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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN JOSE DIVISION

22 APPLE INC.,

23 Plaintiff,

24 vs.

25 CHANG LIU, TANG YEW TAN, OPENAI
26 FOUNDATION f/k/a OPENAI, INC.,
OPENAI GROUP PBC, and IO PRODUCTS,
27 LLC f/k/a IO PRODUCTS, INC.,

28 Defendants.

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Case No. 5:26-CV-07078-EJD

**DEFENDANTS' REPLY IN SUPPORT OF
THEIR MOTION TO DISMISS APPLE
INC.'S COMPLAINT**

Date: October 1, 2026 (Reserved)
Time: 9:00 a.m. P.T.
Courtroom: 4 - 5th Floor
Judge: The Hon. Edward J. Davila
Trial Date: None Set

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1 **I. INTRODUCTION**

2 Apple's opposition confirms, rather than cures, the Complaint's central defect. To state a
3 DTSA claim, Apple must connect three propositions concerning the same information and the same
4 Defendant: what the particular asserted trade secret is; why that information qualifies for protection;
5 and how a defendant improperly acquired, disclosed, or used it. Neither Apple's Complaint nor its
6 opposition ever completes that chain. Apple's supposed "trade secrets" are and remain vague
7 categories and catch-alls, and Apple cannot substitute attorney characterization for missing facts.

8 Apple repeatedly asks the Court to infer essential acts that are not alleged. A request that a
9 candidate bring "parts" becomes assumed receipt of confidential information. Pre-interview
10 downloading becomes assumed disclosure during the interview. A question about an Apple project
11 becomes assumed receipt of trade-secret information. And allegations concerning one person
12 somehow become acquisition or use by another. Rule 12 permits reasonable inferences from alleged
13 facts; it does not permit speculation to substitute for the missing act of misappropriation.

14 Apple has alleged circumstances it insists are suspicious. But that is a far cry from
15 adequately alleging misappropriation. Because the Complaint does not plausibly connect a
16 protectable trade secret to an acquisition, disclosure, or use by any Defendant, Apple's claims should
17 be dismissed.

18 **II. APPLE CANNOT OVERCOME ITS FAILURE TO PLEAD TRADE SECRETS**

19 **A. Apple Fails To Identify The Alleged Trade Secrets**

20 1. Apple's Post-Filing Trade Secret Disclosure Does Not Cure the Complaint

21 Apple spends much of its opposition (misguidedly) faulting Defendants for "resort[ing] to
22 extrinsic evidence" in support of their motion. Opp. at 1; *see also id.* at 14-18. But when forced to
23 defend the Complaint's deficient trade secret identification, Apple immediately reaches outside the
24 four corners of its Complaint for extrinsic evidence, in the form of the purported trade secret
25 disclosure it attached to its motion for a preliminary injunction. *Id.* at 8-9. That disclosure is not
26 part of the Complaint and cannot cure its pleading deficiencies. "In determining the propriety of a
27 Rule 12(b)(6) dismissal, a court *may not* look beyond the complaint to a plaintiff's moving papers,
28 such as a memorandum in opposition to a defendant's motion to dismiss." *Schneider v. Cal. Dep't*

1 of *Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) (emphasis in original). *Wisk Aero LLC v. Archer*
 2 *Aviation Inc.*, 2021 WL 8820180, at *14 (N.D. Cal. Aug. 24, 2021) does not support Apple’s
 3 position because the plaintiff there expressly incorporated its Section 2019.210 disclosure into the
 4 complaint. Apple did not do so here.

5 Regardless, even if the Court were to evaluate Apple’s subsequent disclosures, it would
 6 make no difference because they do not cure the defects in Apple’s Complaint. The examples Apple
 7 chose to highlight in its opposition illustrate the point well: they include generic descriptions of
 8 techniques without explaining what separates them from matters of general knowledge, two
 9 alphanumeric code names that Apple does not try to claim derive any value from being secret,¹ and
 10 the name of an Apple supplier whose identity as such is undisputedly public. *Opp.* at 8-9; *see Mot.*
 11 *at 9 n.2; see also Dkt. 86.* These are not even confidential; they are certainly not trade secrets.

