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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

BALBOA CAPITAL CORPORATION,

Plaintiff,

v.

REGENTS CAPITAL CORPORATION; DONALD HANSEN; DENNIS ODIORNE; KIRSTEN MERZA; CHELSEA HAINES; JAVIER ENRIQUEZ; KEVIN KUTTER; TRAVIS POWER; DOES 1 through 25, inclusive,

Defendants.

Case No. 30-2014-00705733-CU-BT-CJC

Assigned to Hon. Kirk Nakamura

DEFENDANTS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES

Date: August 14, 2014
Time: 2:00 PM
Dept.: C-15

Date of Filing: February 19, 2014

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on August 14, 2014 at 2:00 p.m. in Department C-15 of the above-entitled court, defendants Regents Capital Corporation, Donald Hansen, Dennis Odiorne, Kirsten Merza, Chelsea Haines, Javier Enriquez, Kevin Kutter and Travis Power (collectively "Defendants") will, and hereby do, move the court jointly and severally as follows:

1. For an order awarding attorneys' fees incurred in connection with this action in the sum of $35,546.50, plus paralegal fees of $907.50, for the total amount of $36,454, or such other sums as the Court may determine;

2. Alternatively, if attorneys' fees cannot be had as to all Defendants, for an order awarding attorneys' fees for such of them for whom attorneys' fees can be had.

This motion is made pursuant to Section 3426.4 of the California Civil Code on the grounds that Defendants, as the prevailing parties to plaintiff Balboa Capital Corporation's ("Balboa") action for misappropriation of trade secrets, are entitled to recover their attorneys' fees from Balboa because Balboa's claim for misappropriation was made in bad faith.

This motion is based on this notice of motion and motion; the attached memorandum of points and authorities; the declaration of Tiffanny Brosnan; the request for judicial notice; the pleadings and papers on file in this action; and such other evidence and argument as the court may properly receive.

SNELL & WILMER L.L.P.

Dated: May 22, 2014

By: _____
Tiffanny Brosnan
Erin D. Leach
Jordan M. Lee
Attorneys for Defendants Regents Capital Corporation, Donald Hansen, Dennis Odiorne, Kirsten Merza, Chelsea Haines, Javier Enriquez, Kevin Kutter, and Travis Power

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

FEDERAL CASES

STATE CASES

STATE STATUTES

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Defendants Donald Hansen and Dennis Ordione resigned from their employment with Balboa Capital Corporation ("Balboa") and decided to form their own equipment financing company called Regents Capital Corporation ("RCC") – a competitor to Balboa. Five Balboa employees applied to work at RCC and when they received positions with RCC they quit their job with Balboa. Balboa became suspicious that its former employees took confidential customer information and some Balboa customers to RCC and wanted to intimidate its competition out of the industry. So, without a trace of evidence of any misappropriation, Balboa sued these seven former employees and RCC for theft of trade secrets. Balboa quickly applied *ex parte* for a temporary restraining order to enjoin RCC from competing. Balboa's application was denied. Almost two months later, after Defendants expended over $30,000 in attorneys' fees and costs in defeating Balboa's application for a temporary restraining order and preparing a demurrer to the complaint based on lack of specificity and failure to state a claim, Balboa voluntarily dismissed its lawsuit without providing defendants with any reason behind its decision. The reason is simple – Balboa has never had any evidence of misappropriation of protectable trade secrets, and when its bluff was called and RCC actively fought back, Balboa was forced to back down.

Specifically, Balboa never had any evidence that defendants *took* anything – no documents, no customer lists, no computer records – from Balboa. Balboa also has no evidence that defendants *used* any trade secret information. Moreover, there is no trade secret. Yet Balboa sued all defendants, alleging they engaged in these unlawful acts. Under Civil Code section 3426.4, if a claim for misappropriation is made or maintained in bad faith, "the court may award reasonable attorney's fees to the prevailing party." This case, where a larger established company misuses the judicial process to attack a small, new start-up competitor with baseless claims for the improper purpose of harassing a business competitor and ex-employees, fits all the criteria for awarding attorneys' fees.

Accordingly, Defendants, as prevailing parties, respectfully request that this Court award them their reasonable attorneys' fees in the amount of $36,454.

