

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 10/19/2021 10:19 AM
Reviewed By: R. Walker
Case #2013-1-CV-247926
Envelope: 7490681

ORDER ON SUBMITTED MATTERS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

LEADFACTORS, LLC,

Plaintiff,

vs.

CISCO SYSTEMS, INC., et al.,

Defendants.

Case No.: 1-13-CV-247926
(Consolidated with Case No. 1-13-CV-
249261)

**ORDER CONCERNING DEFENDANT
CISCO SYSTEMS, INC.'S MOTION
FOR SUMMARY JUDGMENT AND
RELATED MOTIONS TO SEAL**

These consolidated actions arise from negotiations between Defendant Cisco Systems, Inc. and ConnectBeam, Inc., a startup founded in 2005 by Puneet Gupta to develop social enterprise software. Mr. Gupta later formed Plaintiff Leadfactors, LLC, which brings this action to enforce ConnectBeam's asserted trade secret rights against Cisco.

Before the Court is Cisco's motion for summary judgment on the ground that Leadfactors cannot show that it acquired ConnectBeam's trade secrets or its right to bring a claim for trade secret misappropriation. Also at issue are Leadfactors's motions to seal: (1) its trade secret designation, which Cisco lodged as an exhibit in support of its summary judgment motion; and (2) five exhibits that Leadfactors lodged in support of its opposition. The motions to seal are unopposed.

1 The Court issued a tentative ruling on October 8, 2021 and no one contested the ruling at
2 the October 14 hearing. The Court now issues its final order, which DENIES the motion for
3 summary judgment and GRANTS the motions to seal.

4 **I. BACKGROUND**

5 **A. Factual Allegations in Operative Complaint¹**

6 According to the operative Third Amended Complaint (“TAC”), ConnectBeam was the
7 first integrated social software platform that combined “social bookmarking, tagging, social
8 networking, expertise location and live profiles, along with social search.” (TAC, ¶ 9.) In 2006,
9 Cisco contacted ConnectBeam to learn more about its products. (*Id.*, ¶ 23.) ConnectBeam
10 demonstrated its products to Cisco, and also answered technical questions about the functionality
11 of these products and how Cisco could implement these products in its system. (*Ibid.*)

12 In late 2007 or early 2008, Cisco contacted ConnectBeam again to continue discussions.
13 (TAC, ¶ 25.) In April 2008, ConnectBeam and Cisco entered into a “Master Mutual
14 Nondisclosure Agreement” (“NDA”), prepared by Cisco. (*Id.*, ¶ 26.) The parties continued to
15 communicate frequently and ConnectBeam disclosed more details of its products, providing
16 Cisco with proof of concept for an enterprise tagging solution. (*Id.*, ¶¶ 27–29.) But by early to
17 mid-2009, Cisco stopped communicating with ConnectBeam. (*Id.*, ¶ 32.) Leadfactors alleges on
18 information and belief that this was because Cisco built its own competing product using
19 ConnectBeam’s trade secrets, confidential information, and/or derivative technology. (*Ibid.*)

20 ConnectBeam had focused its business on Cisco due to the potential for a large deal.
21 Once it was plain that deal was not going to occur, ConnectBeam, was forced to lay off its
22 employees and cease operations in December 2009. (TAC, ¶¶ 33–36.) It defaulted on loans
23 from Square 1 Bank, which obtained a blanket lien on all of its trade secrets, confidential
24 information, and claims for damages associated with intellectual property infringement. (*Id.*,
25 ¶ 35.) Square 1 stored ConnectBeam’s source code in an escrow account at iForem and took
26 reasonable steps to maintain its secrecy. (*Ibid.*)

27
28 ¹ This section is mere background for the interested reader; it is not purporting to be determining
undisputed material facts for purposes of Cisco’s summary judgment motion.

