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15 Rivian Automotive, LLC

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF SANTA CLARA  
18

19 TESLA, INC.,

20 Plaintiff,

21 v.

22 RIVIAN AUTOMOTIVE, INC., RIVIAN  
23 AUTOMOTIVE, LLC, TAMI PASCALE,  
24 KIM WONG, JESSICA SIRON,  
25 CARRINGTON BRADLEY, and  
26 DOES 1-20.

25 Defendants.

CASE NO. 20CV368472

**DEFENDANTS RIVIAN AUTOMOTIVE,  
INC. AND RIVIAN AUTOMOTIVE, LLC'S  
NOTICE OF DEMURRER AND  
DEMURRER TO COMPLAINT;  
MEMORANDUM OF POINTS &  
AUTHORITIES IN SUPPORT**

Hearing Date: TBD  
Hearing Time: 9:00 A.M.  
Dept: 20  
Judge: Hon. Socrates P. Manoukian  
Action Filed: July 17, 2020  
Trial Date: TBD

*[Declaration of Richard G. Frenkel filed  
concurrently herewith]*

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**NOTICE OF DEMURRER**

**TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that on as soon as this matter may be heard in Department 20 of the above-entitled Court, or in the complex division of this Court should this action be transferred thereto, located at 191 North First Street, San Jose, California, Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC, by and through their undersigned counsel, will and hereby do demur to Plaintiff’s Complaint to the causes of action for (1) Violation of Uniform Trade Secrets Act (Civ. Code, § 3426 et seq.) and (2) Intentional Interference with Contract.

This Demurrer will be based on this Notice of Motion, the supporting Memorandum of Points and Authorities, the Declaration of Richard G. Frenkel in support of the Demurrer, the pleadings, records, and papers filed in this action, and on such other evidence and arguments as may be considered by the Court prior to its decision on the Demurrer.

**DEMURRER**

Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC, (together, “Rivian”) hereby demur to Tesla, Inc.’s (“Tesla’s”) Complaint on the following grounds:

**(FIRST CAUSE OF ACTION)**

Plaintiff’s First Cause of Action is defective pursuant to Code of Civil Procedure 430.10(e) because it does not state facts sufficient to constitute a cause of action.

**(THIRD CAUSE OF ACTION)**

Plaintiff’s Third Cause of Action is defective pursuant to Code of Civil Procedure 430.10(e) because it (1) does not state facts sufficient to constitute a cause of action and (2) is preempted by Plaintiff’s First Cause of Action.

1 Dated: August 10, 2020

Respectfully submitted,

LATHAM & WATKINS LLP

2  
3 By /s/ Richard G. Frenkel

4 Douglas E. Lumish  
5 Richard G. Frenkel  
6 Kristine W. Hanson  
7 Brett James Frazer

8 Attorneys for Defendants Rivian  
9 Automotive, Inc., Rivian Automotive, LLC  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Tesla undoubtedly sees the genuine excitement, not only for Rivian’s electric vehicles, but  
4 for the culture and ethos Rivian has meticulously built over the last decade. More importantly,  
5 Tesla sees a strong competitor steadily building momentum. Instead of embracing the growth of  
6 competition in the electric vehicle space and the critical importance in having multiple successful  
7 companies driving the shift to a sustainable transportation system, Tesla resorts to asserting  
8 baseless, harmful allegations and purposefully mischaracterizing facts solely to attempt to stop the  
9 growth of competition through the disparagement of Rivian and Tesla’s own former employees.

10 Tesla did not file this case to defend or protect any legitimate intellectual property rights.  
11 Tesla sued in an improper and malicious attempt to slow Rivian’s momentum and attempt to  
12 damage Rivian’s brand. And it sued in an abusive attempt to scare employees thinking about  
13 leaving Tesla. While Tesla itself recruits employees from other automotive and technology  
14 companies, it cries foul to Rivian, which competes, fairly, for this same automotive and technology  
15 talent. As is evident from the many defects on the face of its complaint, this lawsuit is driven by  
16 these improper aims, and Tesla’s desire to use the judicial system as a prop to deflect attention  
17 from Tesla’s own challenges, to foment fear, uncertainty and doubt about Rivian, and to provide  
18 the pretext to disparage Rivian and its own former employees in the press.