12 2. The Complaint Fails to Identify Any Trade Secrets

13 Apple would not have reached outside the Complaint if it truly believed the Complaint’s
 14 trade secret identification was adequate. Apple all but admits that it has not yet identified the alleged
 15 trade secrets, promising an “iterative process” of discovery, after which it will tell Defendants and
 16 the Court what the alleged trade secrets are. *Opp.* at 5, 8, 21 (citation omitted). Apple’s reliance on
 17 *Quintara Biosciences, Inc. v. Ruifeng Biztech, Inc.*, 149 F.4th 1081 (9th Cir. 2025), for the
 18 proposition that it is allowed to do that, goes too far. *Quintara* held that the DTSA does not
 19 incorporate CUTSA’s particularized pre-discovery disclosure requirement and recognized that
 20 trade-secret identification may be refined through discovery. But it did not displace Rule 8. As
 21 *Mattson Technology, Inc. v. Applied Materials, Inc.* recently explained, “*Quintara* does not alter the
 22 fundamental pleading requirements under Rule 8,” including fair notice of the trade-secret claim
 23 asserted. 2026 WL 1303361, at *4 (N.D. Cal. May 12, 2026).

24
 25 _____
 26 ¹ The point of a code name is to **obscure** the secret information, not to **be** the secret information.
 27 Even if these “code names” were confidential—and here, they were not—Apple offers no explanation
 28 as to how they would rise to the level of “trade secrets.”

Other post-*Quintara* decisions in this District confirm the point. *Google LLC v. Point Financial, Inc.* held that allegations in “broad, categorical terms” merely describing types of potentially protectable information remain “insufficient to state a claim” under DTSA or CUTSA 2026 WL 579462, at *3 (N.D. Cal. Mar. 2, 2026) (citation omitted). And *Joby Aero, Inc. v. Archer Aviation Inc.* recognized that *Quintara* “was not a case directly about pleading DTSA claims” and that Rules 8 and 12 still require sufficient particularity and fair notice. 2026 WL 1625376, at *8 n.3 (N.D. Cal. June 5, 2026). As *Joby* explained, plaintiffs “may not simply rely upon ‘catchall’ phrases or identify categories of trade secrets they intend to pursue at trial.” *Id.*, at *8 (citation omitted). The court found a pleading sufficient as to specifically identified confidential negotiation details and deal terms contained in a named file, but insufficient as to broad categories such as “commercial strategy development,” “regulatory strategies,” “infrastructure strategy,” and “technical information about Joby’s aircraft and operations.” *Id.*, at *9.

Apple’s Complaint suffers from precisely those problems. Paragraph 40 lists broad types of information—“component architecture,” “confidential testing data,” “proprietary manufacturing processes,” unidentified “specialized sub-suppliers and vendors,” and “supplier relationships”—rather than defining the information Apple actually claims was misappropriated. Compl. ¶ 40. Apple responds that its “approach of identifying specific acts of misappropriation that fall within categories of trade secrets” is sufficient. Opp. at 7. But Apple’s attempt to rely on acts, rather than identify its purported trade secrets, collapses two distinct questions: what the trade secret is and whether a Defendant misappropriated it.

Quintara permits refinement of an adequately pleaded trade secret through discovery; it does not permit Apple to forego identifying trade secrets with any specificity at all. At minimum, Apple’s categorical theories should not proceed. And even if the Court found any of Apple’s alleged trade secrets adequately identified at the pleading stage, the complaint should still be dismissed because, as explained in more detail below, Apple fails to plausibly connect the identified information to acquisition, disclosure, or use by any Defendant.

1 **B. Apple Fails to Plead Reasonable Measures**

2 When Apple turns to its purported “reasonable measures,” it makes the same fundamental
3 mistake. Apple argues that “[t]he Complaint describes Apple’s security measures in detail” and lists
4 various generic measures Apple supposedly takes to protect “proprietary information” and
5 “confidential information” in the abstract. Opp. at 10 (citation modified). For instance, Apple
6 alleges that when it thinks something is a trade secret, or even just “Apple Confidential
7 Information,” it ensures that information is “stored in its secure network file repository, a third-party
8 hosted cloud system that houses confidential engineering files, project documentation, and
9 proprietary technical data,” and maybe even keeps it in a “locked building[]” with “security cameras,
10 guards, and other measures to control access to” the “physical facilities” in which the secrets are
11 stored. Compl. ¶¶ 47, 49.