1 In April 2010, Mr. Gupta formed Leadfactors partly as an attempt to restart
2 ConnectBeam. (TAC, ¶ 45.) In 2012, Leadfactors entered into an Asset Purchase Agreement
3 with Square 1, in which the bank sold all of its rights, title and interest in ConnectBeam's
4 software source code and other intellectual property and assets. (*Id.*, ¶¶ 46–49.)

5 In June 2010, Mr. Gupta attended a conference at which Cisco officially launched its new
6 product Quad. (TAC, ¶¶ 38–39.) Watching a demonstration of Quad on June 15, Gupta noticed
7 that it had several features that embodied or were derived from ConnectBeam's trade secrets and
8 confidential information. (*Id.*, ¶¶ 39–40.)

9 **B. Procedural**

10 Leadfactors and Mr. Gupta filed case no. 1-13-CV-247926 in June 2013, alleging
11 misappropriation of trade secrets by Cisco. In a separate complaint filed in July 2013 (case no.
12 1-13-CV-249261), they alleged breach of the NDA. Mr. Gupta was removed as a plaintiff and
13 the actions were consolidated in November 2013.

14 Following a series of demurrers, Leadfactors filed the operative TAC, asserting claims
15 for: (1) misappropriation of trade secrets; and (2) breach of contract (namely, the NDA). The
16 Court sustained Cisco's demurrer to the breach of contract claim without leave to amend and
17 granted Cisco's later motion for summary judgment on the trade secret claim. Leadfactors
18 appealed.

19 In 2018, the Court of Appeal affirmed the Court's ruling on the breach of contract claim
20 but reversed as to the trade secrets claim. (See *Leadfactors, LLC v. Cisco Sys.* (Dec. 14, 2018,
21 No. H043081) ___ Cal.App.5th ___, 2018 Cal. App. Unpub. LEXIS 8463.) Following remand,
22 the action was deemed complex and transferred to this Department in 2019.

1 **II. MOTION FOR SUMMARY JUDGMENT²**

2 Cisco moves for summary judgment, arguing that Leadfactors cannot show that it owns
3 either ConnectBeam’s trade secrets or its right to bring a claim for trade secret misappropriation.
4 Leadfactors opposes the motion.

5 **A. Legal Standard**

6 “A defendant seeking summary judgment must show that at least one element of the
7 plaintiff’s cause of action cannot be established, or that there is a complete defense to the cause
8 of action. ... The burden then shifts to the plaintiff to show there is a triable issue of material
9 fact on that issue.” (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98
10 Cal.App.4th 66, 72; see also Code Civ. Proc., § 437c, subd. (p)(2).)

11 This standard provides for a shifting burden of production; that is, the burden to make a
12 prima facie showing of evidence sufficient to support the position of the party in question.
13 (See *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850–851 (*Aguilar*.) The burden
14 of persuasion remains with the moving party and is shaped by the ultimate burden of proof at
15 trial. (*Ibid.*) “There is a triable issue of material fact if, and only if, the evidence would allow a
16 reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in
17 accordance with the applicable standard of proof.” (*Ibid.*) The opposing party must produce
18 substantial responsive evidence that would support such a finding; evidence that gives rise to no
19 more than speculation is insufficient. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 162–
20 163.)

21 The traditional method for a defendant to meet its burden on summary judgment is by
22 “negat[ing] a necessary element of the plaintiff’s case” or establishing a defense with its own
23 evidence. (*Guz v. Bechtel Nat’l, Inc.* (2000) 24 Cal.4th 317, 334 (*Guz*.) The defendant may
24 also demonstrate that an essential element of plaintiff’s claim cannot be established by
25

26 ² The Court GRANTS Cisco’s request for judicial notice of its Form 10-Q reflecting that it is a
27 Delaware corporation. (Evid. Code, § 452, subds. (c) & (h); *StorMedia, Inc. v. Superior*
28 *Court* (1999) 20 Cal.4th 449, 456, fn. 9 [taking judicial notice of proxy statement and
registration statement filed with SEC].) It also GRANTS judicial notice of the Court of Appeal’s
opinion in this case. (Evid. Code, § 452, subd. (d).)