19 The circumstances surrounding this action make Tesla’s ulterior motives clear. On July  
20 10, 2020, Rivian announced that it had closed an investment round of \$2.5 billion—an investment  
21 round that brought the total amount of capital Rivian has raised since the start of 2019 to over \$5.3  
22 billion. The very same day—and mere hours after Rivian’s announcement—Tesla sent an e-mail  
23 and letter to Rivian purporting to inform Rivian of some concerns Tesla claimed to have regarding  
24 former Tesla employees’ possession of alleged Tesla trade secrets. Tesla’s letter notably omitted  
25 important details necessary for a full investigation. Despite this, Rivian immediately instituted an  
26 investigation, reached out to Tesla to request more details, and made an offer to work with Tesla  
27 to resolve any issues between the companies. This was met with false accusations and multiple  
28 attempts to attribute to Rivian statements or actions fabricated by Tesla. Indeed, squarely opposite



1 the false allegations in the complaint, Rivian has *twice* offered to work with Tesla to assure it that  
2 Rivian wants no Tesla trade secrets, sought no Tesla trade secrets, and obtained no Tesla trade  
3 secrets. Anxious to rush to Court to begin its smear campaign, Tesla refused. One week after  
4 sending its letter, on July 17, Tesla filed this lawsuit. Then, days later, Tesla’s CEO, Elon Musk,  
5 used the lawsuit as an excuse to give an interview in which he lobbed inflammatory and false  
6 accusations of “poaching,” the misappropriation of “a bunch of Tesla’s intellectual property,” and  
7 of Rivian “doing bad things.”<sup>1</sup>

8           Instead of alleging that Rivian misappropriated any technology, the centerpiece of Tesla’s  
9 complaint is that the defendants misappropriated Tesla’s “recruiting tactics and strategies,” its  
10 approach to conducting group interviews, and details of how it compensates certain employees. It  
11 did so even though this information is publicly known, freely available on the internet, and  
12 routinely disclosed by Tesla with no efforts to hide it from public view.<sup>2</sup> Indeed, one of the “trade  
13 secrets” Tesla alleges its former employees stole was a list of Tesla employee email addresses  
14 contained in a “farewell email” sent by one of the employees to people with whom he had worked  
15 for nearly seven years. Moreover, Tesla—more concerned with creating fodder for a lawsuit than  
16 protecting any confidential information—filed this lawsuit despite knowing full well that Rivian  
17 never actually acquired any of the alleged trade secrets in the complaint, and that Rivian had  
18 already taken ample measures to ensure the alleged trade secrets would not be used by or made  
19 available to Rivian. As an innovator with its own valuable intellectual property, Rivian is built on  
20 a foundation that respects others’ intellectual property, and has rigorous policies and procedures  
21 to make sure it does not obtain confidential information from other companies when on-boarding

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23 <sup>1</sup> Joey Klender, *Tesla’s Elon Musk Talks Rivian Lawsuit, “They’re doing bad things, so we sued*  
24 *them,”* TESLARATI (Aug. 4, 2020) <https://www.teslarati.com/tesla-rivian-lawsuit-elon-musk-employee-poaching>

25 <sup>2</sup> See, e.g., Anja Zojceska, *The Best Guide for Conducting Group Interview*, TALENTLYFT (Jan.  
26 4, 2020) <https://www.talentlyft.com/en/blog/article/251/the-best-guide-for-conducting-group-interviews>;  
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2018) <https://www.cnn.com/2018/04/16/how-to-land-a-job-at-tesla.html>.

1 employees. Those procedures did their job here: none of the alleged trade secrets in Tesla’s  
2 complaint have been located at Rivian or on any of its systems. This, tellingly, did not stop Tesla  
3 from suing anyway.

4           Unfortunately, maligning Rivian was not Tesla’s only ulterior motive. Rather, it crafted  
5 its complaint to achieve a second improper purpose—namely to send a threatening message to its  
6 own employees: don’t dare leave Tesla. Understanding that the strong public policy favoring  
7 employee mobility in California restricts the use of non-compete contracts, Tesla’s complaint  
8 seeks to punish four of its former employees for leaving Tesla and joining the Rivian team. To  
9 this end, the complaint deliberately misstates and sensationalizes the circumstances surrounding  
10 the departure of these four employees. It cavalierly aims to destroy their careers and reputations  
11 in the industry by labeling them as liars and thieves despite knowing full well that none of them  
12 took an actual trade secret of Tesla’s. And Tesla strains to plead misappropriation despite having  
13 to concede that each of these employees cooperated with Tesla to delete every one of the  
14 documents Tesla contends belongs to it, and that they did so while still employed at Tesla, before  
15 joining Rivian, and without sending the documents to any Rivian email address or copying any of  
16 the documents onto any Rivian system.