II. Statement of Operative Facts

A. Background Regarding Balboa and the Equipment Financing Industry

Balboa is an equipment financing corporation. Like defendant RCC now, Balboa was born when Patrick Byrne and a co-worker left one equipment financing corporation to start their own competing company. [Previously filed Declaration of Donald Hansen in Support of Opposition to *Ex Parte* Application for Temporary Restraining Order ("Hansen Decl."), ¶3.] Balboa has grown to have over 150 employees. [Hansen Decl., ¶3.] One way Balboa has grown is by recruiting sales people away from competitors who will bring with them their "books of business." [Hansen Decl., ¶11.]

The equipment financing market is highly competitive. [Hansen Decl., ¶5.] There are large national companies like GE Capital competing with companies like Balboa and even smaller companies like Defendants' start up. [*Id.*] Customers consist of any business seeking to finance any piece of equipment used in their particular operations – from a solo practitioner attorney who wants to finance a couple of computers, to an aerospace company who wants to finance a 747 jumbo jet. [*Id.*] Customers are not exclusive to one financing company. When that solo practitioner attorney wants to finance a refrigerator for his office break room, he may use a different finance company than he used for the computers. [*Id.*] It is not uncommon for a particular customer to work with more than one financing company. [*Id*; Previously filed Declaration of Dennis Odiorne in Support of Opposition to *Ex Parte* Application for Temporary Restraining Order ("Odiorne Decl."), ¶6.] In some instances a customer will put a particular transaction out to bid to dozens of different finance companies. [Hansen Decl., ¶6; Odiorne Decl., ¶7.]

Information contained on Balboa's own website discloses how public information regarding Balboa's customers is and, in large part, Balboa is the one that has made that information public.

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On Balboa's "About Balboa Capital" page, Balboa explains that "Balboa Capital has been the trusted financing resource for *many thousands* of businesses since 1988." [[Previously filed Declaration of Tiffanny Brosnan in Support of Defendants' Opposition to Ex Parte Application for Temporary Restraining Order ("Brosnan Decl."), ¶3, Ex. A (emphasis added).] Balboa proudly uses its website to showcase these customers in an attempt to drive additional business. Under the "Testimonials" page, Balboa explains that "Balboa Capital's equipment leasing professionals strive to provide the best customer service possible. This is no more evident than in the amount of video testimonials we receive, many of which are featured here." [Brosnan Decl., ¶4, Ex. A.] The site has links to approximately 45 videos, categorized by industry. [*Id.*] On the videos the customer typically identifies him or herself and his or her business, often with the company logo displayed. [*Id.*] Balboa also maintains a YouTube site where these videos can be found and a link to that site is provided on Balboa's website. [Brosnan Decl., ¶¶3, 10, Ex. B.] Balboa's Facebook page also features the customer videos and a link to that page is provided on Balboa's website. [Brosnan Decl., ¶¶3, 11, Ex. C.] Balboa also lists its Facebook "Likes" on its Facebook page, many of which are its customers. [Hansen Decl., ¶9.] Anyone who visits Balboa's Facebook page can see all of these "likes"/customers. [*Id.*]

Similarly, Balboa frequently tweets on Twitter different companies that it recommends people connect with and follow on "follow Friday" ("#FF"). [Brosnan Decl., ¶14, Ex. F.] A link to Balboa's Twitter feed is provided on Balboa's website. [Brosnan Decl., ¶3.] Many of these companies that Balboa publicly asks people to follow on its Twitter page are Balboa's customers. [Hansen Decl., ¶9.] Balboa also has a Google+ page, accessible through Balboa's website, on which it is connected to 1,707 people/companies in its circle as of March 11, 2014 and shares customer testimonial videos. [Brosnan Decl., ¶¶3, 13, Ex. E.] Many of these people and companies Balboa is connected to are its customers. [Hansen Decl., ¶9.] Anyone who goes on Balboa's Twitter or Google+ page can see all of this information. Through social media, Balboa itself has

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publicly advertised the identities of many of its customers.

Balboa's LinkedIn page, also accessible through its website, has content similar to its Facebook page and Google+ page, such as the link to the customer videos and connections with many of its customers. [Brosnan Decl., ¶¶3, 12, Ex. D; Hansen Decl., ¶9.]