1 “present[ing] evidence that the plaintiff does not possess, and cannot reasonably obtain, needed
2 evidence-as through admissions by the plaintiff following extensive discovery to the effect that
3 he has discovered nothing.” (*Aguilar, supra*, 25 Cal.4th at p. 855.)

4 On summary judgment, “the moving party’s declarations must be strictly construed and
5 the opposing party’s declaration liberally construed.” (*Hepp v. Lockheed-California Co.* (1978)
6 86 Cal.App.3d 714, 717 (*Hepp*); see also *Johnson v. American Standard, Inc.* (2008) 43 Cal.4th
7 56, 64 [the evidence is viewed in the light most favorable to the opposing plaintiff; the court
8 must “liberally construe plaintiff’s evidentiary submissions and strictly scrutinize defendant’s
9 own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiff’s favor”].)

10 Summary judgment may not be granted by the court based on inferences reasonably deducible
11 from the papers submitted, if such inferences are contradicted by others which raise a triable
12 issue of fact. (*Hepp, supra*, 86 Cal.App.3d at pp. 717–718.)

13 **B. Leadfactors’s Rights in the Trade Secrets**

14 1. *Is the Source Code the Trade Secret?*

15 Cisco contends that Leadfactors never acquired ConnectBeam’s trade secrets, because
16 Square 1 did not receive any associated information from ConnectBeam other than its source
17 code, and the source code is not one of the secrets that Leadfactors has designated in this case.

18 To support these contentions, Cisco relies on Leadfactors’s trade secret designation and
19 interrogatory response stating that Square 1 acquired and stored ConnectBeam’s source code in
20 an escrow account maintained in secrecy, but

21 never had in its physical possession, nor did ConnectBeam orally disclose, the
22 particulars of its trade secrets or other confidential information [to Square 1
23 Bank]. Thus, aside from the source code, there was nothing in Square 1 Bank’s
24 physical possession from Connection Beam [*sic*], such as documents, that
25 required protection or secrecy.

26 (Sep. Statement of Undisputed Material Facts ISO Mot. (SUMF), no. 5; see also SUMF no. 6
27 [Leadfactors did not amend this interrogatory response], nos. 7–8 [Leadfactors stated in a filing
28

1 in this case that source code is not one of its identified trade secrets], nos. 9–11 [“source code” is
2 not identified in Leadfactors’ trade secret disclosure].) Leadfactors does not contend otherwise.

3 But Cisco’s argument is, in many ways, beside the point. As suggested by its
4 interrogatory response, Leadfactors takes the position that, while not itself a designated secret, its
5 source code embodies the secrets that Leadfactors has designated. This position makes sense to
6 the Court. In addition, Cisco introduces no evidence suggesting that Leadfactors’s position lacks
7 factual support (at least for summary judgment purposes).

8 Moreover, Cisco’s primary authority is consistent with Leadfactors’s view. In
9 *DaimlerChrysler Servs. v. Summit Nat’l* (E.D.Mich. May 22, 2006, No. 02-71871) 2006
10 U.S.Dist.LEXIS 32049 (*DaimlerChrysler*), the federal district court held that “for purposes of
11 trade secrets law, the focus is appropriately on the knowledge, or possession, of the trade secret,
12 rather than on mere ‘ownership’ in the traditional sense of the word.” (*Id.* at *26–27.) Here,
13 Leadfactors argues it possesses source code that embodies the asserted secrets in this case, or
14 otherwise has knowledge of the alleged trade secrets, and Cisco has not provided evidence to
15 show otherwise as a matter of law.

16 2. *Possession of Source Code*

17 Cisco alternatively contends that even if the trade secrets are embodied in the source
18 code, “it is undisputed that Square 1 did not possess a copy of the source code when it entered
19 the [Asset Purchase Agreement (APA)] with Leadfactors and, as a result, Square 1 could not—
20 and did not—transfer ownership of any purported trade[] secret to Leadfactors.” Cisco explains
21 that while Square 1 lodged a copy of the source code with an escrow service called iForem, that
22 service was acquired by another company and apparently discontinued at some point before
23 Square 1 and Leadfactors executed the APA. If all of this were correct, Square 1 would have lost
24 access to the source code and could not have transferred it to Leadfactors.

