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ENTRATA, INC. (F/K/A PROPERTY SOLUTIONS INTERNATIONAL, INC.)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

YARDI SYSTEMS, INC.,

Plaintiff,

v.

PROPERTY SOLUTIONS INTERNATIONAL, INC.,

Defendant.

PROPERTY SOLUTIONS INTERNATIONAL, INC.,

Counterclaimant,

v.

YARDI SYSTEMS, INC.,

Counterdefendant.

Case No. 2:13-CV-07764-FMO-CW

ENTRATA, INC.'S (F/K/A PROPERTY SOLUTIONS INTERNATIONAL, INC.) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Date: February 25, 2016
Time: 10:00 a.m.
Ctrm: 22

Judge: Honorable Fernando M. Olguin

Pretrial Conference: Not set
Trial Date: Not Set

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I. INTRODUCTION

This case is an attempt by the dominant company in the property management software industry, Yardi Systems, Inc. ("Yardi"), to quash competition from a young and growing property management software company, Entrata, Inc. ("Entrata," formerly known as Property Solutions International, Inc.) by bringing claims that provably lack merit. For many years, Yardi worked cooperatively with Entrata to facilitate integration of Entrata's portal and add-on software products with Yardi's widely-used Voyager accounting software. Once Entrata began to take large customers from Yardi in the portal and add-on market, and announced at an industry trade show in 2012 that it had developed its own accounting software—Entrata Core—Yardi reversed course. Yardi claimed that it did not know Entrata had access to the Voyager software and related information and filed this action. Should there be a trial, the evidence will show that the Entrata Core accounting software was independently developed and that Yardi's claims of infringement are meritless. But, as shown below, most of Yardi's claims fail as a matter of law on undisputed facts and thus are properly resolved now.

Yardi knew by June 2006 that Entrata had obtained access to Yardi's Voyager software and databases from mutual Yardi-Entrata customers; in fact, Yardi consented to that access. Yardi has unambiguously identified this conduct as the basis for its present claims. But Yardi delayed bringing these claims until October 2013. Thus, Yardi's claims for misappropriation of trade secrets, intentional interference with contractual relations, and breach of implied-in-fact contract are time-barred, and its copyright claims are subject to limited damages.

Even if Yardi's trade secrets claim was timely, Yardi cannot recover based on a theory that a commercially available software package "in its entirety" is a trade secret.

Moreover, Yardi's claim for intentional interference with contractual relations is preempted because it is based on exactly the same facts underlying its

trade secrets claim.

Finally, Entrata's access to Voyager went no further than using legitimate login information and license files to obtain user-level access. These undisputed facts establish that Entrata did not "circumvent" digital walls as required to violate the Digital Millennium Copyright Act ("DMCA").

II. FACTUAL BACKGROUND

A. Entrata's Early Business Model.

Entrata, then called Property Solutions, was founded by three students at Brigham Young University in 2003, with the initial goal of designing a new property management accounting software product. (D1; D2; D3; Bateman Tr. 13:13-14:2, 19:9-11; Zimmer Tr. 78:19-20; Ex. 12 at 31.) Property management software allows managers of multiple rental units to perform accounting and management tasks, including organizing and storing resident information, processing applications to rent properties, and processing payments. Entrata's property management software was branded as ResidentWorks in 2004. (D4; Bateman Tr. 11:9-23.) For several years after its founding, however, Entrata's business model focused on the development of add-ons and portal products for other companies' property management software, such as Yardi's Voyager software. (D6; Ex. 12 at 31.) Entrata's initial add-on products were ResidentPay®, ProspectPortal®, and ResidentPortal™. (D8; Hanna Tr. 12:16-24.) These portals enhanced the capabilities of existing property management software packages and enabled features like online rent payment, online rental applications, and online submission of work orders. (D9; D10; D11; Hanna Tr. 27:14-21.) Entrata developed custom integration tools that allow its add-on and portal products to work with several core property management systems. (D12; Hanna Tr. 27:9-28:7.) These tools function by moving data into and out of the third-party property management application and the client's database. (D13; Bateman Tr. 124:14-18.)

B. Entrata Obtains Access to Voyager and Voyager Databases, With Yardi's Knowledge and Approval.

Yardi develops, markets, and sells database and application software for the property management industry. (D14; Am. Compl., ECF 46, ¶ 14.) Yardi's principal product is a core property management accounting system branded as Yardi Voyager. (D15; Am. Compl. ¶¶ 1, 15.) For years, Yardi encouraged developers, such as Entrata, to create specialized add-on and portal products for its property management software. (D16; Am. Compl. ¶ 17.) Yardi profits from these products, not only because they enhance the usability of Voyager, but also because it charges clients a $2,500 annual fee to deploy a third-party integration. (D17; Beane Tr. 44:24-46:7; Yardi 12/11/14 Tr. 57:22-58:2.)