17           These defects in Tesla’s motives manifest as defects in its pleading that warrant demurrer.  
18 For example, Tesla’s allegations concerning Ms. Wong concede that, as of the time of the  
19 complaint, she had not yet even started at Rivian. Thus, these allegations devolve into the baseless  
20 speculation that Ms. Wong *might* do something wrong in the future, not that she ever actually  
21 provided Rivian with any Tesla trade secret information. Similarly, for all of the employees,  
22 Tesla’s complaint pleads only that they “took” certain information Tesla now alleges to be  
23 confidential. Conspicuously absent from the complaint is any factual allegation that Rivian “got”  
24 this information; *i.e.*, the complaint is devoid of facts that, even if accepted as true *arguendo*,  
25 would show that the employees disclosed any confidential or trade secret information to Rivian,  
26 or that Rivian acquired such information through any means, improper or otherwise. Lacking this  
27 requisite predicate for any misappropriation or interference by Rivian, Tesla’s complaint fails to  
28

1 state facts sufficient to constitute a cause of action, and so both of its claims against Rivian should  
2 be dismissed.

3 **II. BOTH OF TESLA’S CLAIMS AGAINST RIVIAN SHOULD BE DISMISSED FOR**  
4 **FAILING TO STATE SUFFICIENT FACTS TO CONSTITUTE A CAUSE OF**  
5 **ACTION**

6 Tesla filed its Complaint on July 17, 2020 against Rivian and four individual defendants:  
7 Tami Pascale, Kim Wong, Jessica Siron, and Carrington Bradley. The Complaint alleges three  
8 causes of action: (1) a First Cause of Action, for violation of the California Uniform Trade Secrets  
9 Act (“CUTSA”) against all defendants; (2) a Second Cause of Action for breach of contract against  
10 only the individual defendants; and (3) a Third Cause of Action for intentional interference with  
11 contract solely against Rivian. This demurrer goes to the first and third causes of action to the  
12 extent they relate to Rivian.

13 Under Code of Civil Procedure section 430.10(e), a “party against whom a complaint . . .  
14 has been filed” may demur on the ground that “[t]he pleading does not state facts sufficient to  
15 constitute a cause of action.” Code Civ. Proc. § 430.10. In assessing Tesla’s complaint, the Court  
16 should give the factual allegations a “reasonable interpretation,” but it should not “assume the truth  
17 of contentions, deductions, or conclusions of law.” *Servo by Medallion, Inc. v. Clorox Co.*, 44  
18 Cal. App. 4th 1807, 1811-12 (1996); *see also Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350,  
19 1358 (2010) (same). In particular, the Court should not credit as true speculation of the kind  
20 scattered throughout Tesla’s complaint. *Cypress Semiconductor Corp. v. Maxim Integrated*  
21 *Products, Inc.*, 236 Cal. App. 4th 243, 262 (2015) (“an allegation that something ‘apparently’  
22 happened is speculative on its face. It has no place in a pleading, as it is pregnant with the admission  
23 that it may not have happened at all”); *Long Beach Equities, Inc. v. County of Ventura*, 231 Cal.  
24 App. 3d 1016, 1024 (1991) (noting that in adjudicating the sufficiency of complaint, the court  
disregards “speculation”).

25 “A plaintiff may allege on information and belief any matters that are not within his  
26 personal knowledge, *if he has information leading him to believe that the allegations are true.*”  
27 *Gomes v. Countrywide Home Loans, Inc.*, 192 Cal. App. 4th 1149, 1158 (2011) (emphasis in  
28 original) (internal quotations omitted). But, as is the case here, “a pleading made on information

1 and belief is insufficient if it merely asserts the facts so alleged without alleging such information  
2 that leads the plaintiff to believe that the allegations are true.” *Id.* (citing *Doe v. City of Los*  
3 *Angeles*, 42 Cal. 4th 531, 551, fn. 5 (2007)); *see also Comerica Bank & Trust, N.A. v. Yue*, No. 1-  
4 15-CV-285202, 2015 WL 12660121, at \*3 (Cal. Super. Dec. 03, 2015) (sustaining demurrer to  
5 trade secret misappropriation claim where “virtually all of these facts are themselves pleaded on  
6 information and belief, without any indication of what known facts support the whole narrative.”).