25 None of the facts supporting this argument were set forth in Cisco’s separate statement.
26 But even assuming that the facts are accurately characterized by Cisco, both Leadfactors and
27 Cisco agree that Mr. Gupta maintained possession of a copy of the source code from the time
28 ConnectBeam was dissolved through the time Leadfactors was formed to buy back its assets. So

1 there is evidence that Leadfactors does have possession of the source code via Mr. Gupta. And
2 as discussed above, possession of the source code that allegedly embodies the trade secrets is
3 sufficient to establish standing to bring a trade secret misappropriation claim. *DaimlerChrysler*
4 and the other authorities cited by Cisco do not suggest a requirement that a specific, consistent
5 physical embodiment of trade secrets be passed from one owner to the next like a talisman.

6 3. *Mr. Gupta's Authorization to Have ConnectBeam Source Code*

7 Cisco then argues that Mr. Gupta's possession of the source code was unauthorized. But
8 Cisco did not provide evidence supporting its assertion with its moving or reply papers, and cites
9 no authority supporting the conclusion that supposedly-unauthorized possession by Mr. Gupta
10 would somehow infect Leadfactors's later, apparently-authorized possession of the code. In fact,
11 Cisco's own authorities emphasize that "the better focus for determining whether a party can
12 assert a misappropriation claim is on that party's possession of secret knowledge, rather than on
13 the party's status as a true 'owner.'" (*BladeRoom Grp. Ltd. v. Facebook, Inc.* (N.D.Cal. 2017)
14 219 F.Supp.3d 984, 990.) In our case, Leadfactors possesses the source code that embodies the
15 alleged trade secrets. And there is no evidence that the trade secrets are no longer secret.

16 4. *Theory Beyond the Scope of the TAC*

17 Finally, Cisco contends that Leadfactors's acquisition of the source code from Mr. Gupta,
18 as opposed to Square 1, raises a theory beyond the scope of the TAC. But the TAC focuses on
19 Leadfactors's acquisition from Square 1 of legal "right[s], title, and interest" in ConnectBeam's
20 largely intangible assets, and does not address the specifics of how Leadfactors obtained physical
21 possession of ConnectBeam's source code.³ In any event, such evidentiary details do not need to
22 be alleged in a complaint. Leadfactors's theory on this point is not inconsistent with the TAC or
23 beyond its scope, in the Court's view.

24 For all these reasons, Cisco's summary judgment motion fails.

25
26
27 ³ The TAC alleges that "Leadfactors was formed, in part, as an attempt to restart ConnectBeam"
28 and to "retrieve" its assets from Square 1 by obtaining "all right[s], title, and interest" in
ConnectBeam's source code and trade secrets. (TAC, ¶¶ 45–47.) "[A]s successor in interest to
ConnectBeam, Leadfactors now owns and has retained all of ConnectBeam's assets and property
...." (*Id.*, ¶ 54.)

1 **C. Leadfactors’s Rights in the Misappropriation Claim**

2 Cisco further argues that Leadfactors cannot show it acquired ConnectBeam’s rights to
3 prosecute this action, apart from any other rights to the trade secrets themselves. But Cisco
4 correctly characterizes this issue as an alternative basis on which Leadfactors could show it is a
5 proper plaintiff. Since Cisco fails to meet its burden concerning Leadfactors’s ownership of the
6 trade secrets, the Court need not address this alternative theory.

7 **D. Conclusion**

8 The Court DENIES Cisco’s motion for summary judgment. The Court notes that it will
9 not rule on the parties’ objections to evidence since they are immaterial to its disposition of
10 Cisco’s motion. (See Code Civ. Proc., § 437c, subd. (q) [“In granting or denying a motion for
11 summary judgment or summary adjudication, the court need rule only on those objections to
12 evidence that it deems material to its disposition of the motion. Objections to evidence that are
13 not ruled on for purposes of the motion shall be preserved for appellate review.”].)