In 2004, some of Yardi's property management customers, including Western National Group ("WNG"), began to express interest in using Entrata's portal products with their Yardi accounting systems. (D18; Ex. 12 at 31; Shoemaker Tr. 10:16-14:8; Yardi 12/11/14 Tr. 8:5-9:10; Bateman Tr. 63:1-67:7.) Entrata reached out to Yardi to obtain Yardi's database schema[1] and a Voyager test system to facilitate development of this integration. (D19; Ex. 12 at 31-32; Shoemaker Tr. 15:13-16:19; Yardi 12/11/14 Tr. 9:11-10:10; Bateman Tr. 63:1-67:7.) Yardi then provided a license file that allowed Entrata to install and operate Yardi Genesis, the desktop application version of Voyager. (D21; D22; D23; Ex. 1; Millar Tr. 15:19-17:19, 18:6-19:14; Shroff Tr. 82:18-83:1; Shoemaker Tr. 28:23-29:3, 44:22-24; Yardi 12/11/14 Tr. 20:8-12.)

In June 2006, Entrata was preparing to launch its custom add-on and portal integration with Voyager for WNG. (D26; Ex. 2 at 4; Bateman Tr. 63:2-65:25, 112:8-20.) During the project, Entrata contacted Yardi Vice President Bryant

[1] According to Yardi, a database schema "is a technique for organizing the database, the different elements in the database, including tables and columns. And it captures how they are stored." (D20; Yardi 12/11/14 Tr. at 9:20-24.)

Shoemaker to explain that Entrata would need access to both the Voyager application and a database in order to build its integration. (D32; D103; Shoemaker Tr. 6:10-7:7; Yardi 11/12/14 Tr. 16:12-18:21; Bateman 12/8/15 Tr. 259:5-24.) Mr. Shoemaker told Entrata to get the Voyager application and database from WNG. (D104; Bateman 12/8/15 Tr. 259:5-24.)

Before launch, Entrata again contacted Mr. Shoemaker to confirm that WNG could provide Entrata with "another copy of its database so we can test on it." (D27; Ex. 2 at 4; Shoemaker Tr., 37:12-42:20; Yardi 11/12/14 Tr. 16:12-18:21; Bateman Tr. 63:2-65:25; 112:8-20.) Mr. Shoemaker confirmed that WNG could provide Entrata with a current copy of its Voyager database. (D28; Ex. 2 at 4; Yardi 12/11/14 Tr. 18:17-21, Bateman Tr. 64:21-65:25; Shoemaker Tr. 38:12-41:18.) Mr. Shoemaker admitted that he would have discussed this request with Yardi's legal group prior to responding. (D29; Shoemaker Tr. 41:10-42:20.)

Just days after Mr. Shoemaker provided this consent, a WNG employee copied Mr. Shoemaker on an email explaining that WNG was going to provide Entrata with a "new license file" for the Yardi Voyager software. (D33; Ex. 13; Shoemaker Tr. 42:21-44:24; Yardi 12/11/14 Tr. 19:9-21:2; Bateman Tr. 63:1-65:25 Bateman 12/8/15 Tr. 259:25-262:20.) Mr. Shoemaker understood that a license file unlocks Yardi's software. (D35; Shoemaker Tr. 44:22-24.) Yardi raised no objection to WNG providing Entrata with a Voyager license file. WNG then sent its license file for Voyager to Entrata. (D34; Ex. 14; Shoemaker Tr. 47:18-24, 48:9-15; Yardi Tr. 24:2-9; Bateman Tr. 64:21-65:25.) Receiving this license file allowed Entrata to install and operate the Voyager application. (D35; Shoemaker Tr. 44:22-24; Yardi 12/11/14 Tr. 20:8-15; Bateman 12/8/15 Tr. 260:13-19 ("The license essentially unlocks the application and allows it to function. . . . So without the license file the Voyager application would have done us no good.").) As Entrata's CEO and lead developer David Bateman explained, "there would have been absolutely no purpose to have a license file were it not to turn on the software

application. That's the purpose of it. Any entry-level programmer, or anybody, is familiar with the concept of how a license file is used in software." (D105; Bateman 12/8/15 Tr. 270:19-271:5.)

Subsequent interactions between Yardi and Entrata repeatedly made clear to Yardi that Entrata had access to Voyager software and Voyager databases:

- In April 2008, David Bateman from Entrata sent Yardi a screenshot of the Voyager user interface, which, according to a Yardi employee, showed Yardi "that he has access to the Yardi Voyager Software." (D99; D100; Ex. 41 at 381-382; Millar Tr. 37:19-38:1.)
- In April 2008, Yardi itself provided Entrata with login credentials and access to the Voyager software. (D97; D98; Ex. 41 at 381, 384 (Yardi employee emailing Entrata a link to an "instance of Voyager [with] our Interfaces Plug-in v1 Installed on it.")
- In August 2008, Jason Alfano, a Yardi systems analyst and member of the application service provider ("ASP") team (D36; Alfano Tr. 9:16-11:7), instructed a Yardi account manager that Entrata should work directly with mutual clients to set up and maintain the Entrata integration with Voyager. (D37; Ex. 5; Alfano Tr. 22:15-23.)
- No later than September 2008, Entrata provided Yardi with instructions for installing the Entrata integration utility with Voyager on Yardi's servers.[2] (D38; Ex. 6; Ex. 7; Alfano Tr. 24:25-25:11.) These instructions listed specific tables used in the Voyager database, evidencing that Entrata had access to it. (D39; Ex. 7 at 20-21; Alfano Tr. 27:5-28:18.)
- In November 2008, Yardi provided Entrata personnel with a login for both the

[2] For "hosted" clients, the client database and the Entrata custom integration software resided on Yardi servers. "Self-hosted" clients maintained the database and Entrata custom integration software on their own computers. (*See* D24; D25; Millar Tr. 7:18-8:11.)

user interface and the database of the Voyager development site. (D41; Ex. 3; Millar Tr. 29:2-33:3.) This development site was a sandbox version of Voyager software. (D42; Yardi 12/11/14 Tr. 58:12-59:1.)