7 Applying this governing law to Tesla’s complaint establishes that both of Tesla’s causes  
8 of action against Rivian should be dismissed.

9 **A. Tesla’s Complaint Fails to State a Claim as to Trade Secret**  
10 **Misappropriation**

11 To state a claim for trade secret misappropriation under CUTSA, a plaintiff must allege  
12 that: (1) it is the owner of a trade secret; (2) the defendant acquired, disclosed, or used the plaintiff’s  
13 trade secret through improper means; and (3) it was damaged by the defendant’s actions. *Sargent*  
14 *Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1665 (2003); *see also CytoDyn of New*  
15 *Mexico, Inc. v. Amerimmune Pharm., Inc.*, 160 Cal. App. 4th 288, 296 (2008) (“a prima facie case  
16 for misappropriation requires the plaintiff to demonstrate . . . the defendant **acquired, disclosed,**  
17 **or used** the plaintiff’s trade secret through improper means.”).<sup>3</sup>

18 Tesla’s complaint falls short in at least two major ways. First, while it includes various  
19 allegations against the individual employee defendants, it fails to assert any actual facts that, even  
20 if accepted as true, would amount to misappropriation **by Rivian**. Second, it improperly substitutes  
21 the requisite pleading of facts with baseless speculation.

22 **1. Tesla Fails to Allege that Rivian Acquired Trade Secrets as Required**  
23 **by the CUTSA**

24 Under California law, misappropriation requires the defendant’s actual possession of the  
25 plaintiff’s trade secrets. *See, e.g., CytoDyn*, 160 Cal. App. 4th at 296 (“a prima facie case for  
26 misappropriation requires the plaintiff to demonstrate . . . the defendant **acquired, disclosed, or**  
27

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28 <sup>3</sup> Emphases in quotations supplied unless otherwise noted.

1 **used** the plaintiff’s trade secret through improper means.”); *Silvaco Data Sys. v. Intel Corp.*, 184  
2 Cal. App.4th 210, 223 (2010) (sustaining summary judgment in favor of the defendant Intel and  
3 noting “there is no suggestion here of acquisition even in the broadest sense, i.e., that Intel ever  
4 came into possession of the source code constituting the claimed trade secrets”), superseded on  
5 other grounds by *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (2011). California courts  
6 routinely sustain demurrer in misappropriation actions where the complaint fails to plead  
7 acquisition, disclosure, or use, as to particular defendants. *See, e.g., Superior Anhausner Foods*  
8 *Inc v. J&J Foods Processing*, No. BC254979, 2002 WL 34580642 (Cal. Super. Jan. 14, 2002)  
9 (“The demurrer of all defendants other than J & J Processing is sustained with leave to amend as  
10 to the second cause of action for misappropriation of trade secrets. **Plaintiff has not sufficiently**  
11 **pled disclosure and use as to these defendants.**”) (emphasis added); *Remington v. Warner Bros.*  
12 *Studios*, No. BC206044, 2001 WL 36022163, at \*1 (Cal. Super. Jan. 22, 2001) (sustaining  
13 defendant Amblin’s demurrer where Amblin “did not steal or use Plaintiff’s methods for simulated  
14 tornadoes and therefore did not make any use of his alleged trade secrets.”). Tesla’s complaint is  
15 devoid of allegations of facts to support this essential prong to its claim of misappropriation against  
16 Rivian, and so that cause of action should be dismissed.

17 Tesla’s complaint alleges that the individual defendants each sent emails to their personal  
18 email accounts, and that those emails contained Tesla confidential and trade secret information.  
19 *See, e.g.,* Compl. ¶ 37 (Wong); *id.* at ¶ 46 (Pascale); *id.* at ¶ 51 (Siron); *id.* at ¶ 59 (Bradley).  
20 Tesla’s complaint does not allege, however, that even a single such email was ever sent to any  
21 Rivian email address, or that the information the employees allegedly emailed themselves was  
22 ever disclosed to anyone at Rivian, copied onto any Rivian computer, or otherwise propagated in  
23 any way onto any Rivian system. Tesla attempts to compensate for the inadequacy of its pleading  
24 by introducing a single and wholly conclusory statement that “Rivian misappropriated Tesla’s  
25 trade secret information at least by acquiring such information improperly through the Individual  
26 Defendants[.]” *Id.* ¶ 77.