The public announcement of Balboa's customers does not end with the video testimonials and "likes" of its customers or requests that people connect or follow its customers. Balboa also publishes its press releases on its website. [Brosnan Decl., ¶9, Ex. A.] In these press releases, Balboa proudly publishes to anyone who wants to pick up the press release, announcements such as the following: "Balboa Capital Becomes Qualified Lender for Carl's Jr. and Hardee's Franchise Owners," "Balboa Capital Becomes Preferred Lender for McAlister's Deli Franchise Owners," and "Balboa Capital Becomes Preferred Financing Resource for LED Lighting Company, LEDtronics, Inc." [*Id.*]

All of this information was readily available to Defendants' attorney by going to one website – Balboa's own. [Brosnan Decl., ¶3, Ex. A.] The customers are even easier to find by someone who knows the equipment financing business.

B. Background Regarding Defendants

Defendant Donald Hansen worked for Balboa for approximately 20 years. [Hansen Decl., ¶2.] When he resigned in December 2013 he was the Vice President of the Commercial Finance Division. [*Id.*] Defendant Dennis Odiorne worked for Balboa for more than eight years. [Odiorne Decl., ¶2.] When Odiorne resigned, he was a sales manager in the Commercial Finance Division. [*Id.*] Hansen and Odiorne tried to make an amicable departure from Balboa. In their resignation letters, they informed Balboa that their goal was to provide a non-disruptive transition of their job duties. [Hansen Decl., ¶13, Ex. A; Odiorne Decl., ¶12, Ex. A.] They also stated that "[a]ll historical files, company data and documentation personally maintained during my tenure remain intact in Balboa network directories [and that] I remain in full compliance with all of our

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agreements." [*Id.*] Hansen and Odiorne also reiterated verbally to Byrne and the Chief Operating Officer, Rob Rasmussen, that they would not be taking any of Balboa's documents with them. [*Id.*]

After submitting the resignation letters, Byrne asked Hansen and Odiorne to stay through the end of the week and they agreed to do so. [Hansen Decl., ¶14; Odiorne Decl., ¶13.] Byrne and Rasmussen requested that Hansen continue processing transactions for Balboa up until his last day, Friday, December 13, 2013, and he did so. [Hansen Decl., ¶14.] Byrne and Rasmussen requested that Odiorne help with the transition by discussing the specifics of many of his accounts and how to approach the accounts with the sales managers that would be taking over those relationships. [Odiorne Decl., ¶13.]

When Hansen and Odiorne left Balboa, they did not take with them any customer lists or customer files, or any documents from customer files, or any supporting documentation concerning customers, including any customer tax returns. [Hansen Decl., ¶15; Odiorne Decl., ¶14.] RCC hired five of Balboa's former employees – the five other named defendants in this action. [Hansen Decl., ¶18; Odiorne Decl., ¶17.] Hansen and Odiorne told each of these employees not to take anything from Balboa when they left including any customer lists or files they may have had while working for Balboa. [*Id.*]

C. Procedural History

1. Balboa's Complaint

On February 19, 2014, Balboa filed a complaint against RCC and seven individuals, Donald Hansen, Dennis Odiorne, Kirsten Merza, Chelsea Haines, Javier Enriquez, Kevin Kutter, and Travis Power (collectively "Defendants"). Balboa alleged the following eleven causes of action: (1) breach of fiduciary duty, (2) unfair competition, (3) breach of implied covenant of good faith and fair dealing, (4) unjust enrichment, (5) breach of employment agreement, (6) misappropriation of trade secrets, (7) intentional interference with contractual relationship, (8) negligent interference with contractual relationship, (9) intentional interference with economic advantage, (10) negligent

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interference with economic advantage, and (11) conversion of files and records (the "Complaint"). [Complaint.] Each of these claims is premised in large part on the same conclusory allegations – Balboa contends that Defendants misappropriated Balboa's allegedly proprietary and confidential customer list and customer files when they resigned from Balboa, and that Defendants are using the customer list and customer files for their own financial gain and to the detriment of Balboa. [Complaint, ¶¶15-20, 22.] *However, there are no facts to support any of these conclusions.* Balboa does not state specifically what Defendants allegedly took, which of the seven individual defendants took it, how they took it, when they took it, and how they are using it now such that it rises to the level of misappropriation.