- Beginning at least in 2008, Yardi representatives participated in GoToMeeting webconferences with Entrata and mutual clients where they could see Entrata representatives logging into the Voyager application. (D101; Shroff 12/8/15 Tr. 86:22-90:20.)
- In January 2009, Mr. Alfano again instructed Yardi client services employees that they should simply provide mutual Yardi-Entrata clients with a URL to the Entrata integration to Voyager, and then Yardi could "close the case" because "this is for them [the mutual client] to work with the third party [Entrata] on." (D43; D44; Ex. 8; Alfano Tr. 35:22-38:19.)
- In February 2009, Mr. Yardi personally approved setting up an Entrata custom integration on a test Voyager database for a mutual customer to allow Entrata to test its custom integration. (D45; Ex. 9 at 25; Alfano Tr. 44:17-45:18; Shroff Tr. 56:8-57:4, 98:1-12.)
- In May 2009, a mutual customer contacted Yardi and noted that "[w]e've signed a Property Solutions-Yardi addendum to start the integration with them awhile [sic] ago. They mentioned that they already have access to our database." (D46; Ex. 21 at 56; Yardi 12/11/14 Tr. 240:1-241:6.)
- In October 2009, a mutual customer contacted Yardi about "the issue with our integration with [Entrata] that I called you about." The customer told Yardi that "I set them up already in Yardi Voyager and their user id is psiintegration." (D47; Ex. 21 at 57; Yardi 12/11/14 Tr. 241:22-242:7.)
- In November 2009, a mutual client reported to Yardi that Entrata needed the database owner login and password for a Voyager test database. Mr. Alfano confirmed that the responsibility for updating the credentials for the Voyager test database was up to Entrata and the client. (D48; D49; Ex. 10; Alfano Tr.

69:7-72:3.)

- In September 2010, Yardi directed an Entrata employee to obtain a Voyager database password from a mutual client. (D50; Ex. 11; Alfano Tr. 77:11-80:7.)

C. Yardi's CEO Has Entrata's Custom Integration Decompiled and Explains that Entrata Had Access to Yardi's Systems.

By 2008, Yardi had lost multiple large clients for its own portal and add-on products to Entrata. (D51; Ex. 15; Ex. 16; Yardi 12/11/14 Tr. 69:10-72:13.) As Mr. Yardi explained, Yardi was "losing" to Entrata. (D52; Yardi 12/11/14 Tr. 69:22-70:6.) In November 2009, Mr. Yardi ordered his software developers to decompile the Entrata custom integration that Yardi had installed on its servers. Decompilation allowed Yardi to decipher Entrata's object code into source code (that is, the human readable code that forms the basis of the software). (D53A; D53B; Ex. 17; Ex. 18; Yardi 12/11/14 Tr. 124:10-125:13, 126:13-127:10.) Mr. Yardi admits that decompiling Entrata violated the parties' non-disclosure agreement. (D54; Yardi 12/11/14 Tr. 51:22-52:4.)

In December 2009, one month after reviewing Entrata's source code, and nearly four years before filing this lawsuit, Mr. Yardi told Gordon Morrell (a "senior member" of Yardi) and Terri Dowen (Yardi's head of sales):

> We need a statement from our consultants that they will not help our competitors.
>
> I puzzle over how Property Solutions was able to figure out so much about our data structure and programming nuances.
>
> They had access to somebody who know [sic] our system
> *They had access to our system for debugging*
>
> Don't see how else they could have written the program.

(D55; D56; D57; Ex. 20 (emphasis added); Yardi 12/11/14 Tr. 34:19-22, 134:16-134:25, 197:24-198:1.) Mr. Yardi admitted that, as of December 2009, he had a "***suspicion***" that Entrata had access to a copy of the Voyager application. (D58;

Yardi 12/11/14 Tr. 136:6-18.)

Jay Shobe, one of Yardi's key software developers, also reviewed the decompiled code for Entrata's custom integration. (D59; D60; Ex. 19; Yardi 12/11/14 Tr. 128:9-129:3, 133:1-4.) Mr. Shobe reported the results of his review to Mr. Yardi, Mr. Morrell, and John Pendergast (a Yardi Senior Vice President) on December 3, 2009. (D61; D62; D63; Ex. 19; Yardi 12/11/14 Tr. 132:8-134:13.) Mr. Shobe told these senior members of Yardi that he believed Entrata was running "our program," i.e., Voyager, and that Entrata was "reverse engineering" Yardi code. (*Id.*) Mr. Shobe recommended telling Entrata that Yardi was studying the Entrata source code to "give them something to think about." (*Id.*)

D. Entrata Independently Develops the Entrata Core Program.

Separately from its custom integration and portal products that worked in conjunction with Yardi's software programs, Entrata resumed development of its own property management software system in earnest in late 2011 and 2012, which was rebranded from ResidentWorks to Entrata ("Entrata Core"). (D102; Bateman 12/8/15 Tr. 243:1-244:21.) Entrata Core was developed independently of Entrata's work with custom integrations and portal products for Yardi's software. Yardi continues to dispute this, but the dispute is irrelevant to the present statute of limitations motion.