27 These conclusory allegations are not sufficient; to avoid demurrer the complaint must plead  
28 **facts** which if taken as true would amount to misappropriation by **Rivian**. *See Rakestraw v.*

1 *California Physicians' Service*, 81 Cal. App. 4th 39, 44 (2000) (“Allegations must be factual and  
2 specific, not vague or conclusory.”); *Accuimage Diagnostics Corp. v. Terarecon, Inc.*, 260 F.  
3 Supp. 2d 941, 950-51 (N.D. Cal 2003) (dismissing claim for misappropriation of trade secrets  
4 because “plaintiff fails to allege sufficient specific conduct by [defendant]”); *Cypress*, 236 Cal.  
5 App. 4th at 262 (“A pleader’s unwillingness to commit to an unequivocal assertion of the facts  
6 necessary to sustain a judgment is strong evidence that he or she doubts the existence of a cause  
7 of action.”); *J&J Foods Processing*, 2002 WL 34580642 (sustaining demurrer where the plaintiff  
8 failed to articulate disclosure or use as to particular defendants). The failure to plead any such facts  
9 is fatal to Tesla’s complaint, and demurrer should be sustained.

10           Moreover, the facts that Tesla plead concerning the individual employee defendants run  
11 counter to the claim that *Rivian* somehow misappropriated Tesla’s trade secrets. Specifically,  
12 concerning the “sixteen” files allegedly taken by Kim Wong, Tesla alleges only that she sent them  
13 to “*her* Gmail account,” Compl. ¶ 37, and that “[o]n information and belief, Wong will begin work  
14 at Rivian shortly and has faced no consequences for *her* misappropriation of Tesla’s trade secret,  
15 confidential, and proprietary information,” *id.* ¶ 41. Moreover, as these same passages from the  
16 complaint acknowledge, Ms. Wong had not even begun working at Rivian at the time of these  
17 allegations, and so had no access to any Rivian computers or systems at the time. *Id.* at ¶ 41.  
18 Similarly, Tesla contends that Tami Pascale “took at least ten confidential and proprietary  
19 documents,” *id.* ¶ 42, and “has faced no consequences for *her* misappropriation of Tesla’s trade  
20 secret, confidential, and proprietary information,” *id.* ¶ 50. And, the complaint begrudgingly  
21 acknowledges that, at Tesla’s instruction and under its supervision, Ms. Pascale deleted the same  
22 documents the complaint alleges are trade secrets before she ever joined Rivian. *Id.* ¶ 47. The  
23 same is true for the allegations against Jessica Siron: Tesla pleads only that she “*sent*” “several  
24 documents” to her “personal Gmail account,” *id.* ¶ 51, deleted those documents in front of “Tesla’s  
25 investigators” while still employed at Tesla, *id.* ¶ 55, and “faced no consequences for *her*  
26 misappropriation,” *id.* ¶ 56. And for Mr. Bradley, the complaint alleges only that, by sending a  
27 good-bye email to his friends and colleagues at Tesla, he “forwarded to *his personal email* address  
28 a list of a highly curated select group of high-level Tesla employees,” *id.* ¶ 59, and has “faced no

1 consequences for *his* misappropriation,” *id.* ¶ 62. Critically, Tesla does not plead that any of these  
2 documents were disclosed to or acquired by Rivian. This too warrants demurrer. *Cf. Wright Med.*  
3 *Tech., Inc. v. Paragon 28, Inc.*, 2019 WL 4751807, at \*4 (D. Colo. Sept. 30, 2019) (Dismissing  
4 allegations of trade secret misappropriation against employer and noting, “Wright’s complaint is  
5 replete with factual allegations concerning its former employees’ acquisition of Wright trade  
6 secrets and subsequent alleged trade secret misappropriation, but lacks any factual allegation that  
7 Paragon itself misappropriated or knowingly used such misappropriated information.”).

8 In sum, to plead a cause of action for trade secret misappropriation against Rivian, Tesla  
9 must plead facts sufficient to show that Rivian actually obtained (or disclosed or used) the alleged  
10 trade secrets in the complaint. Because Rivian never actually obtained (or disclosed or used) the  
11 alleged trade secrets in the complaint, Tesla has not (and cannot truthfully) plead any facts to show  
12 that Rivian acquired in any way even a single one of the alleged trade secrets. Accordingly,  
13 demurrer should be sustained and Tesla’s cause of action for trade secret misappropriation against  
14 Rivian dismissed.