2. Balboa's Failed Application for a Temporary Restraining Order

On or about March 4, 2014, Balboa filed an *ex parte* application for temporary restraining order and order to show cause regarding preliminary injunction. Defendants RCC, Donald Hansen and Dennis Odiorne filed an opposition to the application on March 12, 2014. In their opposition, defendants disputed that there was any trade secret or that any misappropriation took place and clearly set forth in a footnote that they would pursue all rights they have to attorney's fees from Balboa under Civil Code section 3426.4 based on the bad faith filing of this misappropriation action. [Defendants' Opposition to Application for Temporary Restraining Order, filed March 12, 2014.] On March 12, 2014, the Court denied the application for temporary restraining order. The Court scheduled the hearing on Balboa's motion for a preliminary injunction for April 24, 2014 and the parties stipulated that the temporary restraining order papers would constitute the moving papers on the motion for preliminary injunction. [*Id.*]

3. Balboa Dodges Defendants' Deposition Notice

After being served with the application for a temporary restraining order, Defendants noticed the deposition of Balboa's Person Most Knowledgeable for March 20, 2014. [Declaration of Tiffanny Brosnan in Support of Motion for Attorneys' Fees ("Brosnan Fees Decl."), ¶2, Ex. A.] With the deposition notice, Defendants sought

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production of documents supporting Balboa's claim that its customer lists are trade secrets and that Defendants misappropriated Balboa's trade secrets. [*Id.*] Balboa's counsel contacted RCC's counsel on March 13, 2014 stating that Balboa's person most knowledgeable was not available March 20th but was available on March 26th, therefore Defendants re-noticed the deposition for that day. [Brosnan Fees Decl., ¶3, Ex. B.]

Two days before the agreed upon deposition date, Balboa's counsel represented that their person most knowledgeable, Pat Byrne, was *again* unavailable, and requested a different date for the deposition but could not proposing any available dates. [Brosnan Fees Decl., ¶4.] During this call, Balboa's counsel also stated that it would take the hearing on the motion for a preliminary injunction off-calendar. [*Id.*] Balboa's counsel suggested that this should relieve the pressure to take Mr. Byrne's deposition, but RCC's counsel explained that they still wanted to take the deposition as soon as possible.

Defendants' counsel repeatedly tried to obtain a new deposition date from Balboa's counsel without any luck. [Brosnan Fees Decl., ¶4.] As a result, Defendants unilaterally re-noticed the deposition for April 18, 2014. [Brosnan Fees Decl., ¶4, Ex. C.] On April 8, 2014, Balboa's counsel once again claimed that its person most knowledgeable was again unavailable on the proposed date. [Brosnan Fees Decl., ¶5.] The deposition was then re-noticed for an agreed upon date of May 6, 2014. [Brosnan Fees Decl.,¶5, Ex. D.]

Balboa, on the other hand, never propounded any discovery – not a single deposition notice, interrogatory, request for admission or request for production. [Brosnan Decl., ¶5.]

4. Balboa Unilaterally Dismisses Its Case

On March 26, 2014, Defendants filed a demurrer to Balboa's complaint on the grounds that it was uncertain and failed to state facts sufficient to constitute a cause of action. [Defendants' Demurrer to Complaint.] A hearing on the demurrer was scheduled for June 5, 2014. [Brosnan Fees Decl., ¶6.]

The demurrer was never heard, Balboa's person most knowledgeable's deposition was never taken, and Balboa did not conduct any discovery – instead, without any

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warning, Balboa filed a request for dismissal without prejudice as to the entirety of its Complaint on April 29, 2014 which the Court entered the same day. [Request for Dismissal.]

Balboa apparently recognized that it did not have facts to support a misappropriation of trade secrets claim or that it failed to make diligent efforts to determine whether such facts existed prior to initiating a lawsuit against Defendants. Defendants had the burden to defend a meritless lawsuit, oppose an *ex parte* application for a temporary restraining order, start the discovery process, and file a demurrer simply because Balboa had not made a good faith, reasonable effort to determine that neither the facts nor the law supported its claims.

III. Defendants Are Entitled To Their Attorneys' Fees Under Section 3426.4.

Under Civil Code section 3426.4, if a claim for misappropriation is made or maintained in bad faith, "the court may award reasonable attorney's fees and costs to the prevailing party." Defendants are the prevailing parties here because Balboa voluntarily dismissed its complaint in its entirety and the Court entered the dismissal. Cal. Civ. Code §1032(4). A court finds bad faith to support an award of attorney's fees when there is: (1) "objective speciousness of the plaintiff's claim" and (2) "subjective bad faith in bringing or maintaining the claim." *Gemini Aluminum Corp. v. California Custom Shapes, Inc.* (2002) 95 Cal.App.4th 1249, 1262; *see also SASCO v. Rosendin Elec., Inc.* (2012) 207 Cal.App.4th 837, 845. Both of these elements are satisfied here because Balboa's claim was objectively specious and subjectively brought and/or maintained in bad faith.