III. ARGUMENT

A. Yardi's Trade Secret Claim Is Time-Barred.

1. Yardi's Trade Secret Claim Is Subject to a Three-Year Statute of Limitations.

An action for misappropriation under the California Uniform Trade Secrets Act ("CUTSA") must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered.

Cal. Civ. Code § 3426.6.[3] The limitations period begins "'when [plaintiff] has reason at least to suspect a factual basis for its elements.'" *Cypress Semiconductor Corp. v. Superior Court*, 163 Cal. App. 4th 575, 586 (2008) (quoting *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 807 (2005)). The statute of limitations begins to run regardless of whether "plaintiff can unassailably establish a legal claim for trade secret misappropriation" because to do otherwise "would effectively eviscerate the statute of limitations in all cases in which the plaintiff never discovers 'smoking gun' evidence of misappropriation." *Id.* (quoting *Chasteen v. UNISIA JECS Corp.*, 216 F.3d 1212, 1218 (10th Cir. 2000)).

As the California Supreme Court has explained:

> A plaintiff need not be aware of the specific "facts" necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a *suspicion* of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. *So long as a suspicion exists, it is clear that the plaintiff must go find the facts*; she cannot wait for the facts to find her.

Jolly v. Eli Lilly & Co., 44 Cal. 3d 1103, 1111 (1988) (emphasis added). For example, California courts have found that trade secret limitations periods were triggered when a plaintiff "suspected" defendant's product was a "rip-off," *Gabriel Techs. Corp. v. Qualcomm Inc.*, 857 F. Supp. 2d 997, 1004 (S.D. Cal. 2012), and when a plaintiff stated that a defendant's trade show demonstration "looks like" it was using plaintiff's technique, *Alamar Biosciences, Inc. v. Difco Labs., Inc.*, 40 U.S.P.Q.2D (BNA) 1437 (E.D. Cal. Oct. 12, 1995).

In interpreting the statute of limitations for the CUTSA, the California Supreme Court has also held that "a plaintiff's claim for misappropriation of a trade

[3] Defendant need only point to the date of the alleged misappropriation. Plaintiff then bears the burden of proving that it "did not discover, nor with reasonable diligence should have discovered, facts that would have caused a reasonable person to suspect" within the statutory period. CACI 4421.

secret against a defendant arises only once, when the trade secret is initially misappropriated, and each subsequent use or disclosure of the secret augments the initial claim rather than arises as a separate claim." *Cadence Design Sys., Inc. v. Avant! Corp.*, 29 Cal. 4th 215, 227 (2002). "The first discovered (or discoverable) misappropriation of a trade secret … commences the limitation period." *Glue-Fold, Inc. v. Slautterback Corp.*, 82 Cal. App. 4th 1018, 1026 (2000).

A continuing misappropriation constitutes a single claim. Cal. Civ. Code § 3426.6. Likewise, misappropriation claims accrue at the same time for all related trade secrets that were shared with defendant during the same time period, "even if there have not yet been any acts of misappropriation of the other trade secrets." *Forcier v. Microsoft Corp.*, 123 F. Supp. 2d 520, 525 (N.D. Cal. 2000).

2. Yardi Was on Notice of Its Trade Secrets Claim More Than Three Years Before Bringing This Lawsuit.

Yardi's trade secrets case is based on the allegation that Entrata acquired Yardi's alleged trade secrets with knowledge or reason to know that they were acquired by improper means through, among other things: copying the Voyager software without authorization; inducing mutual clients of Yardi and Entrata to disclose trade secret information; and accessing the Voyager software through access that Yardi granted its clients pursuant to license agreements and/or confidentiality agreements. (D65; D66; D67; Am. Compl. ¶ 56.) Yardi claims that the confidential and/or trade secret information accessed by Entrata included Voyager and Genesis.[4] (D68; Ex. 26.) Yardi subsequently disclosed various functionalities in Voyager as trade secrets and claimed that the "Voyager software program in its entirety" is a trade secret. (D69; Ex. 25 at ¶ 23.)

The evidence, however, establishes that Yardi knew Entrata had acquired

[4] As discussed in the factual background, the undisputed evidence in this case shows that Yardi itself provided Entrata with a copy of Genesis. Yardi no longer appears to be pursuing any Genesis-based trade secrets claim.

access to the Voyager program and database from mutual clients as early as 2006. For example, Yardi knew that mutual customer WNG was providing Entrata a "new license file" for Voyager as well as access to a Voyager database. (D28; D33; D34; Ex. 2 at 4; Ex. 13; Ex. 14; Shoemaker Tr. 38:12-41:18, 42:21-44:24, 47:18-24, 48:9-15; Yardi 12/11/14 Tr. 18:17-21,19:9-21:2, 24:2-9; Bateman Tr. 63:1-65:25; Bateman 12/8/15 Tr. 259:25-262:20.) The function of this license file was to unlock the Yardi Voyager application so a user could install and operate it. (D35; Shoemaker Tr. 44:22-24, 47:18-48:15; Yardi 12/11/14 Tr. 20:8-15; Bateman 12/8/15 Tr. 260:13-19.) There would have been "absolutely no purpose" to have the license file without having a copy of the Voyager application to unlock. (D105; Bateman 12/8/15 Tr. 270:19-271:5.) Even Yardi's own installation instructions accompanying the license file make clear that the license file is used "[i]n order to provide access to the new Yardi software" and that installing the license file requires, *inter alia*, "install[ing] the new program or upgrade" and "load[ing] the license file into your program." (D94; D95; Bateman 12/8/15 Tr. 263:7-267:2.)