## 15 2. Tesla’s Speculation Cannot Substitute For Facts

16 Because Tesla has not plead any facts that Rivian ever obtained any of the alleged trade  
17 secrets in the complaint, Tesla resorts to impermissible speculation and innuendo. This fails as a  
18 matter of law to save the trade secret cause of action against Rivian from demurrer.

19 In paragraphs 35 through 37, Tesla alleges that a single communication took place between  
20 Rivian employee Vince Tanner-Duran and then-Tesla employee Kim Wong. Compl. ¶ 35-37. In  
21 these paragraphs, Tesla contends that Mr. Tanner-Duran “instructed” Ms. Wong that Rivian “did  
22 not have the recruiting templates, structures, formulas, or documents that would be needed for  
23 Rivian’s recruitment efforts.” *Id.* at ¶ 36. Tesla then alleges that, on July 7, 2020, Wong emailed  
24 these same types of documents to her personal email address. *Id.* at ¶ 37. That is all the complaint  
25 can muster in trying to tie any of the alleged trade secrets to Rivian.

26 Importantly, the complaint never pleads in words or substance that Mr. Tanner-Duran  
27 “instructed” (or even asked) Ms. Wong to steal anything from Tesla, or even that he was somehow  
28 hinting or implying anything of the sort. And to the extent that Tesla asks the Court to credit

1 Tesla’s apparent speculation and assume that Mr. Tanner-Duran was hinting to Ms. Wong that she  
2 should bring Tesla documents to Rivian, the Court should decline. *Clorox*, 44 Cal. App. 4th at  
3 690 (the court does not “assume the truth of contentions, deductions, or conclusions of law” set  
4 forth in a complaint). Indeed, California courts routinely reject as inadequate even complaints that  
5 go beyond Tesla’s pleading here and rely on circumstantial evidence to allege that a company  
6 engaged in misappropriation. *See, e.g., Cypress*, 236 Cal. App. 4th at 262 (imposing sanctions for  
7 maintaining an “objectively specious” misappropriation action and noting that “an allegation that  
8 something ‘apparently’ happened is speculative on its face. It has no place in a pleading, as it is  
9 pregnant with the admission that it may not have happened at all.”); *Long Beach Equities*, 231 Cal.  
10 App. 3d at 1024.

11 *Cypress* is especially relevant here. In that case, the plaintiff alleged that the defendant,  
12 Maxim, “used a headhunter to repeatedly target Cypress’s touchscreen employees, apparently  
13 using improperly obtained confidential information regarding Cypress touchscreen employees to  
14 do so.” 236 Cal. App. 4th at 262. The court rejected these allegations at the pleading stage, noting  
15 that “an allegation that something ‘apparently’ happened is speculative on its face.” *Id.* The  
16 *Cypress* court also criticized the plaintiffs for merely “hinting” at theories of liability rather than  
17 making concrete allegations. *Id.* at 261; *see also Diodes, Inc. v. Franzen*, 260 Cal. App. 2d 244,  
18 251 (Ct. App. 1968) (sustaining demurrer where “the complaint speaks in circumlocutions and  
19 innuendoes”). The same result should follow here. Because Tesla does not plead that Mr. Tanner-  
20 Duran instructed Ms. Wong to take anything from Tesla and bring it to Rivian, Tesla fails to  
21 support its cause of action for trade secret misappropriation by Rivian, and demurrer should be  
22 sustained.

23 **B. Tesla’s Complaint Fails to State a Claim of Intentional Interference With**  
24 **Contract**

25 Intentional Interference with Contract (sometimes called “tortious interference with  
26 contractual relations”) requires that plaintiff plead “(1) the existence of a valid contract between  
27 the plaintiff and a third party; (2) the defendant’s knowledge of that contract; (3) the defendant’s  
28 intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual



1 breach or disruption of the contractual relationship; and (5) resulting damage.” *Reeves v. Hanlon*,  
2 33 Cal.4th 1140, 1148 (2004) (citing *Pacific Gas & Electric Co. v. Bear Stearns & Co.*, 50 Cal.  
3 3d 1118, 1126 (1990)); *see also Ixchel Pharma, LLC v. Biogen, Inc.*, 2020 WL 4432623, at \*3  
4 (Cal. Aug. 3, 2020). Tesla’s allegations again fall far below this standard, warranting demurrer.  
5 Tesla fails to plead any intentional acts on behalf of Rivian that were intended to induce any breach  
6 by any of the employee defendants. It also fails to articulate any damage it has suffered as a result  
7 of any breach—because it has not suffered any. Tesla’s allegations of intentional interference with  
8 contract therefore fail as a matter of law.