A. Balboa's Claim Was Objectively Specious.

"Objective speciousness exists where the action superficially appears to have merit but there is a complete lack of evidence to support the claim." *FLIR Systems, Inc. v. Parrish* (2009) 174 Cal.App.4th 1270, 1276. Courts hold that a plaintiff's claim is specious when the plaintiff does not have a trade secret and/or there is no evidence of

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COSTA MESA, CALIFORNIA 92626-7689

misappropriation. *Gemini Aluminum Corp.*, *supra*, 95 Cal.App.4th at 1263 (holding trade secret alleged to have been stolen had no economic value); *Computer Econ., Inc. v. Gartner Group, Inc.* (S.D. Cal. Dec. 14, 1999) 1999 U.S. Dist. LEXIS 22204, at *17-18; *Stilwell Development, Inc. v. Chen* (C.D. Cal. April 25, 1989) 1989 WL 418783, at *1, 3-4 (found objective speciousness because plaintiffs could not present credible "evidence that the identities of their distributors were confidential and/or that [defendant] misappropriated them."). A lack of proof in the record that purported trade secrets are worth anything supports the conclusion that a misappropriation claim was objectively specious. *CRST Van Expedited, Inc. v. Werner Enterprises, Inc.* (9th Cir. 2007) 479 F.3d 1099, 1112 (affirming award of attorney's fees following successful motion to dismiss misappropriation claim).

In a recent similar case, *SASCO, supra, v. Rosendin Electric, Inc.* (2012) 207 Cal.App.4th 837, the defendants left their prior employer and went to work for a competitor. Later, the competitor obtained a contract on a project for which plaintiff had also submitted a proposal. The plaintiff sued, and after conducting discovery, the defendants filed a motion for summary judgment. The plaintiff did not file an opposition and instead voluntarily dismissed the case. *Id.* at 842. The court affirmed the award of fees and costs to the defendants under Civil Code section 3426.4 in the amount of $484,943, explaining, "[s]peculation that the individual employees must have taken trade secrets from SASCO based on their decision to change employers does not constitute evidence of misappropriation. Nor does speculation that Rosendin's success in obtaining the Verizon Tustin contract was based on the theft of trade secrets constitute evidence of misappropriation." *Sasco, supra*, 207 Cal.App.4th at 848-849.

Here, Balboa voluntarily dismissed its case because it too was based on mere suspicion and conjecture. From the very beginning and throughout the entire two months since the litigation was commenced, Balboa had no evidence that any of the Defendants took anything from Balboa or that they ever used any information from Balboa to improperly secure new business. They simply resigned, a couple of them started a start-up

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competitor and the remaining defendants went to work for them, and they lawfully continued to conduct business in the same industry. That is not evidence of illegal behavior or misappropriation of trade secrets, and not enough to subject them to large defense costs in a meritless action.

Furthermore, based on Balboa's own public representations and representations made under penalty of perjury in prior trade secret litigation that it had to defend, the identity of its customers and customer information are not trade secrets. California's version of the Uniform Trade Secret Act ("UTSA") defines a trade secret as "information ... that (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Cal. Civ. Code § 3426.1(d). Trade secret protection is afforded only to information that has not yet been ascertained by others in the industry. *ABBA Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 21.

Balboa itself acknowledged the *non*-trade secret nature of customer information in another matter. On March 15, 2012, Patrick Byrne, the President, CEO and founder of Balboa, submitted an affidavit under penalty of perjury in the United States District Court for the District of Massachusetts in opposition to a motion for a temporary restraining order brought *against Balboa* based on alleged misappropriation of trade secrets filed by a competitor of Balboa, Timepayment Corp. [Request for Judicial Notice, Tab 1.] Thus, in that case Balboa was on the other side of the pleadings. Balboa was defending against a claim that it misappropriated trade secrets of a competitor when it hired an employee away from that competitor. In his declaration in that case, Byrne asserted that customer names and contact information in the finance industry are *not* "secret or unavailable from public sources nor is it considered propriety." [*Id.*] Byrne stated instead that customers typically work with two or more financing companies over a period of time and Balboa will typically have the same contact information for customers as a number of other finance companies. [*Id.*] Accordingly, *when it suits Balboa's purposes, the company has*

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taken the exact opposite position it took here.