Thus, as of June 2006, Yardi knew of the basis for its trade secrets claim—namely, that Entrata had access to a copy of Voyager and the license file necessary to use it, was obtaining access to Voyager and Voyager databases from mutual customers, and was using the access provided by Yardi to those mutual customers, i.e., the customer license file. The statute of limitations began to run in June 2006 and expired in June 2009, years before Yardi filed its complaint. Cal. Civ. Code § 3426.6. Any subsequent conduct merely augmented this initial claim. *Cadence*, 29 Cal. 4th at 227. Likewise, this limitations period applies to all of Yardi's alleged trade secrets, because these alleged trade secrets were shared with Entrata at the same time, in connection with the same relationship, and all concerned Yardi's Voyager software. *Forcier*, 123 F. Supp. 2d, 526.

Moreover, Yardi also had knowledge of its trade secret claim at least by late 2009. After reviewing Entrata's source code—which Yardi admits was a violation

of the parties' non-disclosure agreement—Yardi's key software developer sent an email to Yardi's senior executives explaining his belief that Entrata was running a copy of Voyager and was "reverse engineering" Yardi code.[5] (D60; D62; D53A; D53B; D54; Ex. 17; Ex. 18; Ex. 19; Yardi 12/11/14 Tr. 51:22-52:4, 124:10-125:13, 126:13-127:1; 132:8-134:13.) In December 2009, after reviewing Entrata's custom integration source code, Mr. Yardi likewise expressed his belief that Entrata had access to Voyager. (D57; Ex. 20; Yardi 12/11/14 Tr. 134:16-134:25.)

Tellingly, Mr. Yardi confirmed at his deposition that he had a "suspicion" in 2009 that Entrata had access to a copy of Voyager—which begins the statute of limitations as a matter of law. (D58; Yardi 12/11/14 Tr. 136:6-18); *Cypress*, 163 Cal. App. 4th, 586. As with the evidence regarding June 2006, these facts are more than sufficient to trigger a limitations period that expired before Yardi's October 2013 complaint. *See Gabriel Techs.*, 857 F. Supp. 2d at 1004.

3. Equitable Estoppel and Fraudulent Concealment Do Not Apply Here.

Yardi previously argued that because Entrata denied having current access to Voyager when confronted by Yardi with potential legal action in 2012, Entrata is estopped from asserting the statute of limitations. But Yardi has not pleaded the parallel doctrines of fraudulent concealment or equitable estoppel as required by the Ninth Circuit, *Hexcel Corp. v. Ineos Polymers, Inc.*, 681 F.3d 1055, 1060 (9th Cir. 2012), and Entrata's statements in 2012 are irrelevant under the law.

Even if they had been properly pleaded, equitable estoppel and fraudulent concealment are inapplicable here because Yardi already was on notice of the basis of its trade secret claim in 2012: it knew Entrata had access to Voyager software and databases and had known of that access for years. Equitable estoppel requires, *inter alia*, that "the party asserting the estoppel must be ignorant of the true state of

[5] Entrata has never viewed Yardi's source code. (D106; Ex. 29.)

facts" and that it "must rely upon [defendant's] conduct to his injury." *Ashou v. Liberty Mutual Fire Ins. Co*., 138 Cal. App. 4th 748, 767 (2006). Moreover, a defendant's alleged concealment does not toll a statute of limitations, "whatever the lengths to which a defendant has gone to conceal the wrongs, if a plaintiff is on notice of a potential claim." *Rita M. v. Roman Catholic Archbishop*, 187 Cal. App. 3d 1453, 1460 (1986); *see also Fahmy v. Jay-Z*, 835 F. Supp. 2d 783, 791 (C.D. Cal. 2011) (no tolling where plaintiff had actual or constructive knowledge).

Bergstein v. Stroock & Stroock & Lavan LLP is instructive. 236 Cal. App. 4th 793 (2015). In that case, plaintiffs accused defendants of accessing their confidential information, which defendants repeatedly denied. The Court of Appeal found that these denials did not constitute fraudulent concealment because "denials of wrongdoing are not the same as fraudulent concealment." Indeed, the court explained, "'it would be somewhat surprising' if defendants 'were to issue a mea culpa and beg forgiveness' when they received counsel's demand letters." *Id.* at 818. Defendants' representations did not concern the "*necessity* of bringing a timely suit" and therefore did not induce a delay. *Id* at 820. (citing *Lantzy v. Centex Homes*, 31 Cal. 4th 363, 385 (2003).) Nor could plaintiffs claim fraudulent concealment because they continued to suspect defendants' allegedly wrongful conduct despite their denials. *Id.*

So too here, Yardi has admitted that "[n]otwithstanding Property Solutions' carefully worded denials [in 2012], Yardi continued to suspect that Property Solutions was accessing its confidential and proprietary information and copyrighted software." (D85; Am. Compl. ¶ 34.) Yardi further admits that Entrata never denied having access to Voyager in the past. (D84; Am. Compl. ¶ 33.) It also is not possible for Yardi to have detrimentally relied on Entrata's comments in 2012 because the statute of limitations began to run in June 2006 and expired in June 2009. *See United States v. Shaltry*, 232 F.3d 1046, 1053 (9th Cir. 2000) (no reliance when statement made after deadline had passed).