9         The only “act” attributed to Rivian in the complaint is the same single sentence discussed  
10 above contending that Mr. Tanner-Duran “instructed” Ms. Wong that Rivian “did not have the  
11 recruiting templates, structures, formulas, or documents that would be needed for Rivian’s  
12 recruitment efforts.” *Id.* at ¶ 36. For the same reasons this alleged statement is inadequate to  
13 support a claim for trade secret misappropriation, it also fails to support a claim for interference.  
14 On its face, the statement attributed to Mr. Tanner-Duran never instructs or asks Ms. Wong to take  
15 confidential information from Tesla, to bring confidential information to Rivian, or to do anything  
16 else that would be a breach of any agreement Tesla contends it had or has with Ms. Wong. And,  
17 for the same reasons discussed above, the Court should not give any weight to an argument that  
18 Mr. Tanner-Duran was apparently hinting any of this to Ms. Wong. *Clorox*, 44 Cal. App. 4th at  
19 690 (the court does not “assume the truth of contentions, deductions, or conclusions of law” set  
20 forth in a complaint); *Cypress*, 236 Cal. App. 4th at 262 (“an allegation that something ‘apparently’  
21 happened is speculative on its face. It has no place in a pleading, as it is pregnant with the  
22 admission that it may not have happened at all.”).

23         Beyond this, Tesla makes only the bare, conclusory allegation that “Rivian aided, assisted,  
24 and/or encouraged Tesla’s former employees to take or disclose Tesla’s confidential or proprietary  
25 information.” Compl. ¶ 93. Tesla’s only attempt to provide underlying support for this contention  
26 is the allegation that, “on information and belief, Rivian knew that Tesla employees were in  
27 possession of various confidential or proprietary information” and “took various actions to unfairly  
28 disrupt the contractual relationships between Tesla and its employees.” *Id.* at ¶ 92. This too is

1 inadequate. Tesla’s unsupported allegations seek to convert the average recruiting interview into  
2 an NDA violation. This is directly contrary to California “public policy in favor of open  
3 competition.” *Hill Med. Corp. v. Wycoff*, 86 Cal. App. 4th 895, 900 (2001). And further, Tesla’s  
4 attack relies on an infirm application of the information and belief standard. For one, the  
5 allegations “Rivian knew” and “took various actions” are far too vague to support the cause of  
6 action. *Rakestraw*, 81 Cal. App. 4th 39, 44 (“Allegations must be factual and specific, not vague  
7 or conclusory.”). Moreover, “a pleading made on information and belief is insufficient if it merely  
8 asserts the facts so alleged without alleging such information that leads the plaintiff to believe that  
9 the allegations are true.” *Gomes*, 192 Cal. App. 4th at 1158 (internal citation omitted).

10 In short, Tesla pleads no *facts* which, even if taken as true, would show that Rivian intended  
11 for any of the employee defendants to allegedly breach any contract with Tesla, or that Rivian did  
12 anything to induce a breach. Accordingly, demurrer should be sustained and Tesla’s interference  
13 claim against Rivian dismissed.

14 **C. Tesla’s Claim for Intentional Interference with Contract is Preempted by**  
15 **Tesla’s Trade Secret Misappropriation Claims**

16 The court may find on demurrer that “if the nucleus of facts of each of [the common law]  
17 causes of action at issue is based on misappropriation of trade secrets, then under the [Cal. Civ.  
18 Code § 3426] these causes of action” are preempted by the CUTSA. *Samsung Elecs. Am., Inc. v.*  
19 *Bilbruck*, WL 3012875, at \*1 (Cal. Super. Oct. 19, 2006) 2006; *see also K.C. Multimedia, Inc. v.*  
20 *Bank of America Technology & Operations, Inc.*, 171 Cal. App. 4th 939, 958 (2009) (quoting  
21 *Digital Envoy, Inc. v. Google, Inc.* (N.D. Cal. 2005) 370 F. Supp. 2d 1025, 1035) (“[W]e agree  
22 with the federal cases applying California law, which hold that section 3426.7, subdivision (b),  
23 preempts common law claims that are ‘based on the same nucleus of facts as the misappropriation  
24 of trade secrets claim for relief.”).