12 But the DTSA requires a plaintiff to plead that it took “reasonable measures” to maintain
13 the secrecy of *the information specifically claimed to be a trade secret*. 18 U.S.C. § 1839(3)(A).
14 Apple has not pled that it took any particular measures with respect to any *specific* trade secrets
15 (whatever they turn out to be). In fact, its Complaint shows the opposite. Apple does not—and
16 cannot—allege that the documents it claims Mr. Liu took were kept in locked physical facilities; it
17 alleges he was able to access them using his own Apple login credentials, which Apple had kept
18 active after he left the company; Apple then asked him for help retrieving and identifying
19 documents. Mot. at 14-17. Most of Apple’s allegations against Mr. Liu claim that he accessed
20 Apple confidential information at the request, and for the benefit, of a then-*Apple employee*. *Id.*
21 Apple does not dispute that its “common practice” is to allow and even encourage employees to use
22 their personal iCloud accounts for Apple work, including work involving alleged trade secrets. Mot.
23 at 15 n.9. Nor does it dispute that an *Apple manager* reached out to Mr. Liu after his departure, and
24 that the two texted about the Apple employee retaining access to Mr. Liu’s iCloud account “for
25 files.” *Id.* at 15 (displaying Ex. A at 1). As explained below, these facts are fatal to Apple’s
26 misappropriation claim—but they also gut Apple’s claim that it took “reasonable measures” to
27 protect its purported trade secrets. Apple cannot both ask a former employee to access allegedly
28 confidential documents for its benefit and then argue that it took reasonable measures to prevent

1 non-employees from accessing those documents. And of course, allowing or requiring employees
 2 to commingle Apple documents with their personal files on their personal iCloud accounts—
 3 accessible everywhere through personal devices—is wholly inconsistent with the idea that Apple
 4 believed those documents to contain trade secrets.²

5 In sum, Apple’s own allegations demonstrate that, notwithstanding the general security
 6 measures it may employ elsewhere within the company, Apple failed to take reasonable measures
 7 to protect the secrecy of the specific documents it claims contain its alleged trade secrets in this
 8 case. Indeed, taking Apple’s allegations as true, any documents Mr. Liu or Mr. Tan are alleged to
 9 have received were by definition not Apple trade secrets, because they were not subject to the
 10 measures Apple alleges it took to protect its purported trade secrets. That alone requires dismissal
 11 of Apple’s trade-secret claims.

12 **III. APPLE FAILS TO PLEAD MISAPPROPRIATION**

13 1. Apple Fails to Plead Misappropriation by Mr. Liu

14 As Defendants explained in their motion, the allegedly unauthorized downloads that Apple
 15 accuses Mr. Liu of making were in fact done at the direction of, and for the benefit of, Apple
 16 employees. Mot. at 14-17. Indeed, some of those files were downloaded *by Apple employees* using
 17 Mr. Liu’s credentials to access his account. *Id.* at 15. Apple barely contests these points, asserting
 18 only—and without explanation or support—that Defendants’ account “is an inaccurate description
 19 of different conduct, on a different system, at a different time.” Opp. at 15. But Apple was careful
 20 to word its response in a way that does not deny the truth of what Defendants explained. Most
 21 notably, Apple does *not* deny that “Mr. Liu answered his former manager’s questions or that Apple
 22

23 ² Ongoing events further undermine Apple’s claim to take reasonable measures. One of the code
 24 names Apple’s opposition cites as a trade secret recently “leak[ed]” because “Apple accidentally
 25 left the back door open in its latest software update.” *Apple Leaks Unreleased Devices Weeks Ahead*
 26 *of Annual September Event*, Hypebeast (Aug. 20, 2026), [https://hypebeast.com/2026/8/apple-](https://hypebeast.com/2026/8/apple-iphone-18-iphone-ultra-leak-from-macos-tahoe)
 27 [iphone-18-iphone-ultra-leak-from-macos-tahoe](https://hypebeast.com/2026/8/apple-iphone-18-iphone-ultra-leak-from-macos-tahoe).
 28

1 employees accessed his personal iCloud account”—only that “[t]he Complaint does not allege” that
2 those things happened. Opp. at 15. The reason Apple does not deny those things happened is as
3 simple as it is obvious: Apple knows they did.