4. Yardi Cannot Escape the Statute of Limitations by Reframing Its Claims in Response to This Motion.

Yardi alleges in its Amended Complaint that Entrata "has never had any right to copy, possess, and use the Voyager software" (D96; Am. Compl. ¶ 2), and its damages expert contends that Yardi's damages began with Entrata's first access to Voyager in July 2006. (D89, Ex. 30 at 225.) Entrata previously moved for summary judgment based, *inter alia*, on the undisputed evidence that Yardi learned of this allegedly wrongful conduct well before the limitations period for most of its claims.

In its original summary judgment opposition, Yardi attempted to disavow its Amended Complaint, and took the position that Entrata's use of the Voyager software and other Yardi information for developing custom integrations (as opposed to a competing accounting product) was authorized and therefore did not trigger the statute of limitations. (ECF 106-1 at 17-18.) When the Court ordered further briefing on this issue, Yardi represented that "[a]side from the surreptitious development of Entrata, all of PSI's statements, actions, or omissions discussed in Sections IIB, IIIC, IVA, and IVB of the parties' Joint Integrated Brief" were a part of the custom integration process and thus were within the scope of the parties' NDAs. (ECF 119 at 1-2.) Yardi thus attempted to save its trade secret and related claims from the statute of limitations defense by reframing its claims and declaring that Entrata's conduct before the bar date—October 21, 2010—was non-actionable and did not trigger the statutory bar.

Yardi cannot escape the present motion, however, through a similar device. When forced to take a position under oath on December 1, 2015, in responding to the Court-ordered supplemental discovery, Yardi returned to its original position that Entrata was never authorized to possess or access the Voyager software or other Yardi information for any purpose. (D86-D90, Ex. 44 Nos. 6-24; Ex. 45 No. 19 (denying, e.g., request to admit that Entrata's possession and use of the Voyager

software to develop the Voyager custom interface was authorized by NDA or implied-in-fact agreement; identifying Entrata's use of Voyager for custom integration as an act underlying Yardi's claims).) Yardi also renewed its assertion that Entrata's possession and use of the databases in which client data is stored and organized for use with the Voyager software was wrongful conduct that forms the basis of its claims. (D90-D92, Ex. 45 No. 19 (e.g., "PSI further misappropriated trade secrets by unlawfully securing, possessing, and utilizing Yardi's Voyager *database*…")), notwithstanding Yardi's previous contention that these databases are not trade secrets.[6] Yardi's ever-shifting positions evidence the dubious nature of its claims. But for purposes of this motion, its current, binding position—that Entrata's possession and use of Voyager software and databases for any purpose, dating back to 2006, is the basis for its trade secret and related claims—removes any doubt that those claims are barred.

B. Yardi's Intentional Interference Claim Is Time-Barred.

1. Yardi's Intentional Interference Claim Is Subject to a Two-Year Statute of Limitations.

A cause of action for intentional interference with contractual relations is governed by a two-year limitations period. *Richardson v. Allstate Ins. Co.*, 117 Cal. App. 3d 8, 12 (1981); Cal. Code Civ. Proc. § 339.1. Generally, the cause of action begins to run on the date of the wrongful act, but no later than the date the breach actually occurred. *Forcier*, 123 F. Supp. 2d at 530 (citing *Trembath v. Digardi*, 43 Cal. App. 3d 834 (1974)). California courts also recognize the "discovery rule" if the plaintiff proves "facts showing that he was not negligent in

[6] The undisputed evidence establishes that Yardi permitted Entrata to get these databases from mutual clients, including an admission by Yardi's CEO that Yardi's clients were free to send their databases to whomever they wanted (D30; Yardi 12/11/14 Tr. 188:2-5.), which caused Yardi to admit that Yardi's databases were *not* trade secrets. (D31; *compare* Ex. 24 ¶ 18 *with* Ex. 25 ¶ 18.)

failing to make the discovery sooner and that he had no actual or presumptive knowledge of facts sufficient to put him on inquiry." If the discovery rule applies, the statute of limitations begins to run on the date that the plaintiff "suspects or has reason to suspect a factual basis for the elements of the claim." *Forcier*, 123 F. Supp. 2d at 531 (quoting *Norgart v. Upjohn Co*., 21 Cal. 4th 383, 397-98 (1999)).