25 Applied here, Tesla’s cause of action for intentional interference with contract is preempted  
26 by the CUTSA which provides the exclusive civil remedy for conduct falling within its terms. Civ.  
27 Code § 3426.7; *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App.4th 210, 236 (2010) (holding that  
28 claims for conversion, common count, common law unfair business practices, intentional and

1 negligent misrepresentation were preempted by the CUTSA), *disapproved on other grounds*,  
2 *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (2011). CUTSA therefore preempts claims based  
3 on the “same nucleus of facts” as trade secret misappropriation. *Silvaco*, 184 Cal. App.4th at 232  
4 (quoting *K.C. Multimedia, Inc. v. Bank of Am. Tech. & Operations, Inc.*, 171 Cal. App. 4th 939,  
5 962 (2009)); *CBR Intern. LLC v. Shaller*, No. BC621633, 2016 WL 7326252, at \*1 (Cal. Super.  
6 Nov. 28, 2016) (“Under California law, intentional interference with contractual relations ... is  
7 subject to supersession by [CUTSA] if [the] claim for intentional interference with contract  
8 relations is based on the misappropriation of confidential information.”) (citing *Mattel, Inc. v.*  
9 *MGA Entertainment, Inc.*, 782 F. Supp. 2d 911 (CD. Cal. 2011)). “Moreover, the CUTSA  
10 preempts claims based on the misappropriation of confidential and/or proprietary information,  
11 whether or not that information meets the statutory definition of trade secret, unless the plaintiff  
12 can identify some other law that confers property rights protecting the information.” *D Software,*  
13 *Inc. v. Adanza*, 2018 WL 10703838, at \*3 (Cal. Super. Apr. 10, 2018).

14 Tesla’s intentional interference allegations here rest on the *exact* same nucleus of facts as  
15 its misappropriation allegations—the alleged taking of trade secrets by the individual employee  
16 defendants. For this cause of action, the complaint “incorporates and realleges” all the same facts  
17 used to allege trade secret misappropriation. Compl. ¶ 89. It then recites a series of conclusions,  
18 but no new facts, to announce that Rivian “knew that the Tesla employees” had contracts with  
19 Tesla, *id.* ¶ 91, “took various actions to unfairly disrupt” those contracts, *id.* ¶ 92, “aided, assisted,  
20 and/or encouraged Tesla’s former employees to use, take, or disclose Tesla’s confidential and  
21 proprietary information,” *id.* ¶ 93, and “intentionally induced and encouraged” the employee  
22 defendants to breach their contracts with Tesla, *id.* ¶ 94. All of these conclusions are based solely  
23 on the “facts” pleaded earlier in the complaint to allege misappropriation. In this way, Tesla  
24 attempts to get two bites at the apple, and to broaden the coverage of the CUTSA to information  
25 that does not rise to the level of a protectable trade secret under the law. This cannot stand, and  
26 Tesla’s cause of action for intentional interference is preempted and should be dismissed. *K.C.*  
27 *Multimedia*, 171 Cal. App. 4th at 958; *Sky Lift Aeronautics, LLC v. Lockheed Martin Corp.*, No.  
28 SC128899, 2018 WL 10517210, at \*7, \*10 (Cal. Super. Dec. 20, 2018) (citing *K.C. Multimedia*

1 and sustaining demurrer where “gravamen of this cause of action is misappropriation of trade  
2 secrets, and it is preempted by CUTSA”); *Neuman v. B2 Brands, Inc.*, 2010 WL 11596467, at \*8  
3 (C.D. Cal. Feb. 17, 2010) (applying California law and holding that a claim for intentional  
4 interference with contract was preempted “because it is based upon misappropriation of a trade  
5 secret.”).

6 **III. CONCLUSION**

7 For these reasons, Rivian’s demurrer for Tesla’s First and Third Causes of Action against  
8 Rivian should be sustained, and those causes of action dismissed.

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Dated: August 10, 2020

Respectfully submitted,  
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