4 Apple tries to hide behind procedural arguments, invoking what it calls “extrinsic hearsay.”
5 Opp. at 14. As an initial matter, the text messages quoted from Apple employees within the scope
6 of their employment are plainly not hearsay; they are party admissions. Fed. R. Evid. 801(d)(2).
7 Nor are the statements offered for their truth: they show that Apple knew Mr. Liu still had access to
8 his Apple account after he left, and that Apple exploited that access by asking him to help retrieve
9 Apple files and, in some cases, downloaded the files itself, all of which negates Apple’s contention
10 of trade secret misappropriation. Mot. at 13-17. Apple’s extrinsic evidence arguments fare no
11 better. Apple does not dispute that the incorporation by reference doctrine allows the Court to
12 consider “documents whose contents are alleged in a complaint and whose authenticity no party
13 questions.” Mot. at 14 n.8 (quoting *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th
14 Cir. 2012)). Apple also does not question the authenticity of the text messages at issue. Nor can
15 Apple deny that the Complaint refers extensively to Mr. Liu’s communications with former Apple
16 employees after leaving Apple, quoting those messages directly when it suits Apple’s purposes.
17 See, e.g., Compl. ¶¶ 56-65. Apple instead argues that, because it chose to leave Mr. Liu’s
18 communications with a specific employee—his manager—out of the Complaint, it is entitled to hide
19 those communications from the Court. Opp. at 14-15. Apple’s overly narrow reading of the
20 incorporation-by-reference doctrine would permit it to include the portions of Mr. Liu’s text
21 messages with Apple it likes while concealing the portions it does not. As Apple’s cited case
22 recognizes, the very purpose of the doctrine is to “prevent[] plaintiffs from selecting only portions
23 of documents that support their claims, while omitting portions of those very documents that
24 weaken—or doom—their claims.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th
25 Cir. 2018). That is exactly what Apple is trying to do here.

26 Putting all that aside, Defendants’ motion also showed that, even taking the Complaint’s
27 well-pleaded factual allegations (as distinct from attorney characterizations and legal conclusions)
28 as true, the most they establish is that Mr. Liu “help[ed] one of his former colleagues locate

1 information from his own prior work at Apple.” Mot. at 16. Apple does not address this at all,
 2 except to assert that it “does not have to foreclose all other explanations at the pleading stage.” Opp.
 3 at 16 (quoting *Wisk*, 2021 WL 8820180, at *16). True enough. But Apple *does* have to show that
 4 its explanation is plausible. *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1108 (9th Cir.
 5 2013). As Defendants’ motion explained, the conduct Apple actually pleads (again, stripped of
 6 attorney characterizations and insinuations) is entirely innocent: Mr. Liu left Apple, his former
 7 colleagues reached out for help locating certain files, and he obliged. Mot. at 14-17; Compl. ¶¶ 55-
 8 67. That does not come close to a colorable misappropriation claim.

9 In an effort to spin this innocent conduct (which Apple induced) into a nefarious conspiracy,
 10 Apple relies on only three factual allegations from its entire 41-page Complaint. Opp. at 16. None
 11 supports a plausible inference of liability.

12 **First**, Apple claims that, based on a text message Mr. Liu sent “within hours of leaving
 13 Apple,” he “knowingly retained a computer from which he could access Apple’s confidential
 14 information.” Opp. at 2, 16 (citing Compl. ¶ 56). But Apple got the time zone wrong. As Apple’s
 15 own expert admits, this text message was sent on “January 22, 2026 in Pacific Time,” though it
 16 appears “eight hours ahead” in “Coordinated Universal Time (UTC).” Dkt. 45 (Roffman Decl.)
 17 ¶ 18. In other words, Mr. Liu sent that text while still employed by Apple and while still at Apple’s
 18 offices on his last day. *Id.*; *see also* Lazarus Decl. ¶¶ 2-5 and Ex. D. And even if Apple had not
 19 been mistaken, the retention of devices by departing employees is a natural consequence of Apple’s
 20 policy of walking departing employees out the door the same day they give notice instead of
 21 affording them the customary two-week transition period. Mot. at 14 (citing Compl. ¶ 84). That
 22 hastiness predictably led to mistakes on Apple’s part, including failing to disable Mr. Liu’s access
 23 to Apple’s cloud storage system. Mot. at 14 (citing Compl. ¶ 5). But Apple cannot use its own
 24 sloppy exit procedures as evidence of ill intent on the part of departing employees—let alone as
 25 evidence of misappropriation. And in all events, as Apple admits, Mr. Liu sent his “I still have
 26 another computer” message *to an Apple employee* on her “*Apple-issued work laptop*.” Compl. ¶¶
 27 5, 56 (emphasis added). These are “the actions of an ‘innocent’ party” (*contra* Opp. at 16)—not
 28 someone trying to hide his conduct from Apple.