Moreover, as set forth in detail above, Balboa broadcasts the names of its customers and their information repeatedly throughout its website and all over social media in an attempt to gain additional customers. After doing this, Balboa cannot then say that the customer information is a trade secret that no one can use. *See DVD Copy Control Ass'n, Inc. v. Bunner* (2004) 116 Cal.App.4th 241, 254 (noting, on a motion for preliminary injunction where moving party sought to enjoin disclosure or use of alleged trade secret already disseminated on the Internet, that it could "conceive of no possible justification for an injunction against the disclosure of information if the information were already public knowledge").

Thus, in this case, there was no evidence of misappropriation, plus there was no trade secret to misappropriate. Accordingly, the Court should find that Balboa's claim was specious, satisfying the objective element of Section 3426.4.

B. Balboa's Claim Was Subjectively Brought in Bad Faith.

Subjective bad faith means "the action was commenced or continued for an improper purpose, such as harassment, delay, or to thwart competition." *Sasco*, *supra*, 207 Cal.App.4th at 847; *see also FLIR Systems, Inc.*, *supra*, 174 Cal.App.4th at 1278. Moreover, "[s]ubjective misconduct exists where a plaintiff knows or is reckless in not knowing that its claim for trade secret misappropriation has no merit." *FAS Techs. v. Dainippon Screene Mfg.* (N.D. Cal. September 21, 2001) 2001 WL 1159776, at *3; see also *Stilwell*, *supra,* 1989 WL 418783 (court inferred from the complete failure of proof that the plaintiffs must have knowingly and intentionally prosecuted a specious claim). For example, "[b]ad faith may be inferred where the specific shortcomings of the case are identified by opposing counsel, and the decision is made to go forward despite the inability to respond to the arguments raised." *FAS Techs, supra,* 2001 WL 1159776 *3 (quoting *Alamar Biosciences, Inc. v. Difco Labs., Inc.* (C.D. Cal. 1996) 40 U.S.P.Q.2d (BNA)1437; *see also CRST Van Expedited, Inc.*, *supra*, 479 F.3d at 1112 ("district court

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COSTA MESA, CALIFORNIA 92626-7689

could infer subjective bad faith because defense counsel warned the plaintiff the claims were specious but CRST first haggled for a release and then when unsuccessful, agreed to abandon the claim after Werner filed its motion to dismiss"); *Gemini Aluminum Corp., supra,* 95 Cal.App.4th at 1263-64 (held subjective bad faith was present because defense counsel had pointed out the shortcomings in the trade secret claims with no response from the plaintiff). In addition, finding that the plaintiffs' reasons for bringing and maintaining the action were "inevitable disclosure" arguments, which is not the law in California, supports a finding of subjective bad faith. *FLIR Systems, Inc.,* 174 Cal.App.4th at 1277-78.

The best proof that Balboa brought this action subjectively in bad faith to harass Defendants and thwart competition is that Balboa voluntarily dismissed its action to avoid having to propound any discovery, respond to any discovery, produce any documents or have its person most knowledgeable deposed – all of which would have shown that this action was based on nothing more than speculation without any basis in fact. And prior to the dismissal, Balboa simply gave up on its request for a preliminary injunction despite the fact that its papers were already on file and the court had already set a hearing date. That injunction was not likely to have been entered. At no point, whether in the complaint itself or in support of their *ex parte* application for a temporary restraining order, has Balboa presented any evidence of any actual misappropriation of trade secrets or supporting its claims that its customer lists and files are trade secrets. Rather, Balboa has argued, when it benefited Balboa, that customer lists and information are not trade secrets in the finance industry. Balboa thus initiated this litigation despite its own belief, stated under penalty of perjury, that the trade secrets alleged here are not actually protectable trade secrets.

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COSTA MESA, CALIFORNIA 92626-7689

IV. All Attorneys' Fees Incurred by Defendants Thus Far Are Connected to Balboa's Misappropriation Claims and Are Thus Recoverable Under Section 3426.4.

Although Balboa alleged eleven causes of action against Defendants, a majority of these claims are based on an alleged misappropriation of trade secrets. Moreover, the work performed by Defendants' counsel on this case thus far has all revolved around the claims stemming from the alleged misappropriation of trade secrets. [Brosnan Fees Decl., 8.] As such, all of Defendants' attorneys' fees should be recovered.