2. Yardi Was on Notice of Its Intentional Interference Claim More Than Two Years Before Bringing This Lawsuit.

Here, the outcome is the same regardless of whether the statute of limitations runs from the allegedly wrongful act or whether the discovery rule applies: Yardi brought its claim too late. Yardi contends that "[e]very time that Property Solutions requested and obtained access to the Voyager software or confidential Yardi information from Yardi clients, Property Solutions interfered with and caused a breach of that client's contract with Yardi." (D74; Ex. 28.) Yardi also now alleges that Entrata interfered with Yardi's business relationships when it requested Voyager *databases* from mutual clients. (D90-D92, Ex. 45 No. 19.) As discussed above, there can be no genuine dispute that Yardi knew of this conduct as early as June 2006, when Yardi knew that Entrata was requesting and obtaining access to the Voyager software and databases from Yardi clients. (D28; D33; D34; Ex. 2 at 4; Ex. 13; Ex. 14; Yardi 12/11/14 Tr. 18:17-21, 19:9-21:2, 24:2-9; Bateman Tr. 63:1-65:25; Shoemaker Tr. 38:12-41:18, 42:21-44:24, 47:18-24, 48:9-15; Bateman 12/8/15 Tr. 259:25-262:20.) Yardi repeatedly was reminded over the following years that mutual clients were providing Entrata with access to Voyager and Voyager databases. (*See, e.g.*, D47; Ex. 21 at 57; Yardi 12/11/14 Tr. 241:22-242:7 (mutual client informing Yardi in 2009 that client had set up Entrata with Voyager and a Voyager user ID).) Thus, Yardi knew of the conduct underlying its claim for intentional interference with contractual relations more than seven years before filing suit. Yardi's claim for intentional interference is time-barred.

C. Yardi's Breach of Implied Contract Claim Is Time-Barred.

1. Yardi's Claim for Breach of Implied Contract Is Subject to a Two-Year Statute of Limitations.

Claims for breach of an implied contract are subject to a two-year statute of limitations. Cal. Civ. Proc. Code § 339(1); *Kourtis v. Cameron*, 419 F.3d 989, 1000 (9th Cir. 2005), *abrogated on other grounds, Taylor v. Sturgell*, 553 U.S. 880 (2008). Ordinarily, implied contract claims accrue at the time of breach, regardless of whether any damage is apparent or ascertainable. *Id.* (citing *Menefee v. Ostawari*, 228 Cal. App. 3d 239 (1991)). Some California courts have recognized that the "discovery rule," discussed above, can apply to implied contracts. *Seelenfreund v. Terminix of Northern Cal., Inc.*, 84 Cal. App. 3d 133, 136 (1978). Implied contract claims accrue only once; they are not subject to a "continuing violation" theory that can preserve a claim based on repeated breaches. *Kourtis*, 419 F.3d at 1000-1001.

2. Yardi Was on Notice of Its Implied Contract Claim More Than Two Years Before Bringing This Lawsuit.

Yardi's implied contract claim is again time-barred, regardless of whether the claim accrued upon the alleged wrongful act or upon discovery, because Yardi admits that it had a reason to suspect the basis for its claim more than two years before filing its complaint. Yardi's breach of implied contract claim is premised on the allegation that "Property Solutions breached the parties' implied contract by using information that Yardi provided it in confidence for the sole purpose of resolving specified technical issues to develop Entrata [Core]," the property management system. (D76; Am. Compl. ¶ 77.) Yet Yardi admits that it began to suspect that Entrata "might be misappropriating its trade secrets beginning in mid-2011 when it first heard that [Entrata] might be developing a property management system." (D77; Ex. 26.) Because Yardi suspected that Entrata was using Yardi confidential information to develop its Entrata accounting software as of mid-2011,

the limitations period for its implied contract claim expired in mid-2013. Yet Yardi did not file its complaint until October 21, 2013. As with the causes of action discussed above, Yardi's delay bars its claim—once Yardi had a suspicion of wrongful conduct, it could not wait for the "facts to find [it]" but "must go find the facts." *Jolly*, 44 Cal. 3d at 1111.[7]

D. Yardi Cannot Recover Damages for Alleged Copyright or DMCA Violations Outside of the Limitations Period.

1. When a Plaintiff Is on Notice of Infringement More Than Three Years Before Filing its Complaint, Supreme Court Law Limits the Damages Recoverable.

The Copyright Act provides that "[n]o civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued." 17 U.S.C. § 507(b). The limitations period begins to run when a plaintiff learns or by reasonable diligence could have learned that it has a cause of action. *Polar Bear Prods. v. Timex Corp.*, 384 F.3d 700, 706 (9th Cir. 2004) (reprinted at 2004 U.S. App. LEXIS 22131). In the case of a series of infringing acts, each act will trigger a new three-year limitations period. *Petrella v. MGM*, 134 S. Ct. 1962, 1969-70 (2014). However, the Supreme Court has made clear that when a copyright holder is on notice of the infringing acts more than three years prior to the complaint, any damages will be limited to acts occurring during that three year period. *See id.* at 1970. This is because a copyright holder's suit is considered timely with respect to acts up to three years before the complaint, "but untimely with respect to prior acts of the same or similar kind." *Petrella*, 134 S. Ct. at 1970. As a result, "the infringer is insulated from liability" for infringements of the same work outside of the three-year period. *Id.* at 1969. The Ninth Circuit also has recognized that "'[a] plaintiff's right to damages is limited to those suffered during

[7] As discussed above, equitable tolling and equitable concealment based on conduct by Entrata in 2012 cannot apply.

the statutory period for bringing claims . . . .'" *Polar Bear Prods.*., 384 F.3d at 706.