1 **Second**, Apple makes much of Mr. Liu “laugh[ing] about having access to Apple’s system,”
 2 quoting a text he again sent *to an Apple employee* in which he allegedly wrote (as translated by
 3 Apple) “LOL, I found out I can access the [network storage], so funny.” Opp. at 16 (alteration in
 4 original) (quoting Compl. ¶ 57). While Apple trumpets this quote as though it proves Mr. Liu’s bad
 5 intent, it in fact does the opposite. As noted, had he intended to use his continued network access
 6 to steal Apple documents, he would not have sent that message to *an Apple employee on her work-*
 7 *issued device*. Next, as Apple admits, Mr. Liu was “surpris[ed]” to find he could access the network
 8 storage—negating Apple’s theory of intentional theft. Compl. ¶ 57. Finally, and perhaps most
 9 importantly, Apple omits the context of Mr. Liu’s message. Ms. Peng, a then-Apple employee, had
 10 previously asked Mr. Liu for help locating certain key documents *for her work at Apple*. Mr. Liu
 11 texted her to tell her he had found the documents, noting in passing that it was funny he still had
 12 access, and then sent her the filepaths—*not* the files themselves. Lazarus Decl., Ex. D. Mr. Liu’s
 13 efforts to help an Apple employee locate Apple documents for her work at Apple, at her request,
 14 and without downloading the documents himself, does not support a plausible inference of trade
 15 secret misappropriation.

16 **Third**, Apple claims Mr. Liu “coached Ms. Peng about how ‘to avoid trouble with the
 17 security team.’” Opp. at 16 (quoting Compl. ¶ 63). Again, Apple provides no meaningful
 18 explanation of how that supports an inference of liability under its theory, which focused on Mr.
 19 Liu’s alleged downloading of Apple files. And again, Apple leaves out vital context: Mr. Liu’s
 20 former Apple manager was in the process of downloading the contents of Mr. Liu’s personal iCloud
 21 storage for Apple’s use and benefit. Ms. Peng asked Mr. Liu about the location of certain Apple
 22 documents, also for Apple’s use and benefit. Mr. Liu suggested that, instead of him sending her the
 23 documents, it would be easier for her to get them directly from Mr. Liu’s former manager “to avoid
 24 trouble with the security team.” Lazarus Decl., Ex. D. In other words, he was encouraging her to
 25 *comply* with best practices, not evade them. None of this supports a plausible inference of trade
 26 secret theft.

27 What Apple’s Complaint actually alleges—and what the documents that Apple selectively
 28 excerpted actually show—is that Mr. Liu accessed and downloaded certain documents *at the request*

1 *of Apple for use of its employees in their work at Apple*, and in some cases those Apple employees
 2 used his credentials to download the documents themselves. Apple’s claim against Mr. Liu simply
 3 is not plausible.

4 2. Apple Fails to Plead Misappropriation by Mr. Tan

5 Apple’s misappropriation claims against Mr. Tan suffer from similar defects: because Apple
 6 can allege only innocuous facts, it relies on argument and insinuation as it tries to alchemize them
 7 into something nefarious. But, at the end of the day, Apple has not alleged—and still does not
 8 identify—a single specific trade secret that it alleges Mr. Tan acquired, disclosed, or used.

9 In its opposition, Apple mischaracterizes Defendants’ argument as claiming that the
 10 Complaint does not allege Mr. Tan received “any information.” Opp. at 18. Not so. What the
 11 motion explained is that “Apple’s Complaint does not allege that any candidate actually disclosed
 12 *an identified trade secret*, let alone that Mr. Tan received one.” Mot. at 19 (citation modified); *see*
 13 *also id.* at 17 (“[I]t never identifies any particular trade secret, at any level of detail, that Mr. Tan
 14 supposedly acquired, used, or disclosed”). That Apple’s opposition fails even to address that point
 15 is fatal: the DTSA protects trade secrets, not “information” or even “confidential information.”

