Pleading a Claim for Misappropriation of Trade Secrets in California: A Problem of Particularity

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Recent decisions in California raised the question of whether a party asserting a claim for misappropriation of trade secrets must, in its pleadings, define the trade secrets at issue with particularity. The cases variously involved claims of misappropriation under both federal and state law: the Defend Trade Secrets Act (DTSA) and the California Uniform Trade Secrets Act (CUTSA). While pleading standards in federal court typically require only that the party set forth sufficient “facts to state a claim to relief that is plausible on its face,” there has been some disagreement among decisions in California for claims under the CUTSA.

Some courts have required parties to identify trade secrets with reasonable particularity in their pleadings because of California Code of Civil Procedure § 2019.210, which states that “before commencing discovery relating to the trade secret, the party alleging the misappropriation shall identify the trade secret with reasonable particularity.” For example, in Pellerin v. Honeywell Int’l, Inc., the counterclaimant asserted trade secret misappropriation involving foam earplug manufacturing operations. The court in Pellerin stated that the standard for pleading trade secret misappropriation under the CUTSA when the trade secret is a manufacturing process requires a complaint to “describe the subject matter of the trade secret with sufficient particularity to separate it from matters of general knowledge in the trade or of special knowledge of those persons who are skilled in the trade, and to permit the defendant to ascertain at least the boundaries within which the secret lies.”

More recent decisions, however, have rejected this “reasonable particularity” standard and reaffirmed that the correct pleading standard is simply the one articulated by the Supreme Court in Twombly and Iqbal. The court in Physician’s Surrogacy, Inc., for example, addressed the issue of pleading standards for a claim under the DTSA and held that a party is not required to define the trade secrets at issue with particularity at the pleading stage. Specifically the court found that “the Court applies general pleading standards, which require plausibility as opposed to particularity. In other words, the Court finds unpersuasive Defendants’ argument that Plaintiff must plead DTSA claims with particularity.” This finding is consistent with Supreme Court and Ninth Circuit precedent and numerous district court decisions.

As noted, pleading standards in federal court typically require only that the party set forth sufficient “facts to state a claim to relief that is plausible on its face.” 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. However, “detailed factual allegations” are not required. Instead, there must only be “sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively . . . [and] plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.”

Trade secret claims are typically governed by the notice pleading requirements of Rule 8(a). Only where the improper means used to misappropriate the trade secrets are specifically alleged to be “fraudulent” would the heightened “particularity” pleading standard articulated in Fed. R. Civ. P. 9(b) apply.
Thus, for claims under the DTSA not alleging fraud, the party alleging misappropriation should not be required to define the trade secrets at issue with particularity. Rather, the party must simply allege sufficient facts to plausibly demonstrate that the information at issue constitutes any form or type of “financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes” so long as that information “derives value from being secret,” and “the owner took reasonable measures to keep [it] secret.”

The court in Space Data Corp. specifically addressed claims under the CUTSA. The defendant argued that Plaintiff’s disclosure of trade secrets was deficient under California Code of Civil Procedure § 2019.210, which requires a party alleging misappropriation to identify the trade secret with reasonable particularity. The court, however, found that the trade secrets only needed to satisfy the Fed. R. Civ. P. 8 standard, and provide “reasonable” detail, which is enough to permit the defendant to prepare a defense and for the court to craft limits on discovery. A number of earlier decisions from the Northern District of California seemed to support defendant’s view. The court, however, noted that compliance with § 2019.210 is a separate issue from pleading standards on a motion to dismiss and does not apply to pleading requirements. Thus, the court held that claims under the CUTSA do not require a plaintiff to define the trade secrets at issue with reasonable particularity in its pleadings.

While, as mentioned, there a number of decisions that applied the “reasonable particularity” requirement of § 2019.210 to pleadings, the Space Data Corp. court’s decision is consistent with several other district court decisions and an unreported decision of the Ninth Circuit. In Meggitt San Juan Capistrano, Inc. v. Yongzhong, the Ninth Circuit found no authority suggesting that a party is required to “identify[y] the particular trade secrets at the pleading stage. Rather, the authorities . . . simply require a plaintiff to identify a trade secret ‘with reasonable particularity’ prior to commencing discovery.” Decisions in the Central District of California previously held that “the unambiguous language of” Section 2019.210 demonstrates that the particularity requirement is “one related to discovery rather than related to pleading.”

Furthermore, some district court cases have found that application of Section 2019.210 would violate the Erie Doctrine. According to the Erie Doctrine, when questions of state law are raised in federal court, the federal court generally applies the state’s substantive law but federal procedural law. The determination of whether a rule is “substantive” depends on the legal context and requires the court to consider whether the state rule conflicts with any applicable federal rule. In Hilderman v. Enea TekSci, Inc., the Southern District of California found that § 2019.210 conflicts with Fed. R. Civ. P. 26. As noted by Hilderman, Rule 26 sets forth required initial disclosures, permits discovery of “any nonprivileged matter that is relevant to any party’s claim or defense,” and provides for the opening of discovery, i.e., discovery shall not occur until the Rule 26(f) conference unless otherwise ordered by the Court or authorized under the Federal Rules of Civil Procedure. Section 2019.210, however, conditions discovery regarding trade secrets on plaintiff sufficiently identifying the trade secret. If Section 2019.210 is applied and the plaintiff fails to make an adequate disclosure by the Rule 26(f) conference, the plaintiff would be barred from engaging in discovery on his trade secret claims even though he would otherwise be permitted to do so under the Federal Rules. Accordingly, because the state court discovery rule conflicts with the Federal Rules, the Hilderman court held that that Section 2019.210 does not apply to federal actions. Other district courts in California have similarly found that Section 2019.210 has no applicability in federal court proceedings.

In conclusion, a claim of misappropriation of trade secrets in many situations should not require a party to define the trade secrets at issue with particularity at the pleading stage, regardless of whether that claim is made under the DTSA, CUTSA, or both. Rather, a party should simply be required to meet the notice pleading requirements of Rule 8 of the Federal Rules of Civil Procedure: a party asserting misappropriation of trade secrets should be required to plead nothing more than sufficient “facts to state a claim to relief that is plausible on its face.”


[12] Id.


[19] Id.


[27] Id.

[28] Id.

[29] Id.

[30] Id. at *3.


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