14 **III. MOTIONS TO SEAL**

15 In its first motion, Leadfactors moves to file under seal its Second Amended Confidential
16 Trade Secret Identification, which is attached as Exhibit 10 to both the Declaration of Krista M.
17 Enns supporting Cisco’s motion and to the Evidence in Support of Cisco’s motion. Leadfactors
18 also moves to file under seal five exhibits to its opposition to Cisco’s summary judgment motion.

19 **A. Legal Standard**

20 Generally, “[t]he court may order that a record be filed under seal only if it expressly
21 finds facts that establish: (1) There exists an overriding interest that overcomes the right of
22 public access to the record; (2) The overriding interest supports sealing the record; (3) A
23 substantial probability exists that the overriding interest will be prejudiced if the record is not
24 sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to
25 achieve the overriding interest.” (Cal. Rules of Court, rule 2.550(d).)

26 But in actions for trade secret misappropriation, the court “shall preserve the secrecy of
27 an alleged trade secret by reasonable means, which may include ... sealing the records of the
28 action” (Civ. Code, § 3426.5.) The usual sealing rules do not apply to records such as these,

1 which “are required to be kept confidential by law.” (Cal. Rules of Court, rule 2.550(a)(2);
2 see *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298–299 (*Providian*) [“a
3 mandatory confidentiality requirement ... is imposed ... in actions initiated pursuant to the
4 Uniform Trade Secrets Act for misappropriation of trade secrets”].) While the Court retains the
5 authority to unseal claimed secrets that are not even arguably secret, it must generally preserve
6 the confidentiality of claimed secrets until such time as that information is finally adjudged not
7 to be a trade secret. (See *Cypress Semiconductor Corporation v. Maxim Integrated Products,*
8 *Inc.* (2015) 236 Cal.App.4th 243, 255.)

9 Where rule 2.550 does apply, “[c]ourts have found that, under appropriate circumstances,
10 various statutory privileges, trade secrets, and privacy interests, when properly asserted and not
11 waived, may constitute overriding interests.” (*Providian, supra*, 96 Cal.App.4th at p. 298, fn. 3.)

12 In addition, confidential matters relating to the business operations of a party may be sealed
13 where public revelation of the information would interfere with the party’s ability to effectively
14 compete in the marketplace. (See *Universal City Studios, Inc. v. Superior Court* (2003) 110
15 Cal.App.4th 1273, 1285–1286.) Where some material within a document warrants sealing, but
16 other material does not, the document should be edited or redacted if possible, to accommodate
17 both the moving party’s overriding interest and the strong presumption in favor of public access.
18 (Cal. Rules of Court, rule 2.550(d)(4), (5).) In such a case, the moving party should take a line-
19 by-line approach to the information in the document, rather than framing the issue to the court on
20 an all-or-nothing basis. (*Providian, supra*, 96 Cal.App.4th at p. 309.)

21 **B. Discussion**

22 In its first motion, Leadfactors seeks to maintain its trade secret designation under seal, a
23 reasonable means of preserving the alleged secrets. The Court accordingly GRANTS this
24 motion.

25 The exhibits addressed by Leadfactors’s second motion reflect information relating to
26 and describing Leadfactors’s trade secrets and its confidential information about its sales and
27 proprietary software. Leadfactors’s overriding interests in this information supports maintaining
28

1 the exhibits under seal, and the other factors set forth in rule 2.550 are satisfied insofar as they
2 apply. The Court GRANTS the second motion to seal.

3 **IT IS SO ORDERED.**⁴

4 Date: October 18, 2021



5 _____
6 The Honorable Sunil R. Kulkarni
7 Judge of the Superior Court

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 _____
28 ⁴ In its tentative ruling, the Court stated that this order would be filed publicly unless the parties indicated that it should not be at the hearing. Since no party did so, the order is being filed publicly.