16 Apple alleges Mr. Tan asked candidates to bring hardware components to interviews. Opp.
 17 at 17 (citing Compl. ¶ 70). But the Complaint does not (and Apple has no basis to) allege that any
 18 candidate ever actually brought Mr. Tan any nonpublic component; nor does it identify any trade
 19 secret embodied in such a hypothetical component; nor does it allege what information Mr. Tan
 20 supposedly obtained. Instead, Apple speculates that the interviews “would disclose Apple’s
 21 proprietary technologies” (Compl. ¶ 70); that the parts were from the candidate’s “confidential
 22 Apple work” (Opp. at 17); and that “[n]o one needs ‘show and tell’ for ‘consumer products’ that are
 23 [] ‘widely available and in the public domain’” (Opp. at 17 (citation omitted)). Those arguments
 24 cannot withstand scrutiny: what Apple calls “show and tell” was “a common and innocuous request
 25 that a candidate discuss or display his prior work”; the point was not to gain information about
 26 publicly available products, it was to allow the candidate to explain his work on those products as
 27 an illustration of his knowledge and proficiency. Mot. at 18. But that is all beside the point, because,
 28 as explained above, it is not enough for Apple to argue its way into a trade-secret case by claiming

1 that some (unidentified) trade secret surely “must have” been disclosed in some (unspecified)
2 meeting simply because Apple says so.

3 Next, Apple misreads the text exchange attached to Defendants’ motion as Exhibit B.
4 “[S]hipped” parts should be afforded its natural meaning: shipped to customers and therefore public.
5 *Contra* Opp. at 17. Worse still, Apple **admits** that Mr. Tan has said that only “some folks” brought
6 even **publicly** available parts to interviews. (Here, Apple is left with no choice but to ask this Court
7 to reach for an implausible alternative reading of a straightforward text. Opp. at 18. But, read in
8 context, Mr. Tan’s meaning was clear: “some folks” bring parts to interviews, and when they do,
9 those parts are “shipped,” meaning public. Dkt. 60-3.) Once again, Apple does not identify a single
10 part that it claims is a trade secret, explain what measures it took to protect that part, or allege that
11 Mr. Tan or anyone else at OpenAI or io Products ever solicited that part from a candidate. Mot. at
12 18.

13 Apple’s allegations concerning project code names suffer the same defect. Apple claims
14 Mr. Tan used “internal Apple project codenames to ask, ‘What’s the plan?’ for an unannounced
15 Apple product.” Opp. at 18 (citation modified). Putting aside that Apple has not tried to explain
16 how the codenames themselves could meet the definition of a trade secret and that Apple’s internal
17 codenames regularly become public (Mot. at 19, n.11, *supra* n.2), the fundamental issue is the same:
18 Apple does not identify a single piece of confidential information, let alone an identified trade secret,
19 that it claims Mr. Tan solicited or received during any of these interviews.

20 Apple’s allegations about pre-interview downloading or Mr. Tan’s pre-departure emails fare
21 no better. Apple does not allege that Mr. Tan knew of or requested the downloading, saw any
22 downloaded material, or what, if anything, the candidate disclosed to him. And its allegation that
23 he emailed himself “information about Apple’s suppliers and internal summaries of the consumer
24 electronics industry,” Compl. ¶ 9, identifies no particular email, attachment, supplier term,
25 specification, or other information that Apple alleges constituted a trade secret.

26 Lastly, Apple claims Mr. Tan improperly used an internal Apple document describing
27 offboarding procedures. Opp. at 19. Apple does not claim that the document is itself a trade secret,
28 or that Mr. Tan somehow used the document to obtain any specific trade secrets. *Id.* Thus, even if

1 Apple were granted the inference that Mr. Tan’s possession of this document were somehow
 2 evidence of some generalized nefarious intent (an inference to which it is not entitled), Apple would
 3 still have failed to plead a claim for trade secret misappropriation. Mot. at 20-21.³

4 3. Apple Fails to Plead Misappropriation by OpenAI or io Products

5 The Complaint’s allegations as to OpenAI and io Products fail as well.

6 **First**, Apple argues that its “allegations against Mr. Liu and Mr. Tan can[] be attributed to
 7 OpenAI and io.” Opp. at 20. But the cases Apple cites bear no resemblance to the facts here. The
 8 allegations in *Wisk* were that the corporate defendant Archer—having hired employees alleged to
 9 have taken “roughly 5,000 files from Wisk’s systems ... through non-Wisk networks,” including
 10 “many files embodying trade secrets at issue” as listed in Wisk’s 2019.210 disclosure—was then
 11 “able to put together a relatively comprehensive presentation [] that set out virtually all important
 12 concepts underlying the Maker aircraft in ... a suspiciously short timeframe.” 2021 WL 8820180,
 13 at *15. That those “allegations together, with all reasonable inferences drawn in plaintiff’s favor,
 14 plausibly impl[ied]” liability in *Wisk* (Opp. at 20 (citation modified)) does not mean Apple’s much
 15 different allegations imply liability here. Unlike in *Wisk*, Apple does not tie its allegations against
 16 OpenAI or io Products to any specific alleged trade secret (even if it had identified any). Just as
 17 importantly, Apple alleges nothing like the “implausible development timeline” on which the *Wisk*
 18 court relied. 2021 WL 8820180, at *15. *WeRide Corp. v. Kun Huang* similarly relied on an
 19 unrealistic development timeline in finding that the corporate defendant knew or should have known
 20 of the alleged misappropriation. 379 F. Supp. 3d 834, 850 (N.D. Cal. 2019). And Apple cites
 21 *Autodesk, Inc. v. ZWCAD Software Co.*, 2015 WL 2265479 (N.D. Cal. May 13, 2015) only for the