V. The Attorneys' Fees Sought By Defendants Are Reasonable.

A court has considerable discretion in determining the reasonableness of attorneys' fees. *Stokus v. Marsh* (1990) 217 Cal.App.3d 647, 656-57. The court's determination will not be overruled in the absence of a "prejudicial" abuse of discretion. *Guinn v. Dotson* (1994) 23 Cal.App.4th 262, 267. The *Stokus* court set forth several factors a court should consider in making its determination:

> [T]he nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded . . .; the intricacies and importance of the litigation, the labor and necessity for skilled legal training and ability in trying the cause, and the time consumed.

Stokus, *supra*, 217 Cal.App.3d at 657.

When the foregoing factors are considered, it is clear that the attorneys' fees requested by Defendants in this case are reasonable. Trade secret misappropriation involves a specialized area of the law and requires counsel capable of dealing with complex issues. A partner, senior associate and junior associate worked to a successful conclusion on this matter. Each attorney had the requisite knowledge and experience to handle the trade secret issues. [Brosnan Fees Decl., ¶¶8, 10.] Moreover, Defendants' attorneys' time spent was also reasonable and justified by the fact that Defendants'

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COSTA MESA, CALIFORNIA 92626-7689

attorneys were *completely successful* – Balboa voluntarily dismissed its complaint in its entirety.

Considering all of these factors, Defendants' request for attorneys' fees of $35,546.50 is reasonable, and should be granted in its entirety.

VI. Defendants Are Entitled To Recover Paralegal Fees.

Defendants also request that this Court order Balboa to pay fees for paralegal services in the amount of $907.50 that they incurred in the defense of this action. [Brosnan Fees Decl., ¶8.] California courts have recognized that reasonable paralegal services are compensable as part of an award of attorneys' fees. *See, e.g., Guinn*, 23 Cal.App.4th at 269 (prevailing party entitled to attorneys' fees by statute was also entitled to be compensated for reasonable services of paralegal, as part of attorneys' fees); *City of Oakland v. McCullough* (1996) 46 Cal.App.4th 1, 7 ("necessary support services for attorneys, e.g., secretarial and paralegal services, are includable within an award of attorneys fees") (quoting *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 951); *Sundance v. Municipal Court* (1987) 192 Cal.App.3d 268, 274 ("awards of attorneys' fees for paralegal time have become commonplace, largely without protest"). In this case, where appropriate, a paralegal with a lower billing rate was utilized to maximize Defendants' counsel's efficiency while minimizing costs. [Brosnan Fees Decl., ¶8.]

VII. Conclusion

In view of the foregoing, Defendants respectfully request this Court award Defendants their attorneys' fees of $35,546.50, plus paralegal fees of $907.50, for the total

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amount of $36,454.

SNELL & WILMER L.L.P.

Dated: May 22, 2014

By: _____
Tiffanny Brosnan
Attorneys for Defendants

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COSTA MESA, CALIFORNIA 92626-7689

PROOF OF SERVICE

Balboa Capital Corporation v. Regents Capital Corporation, et al.
OCSC Case No. 30-2014-00705733

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, CA 92626-7689.

On May 22, 2014, I served, in the manner indicated below, the foregoing document described as **DEFENDANTS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Marc S. Hines, Esq. Nicole M. Hampton, Esq. Natalie Mirzayan, Esq. Hines Carder, LLP 3090 Bristol Street, Ste. 300 Costa Mesa, CA 92626	**Attorneys for Plaintiff** **Tel: 714-513-1122** **Fax: 714-513-1123** **nhampton@hinescarder.com**

☑ BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested (C.C.P. § 1013(a)). **Only as to those indicated below.**

☐ BY FACSIMILE: (C.C.P. § 1013(e)(f)).

☐ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees **only as to those indicated below**. (C.C.P. § 1013(c)(d)).

☐ BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to the addressee(s). (C.C.P. § 1011(a)(b)).

☐ BY ELECTRONIC SERVICE: Only as to those indicated with email addresses on the service list (C.C.P. §1010.6 (a)(2)).

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 22, 2014, at Costa Mesa, California.

Anh Dufour

Snell & Wilmer L.L.P.
LAW OFFICES
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