23 ³ Notably, the “at least equally plausible” quote from Defendants’ motion, Mot. at 20, applied **only**
 24 to this specific issue: whether Mr. Tan had the Apple offboarding document to ensure departing
 25 Apple employees complied with it, or as some unexplained means of avoiding Apple’s supposed
 26 confidentiality protections. Defendants have never admitted that Apple’s allegations against Mr.
 27 Tan as a whole are plausible. They are not.

1 uncontroversial idea that “the plaintiff is not required to detail *all* uses of [the] trade secret in the
 2 complaint.” Opp. at 20 (emphasis added). That is true, but has nothing to do with Apple’s failure
 3 to plausibly detail *any* such uses in its Complaint here. Mot. at 21-22.

4 **Second**, Apple makes the same failed arguments described above (*supra* at 9-11) regarding
 5 the Corporate Defendants’ interviews of Apple employees. These allegations are downstream from
 6 Apple’s allegations against Mr. Tan, and fail for the same reasons discussed above. Most
 7 fundamentally, the Complaint never alleges that Mr. Tan, or anyone else at OpenAI or io Products,
 8 actually received any specific trade secrets from the Apple employees they interviewed (because
 9 they did not).

10 **Third**, Apple relies on what it calls “direct allegations that OpenAI misappropriated trade
 11 secrets relating to a ‘multi-step metal finishing’ technique.” Opp. at 22 (citation omitted). Apple
 12 repeats generic, conclusory allegations from the Complaint (*id.*), but never addresses the central
 13 flaw Defendants’ motion identified. Specifically, even assuming Apple is right that (1) it has a
 14 confidential supplier, (2) the supplier performs a process for Apple that could qualify as a trade
 15 secret, and (3) the supplier performed that process for OpenAI in breach of the supplier’s agreements
 16 with Apple, that is an issue between the supplier and Apple. Mot. at 23.

17 The only thing purporting to convert that issue into a misappropriation claim against OpenAI
 18 is Apple’s conclusory assertion that OpenAI “misled” the supplier into believing it “had Apple’s
 19 permission to have the [supplier] carry out the confidential metal-finishing technique for OpenAI’s
 20 benefit.” Compl. ¶ 81. That is an allegation of fraud, and thus Apple was required to plead it with
 21 particularity. Fed. R. Civ. P. 9(b). Because “[f]raud allegations may damage a defendant’s
 22 reputation regardless of the cause of action in which they appear,” they are “properly subject to Rule
 23 9(b) in every case,” so that “allegations [] of fraudulent conduct must satisfy the heightened pleading
 24 requirements of” that rule. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1104-05 (9th Cir. 2003).
 25 “Rule 9(b) applies to [] trade secret claims” where the plaintiff alleges that the defendant
 26 “misappropriated its trade secrets by misrepresentation.” *Weiss Residential Research LLC v.*
 27 *Experian Information Solutions, Inc.*, 2020 WL 6555053, at *5 (C.D. Cal. Oct. 15, 2020); *see also*
 28 *Foam Supplies, Inc. v. Dow Chem. Co.*, 2006 WL 2225392, at *14 (E.D. Mo. Aug. 2, 2006)

1 (“[W]here a plaintiff alleges fraud as the improper means by which a party misappropriated trade
 2 secrets, Rule 9(b)’s particularity requirement applies.”). And where Rule 9(b) applies, “[t]he
 3 complaint must identify the ‘who, what, when, where, and how’ of the fraudulent misconduct, ‘as
 4 well as what is false or misleading about’ it, and ‘why it is false.’” *Weiss*, 2020 WL 6555053, at *5
 5 (quoting *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011)).

6 Apple’s Complaint fails to satisfy Rule 9(b)’s requirements. It simply asserts that “OpenAI
 7 and its cohorts misled the partner to believe they had Apple’s permission to have the partner carry
 8 out the confidential metal-finishing technique for OpenAI’s benefit.” Compl. ¶ 81. It does not
 9 specify who at OpenAI (or possibly one of “its cohorts”) made the misleading statements, what the
 10 statements were, when they were made, where, how, or what was misleading about them. The
 11 “OpenAI and its cohorts” vagueness alone dooms Apple’s claim because a party claiming fraud
 12 must plead “the identities of the parties to the misrepresentations.” *Weiss*, 2020 WL 6555053, at *5
 13 (quoting *UMG Recordings, Inc. v. Global Eagle Ent., Inc.*, 117 F. Supp. 3d 1092, 1106 (C.D. Cal.
 14 2015)); *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007)).

15 Because Apple has failed to plead the fraud it alleges, the Court should “‘disregard’ those
 16 averments, or ‘strip’ them from the claim,” and then “examine the allegations that remain to
 17 determine whether they state a claim.” *Vess*, 317 F.3d at 1105. With the allegation that OpenAI
 18 “misled” the Apple supplier stripped from the claim, all that is left is a contract dispute between
 19 Apple and its supplier. *Supra* at 12; Mot. at 23. Apple’s claim of trade secret misappropriation
 20 against OpenAI and io, therefore, must be dismissed.

21 **IV. APPLE FAILS TO PLEAD HARM**

22 Defendants’ motion explained that “Apple does not allege that it lost a sale, a supplier, a
 23 customer, or an employee it wished to keep; that any Apple product was delayed, degraded, or made
 24 more expensive; or that the value of any identified secret declined by any amount.” Mot. at 24-25.
 25 Apple does not meaningfully dispute any of that, instead citing only to paragraphs of the Complaint
 26 containing conclusory, boilerplate allegations of harm. Opp. at 24 (citing Compl. ¶¶ 97, 110, 123,
 27 136). “Threadbare recitals of the elements of a cause of action” cannot withstand a motion to
 28 dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Nor does *Apple Inc. v. Rivos, Inc.* support

1 Apple's position. There, this Court found that Apple had "extensively described the harm that would
2 result if its trade secrets were to be disclosed," citing a *sworn declaration* from an Apple employee
3 with detailed statements to that effect. 2023 WL 5183034, at *9 (N.D. Cal. Aug. 11, 2023). This
4 Court also relied on the fact that "there [were] no affirmative allegations in the [complaint] that
5 would preclude a finding of harm." *Id.* Here, there are allegations in the Complaint—or at least in
6 documents that Apple references in, but does not attach to, the Complaint—that preclude such a
7 finding. Apple does not dispute that its outside counsel attempted to contact OpenAI regarding
8 Apple's alleged concerns in February (Compl. ¶ 14), confused two Asian last names, emailed the
9 wrong person as a result, and then incorrectly said it had spoken to OpenAI's general counsel. Mot.
10 at 1. Nor does Apple dispute that, after OpenAI responded and identified the issue, Apple
11 apologized for the mix-up, indicated the issue was being resolved, and then sat silent for five months
12 before filing its complaint. *Id.* That is not the behavior of a company that believes itself to be
13 facing irreparable, or any, harm.

14 **V. THE COURT SHOULD DISMISS APPLE'S STATE LAW CLAIMS AS WELL**

15 Apple fails to even address the substance of Defendants' argument that, if the Court
16 dismisses Apple's DTSA claims, it should decline to exercise supplemental jurisdiction over
17 Apple's state-law breach of contract claims. Mot. at 25; Opp. at 25. Instead, Apple merely repeats
18 its incorrect argument that "Apple's DTSA claims are well pleaded." Opp. at 25. The parties thus
19 seem to agree that, if Apple's DTSA claims fall, its breach of contract claims fall as well.

20 **VI. CONCLUSION**

21 For the foregoing reasons, Defendants respectfully request that the Court dismiss Apple's
22 Complaint with prejudice.
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1 DATED: August 26, 2026

By /s/ Andrew H. Schapiro

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ATTESTATION

I, Andrew H. Schapiro, am the ECF user whose ID and password are being used to file the above document. In compliance with Local Rule 5-1(i)(3), I hereby attest that Kate E. Lazarus has concurred in the filing of the above document.

By /s/ Andrew H. Schapiro
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