The DMCA shares the same three-year statutory limitations period as a traditional copyright claim. 17 U.S.C. § 507(b) (setting limitations for "provisions of this title"); *Point 4 Data Corp. v. Tri-State Surgical Supply & Equip., Ltd.*, 2013 U.S. Dist. LEXIS 109298, *118 n.56 (E.D.N.Y. Aug. 2, 2013) (noting that three-year statute of limitations under § 507(b) applies to DMCA). Accordingly, as with traditional copyright, when the defendant has engaged in a series of discrete acts, the copyright holder's suit is timely with respect to acts within the three-year window but untimely with respect to prior acts of the same kind. *Id.* at 1970.

2. Yardi Was on Notice of Its Copyright and DMCA Claims More Than Three Years Before Bringing This Lawsuit.

It cannot genuinely be disputed that Yardi knew of the factual basis for its copyright claim before October 21, 2010—three years before this suit was filed. Yardi's copyright claim is based on the allegation that Entrata "knowingly and intentionally [copied] and [used] the Voyager software without Yardi's authorization and without a license to do so." (D78; Am. Compl. ¶ 45.) Yardi's damages expert opines that copyright damages began to accrue when Entrata allegedly "first possessed, copied, accessed or used Voyager software" and calculates damages beginning on July 21, 2006, "the first date that [Entrata] admitted that it could verify its employees or agents had access to the Voyager software." (D80; D81; Ex. 30 at 223, 225.)

Yet, as of 2006, Yardi already knew that Entrata had obtained the license file that would allow it to install and operate Voyager. (D33; D35; Ex. 13; Shoemaker Tr. 42:21-44:24, 44:22-24; Yardi 12/11/14 Tr. 19:9-21:2, 20:8-15; Bateman Tr. 63:1-65:25; Bateman 12/8/15 Tr. 260:13-19.) Even more tellingly, as of 2009, Yardi's CEO had a "suspicion" that Entrata had a copy of the Voyager application and Yardi's key software developer flatly asserted to Yardi executives that Entrata was running a copy of Voyager on its own server. Because Yardi was on notice

that Entrata was using a copy of Voyager prior to October 21, 2010, it may not recover damages for conduct before that date. *Polar Bear Prods.*, 384 F.3d at 706.

Yardi also knew or with reasonable diligence could have learned that prior to October 21, 2010, Entrata had obtained customer license files and login credentials that would allow it access to Voyager and the Voyager database. (D28; D33; D35; Ex. 2 at 4; Ex. 13; Yardi 12/11/14 Tr. 18:17-21, 19:9-21:2, 20:8-15; Bateman Tr. 63:1-65:25; Shoemaker Tr. 38:12-41:18, 42:21-44:24; Bateman 12/8/15 Tr. 260:13-19.) In fact, Yardi's employees were actually instructing mutual clients to give Entrata this information. (D37; D44; D49; D50; Ex. 5; Ex. 8; Ex. 10; Ex. 11; Alfano Tr. 22:15-23, 35:22-38:19, 69:7-72:3, 77:11-80:7.) This conduct forms the basis of Yardi's DMCA claim. (D82; Am. Compl. ¶ 83.) Accordingly, Yardi knew of Entrata's conduct prior to the limitations period and should not recover any damages relating to this period. *See Polar Bear Prods*, 384 F.3d at 706.

E. Yardi's Intentional Interference Claim Is Preempted by the California Uniform Trade Secrets Act.

1. The California Uniform Trade Secrets Act Preempts Civil Remedies Based on the Same Nucleus of Facts.

It is well established that Section 3426.7 of the CUTSA "implicitly preempts alternative civil remedies based on trade secret misappropriation." *K.C. Multimedia, Inc. v. Bank of Am. Tech. & Ops, Inc.*, 171 Cal. App. 4th 939, 954 (2009) (quoting Trade Secrets Practice in Cal. (Cont.Ed.Bar 2d ed. 2008) Litigation Issues, § 11.35). The CUTSA therefore "provides the exclusive civil remedy for conduct falling within its terms." *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th 210, 236 (2010). CUTSA preemption exists wherever a common law claim stems from the same nucleus of fact as the trade secrets claim. *K.C. Multimedia, Inc.*, 171 Cal. App. 4th at 962. Even claims involving disclosure of confidential information that does not meet the statutory definition of a trade secret are subject to preemption if they are related to the same core facts. *See Mattel, Inc. v. MGA Entm't, Inc.*, 782 F. Supp. 2d 911, 987 (C.D. Cal. 2010); *Silvaco*, 184 Cal. App. 4th

at 239 n.22.

2. Yardi's Intentional Interference With Contractual Relations Claims Is Based on the Same Facts as Its Trade Secret Claim.

Yardi bases its intentional interference with contractual relations claim on precisely the same nucleus of facts as its trade secrets claim, specifically, that Entrata obtained access to Voyager or confidential Yardi information from mutual clients who were subject to a confidentiality obligation to Yardi. (D74; Ex. 28); *see K.C. Multimedia, Inc.*, 171 Cal. App. 4th at 958. Yardi alleges Entrata misappropriated its trade secrets by, *inter alia*, inducing clients to provide those trade secrets in breach of their license agreements with Yardi. (D66; D67; Am. Compl. ¶ 56; *see also* D90; Ex. 45 No. 19 (interrogatory response stating same).) Similarly, Yardi's intentional interference claim alleges that Entrata induced clients to provide it with the Voyager software—which Yardi claims is a trade secret in its entirety—and other information Yardi claims as its trade secrets, resulting in breaches of the clients' license agreements. (D69; Ex. 25 at ¶ 23.) There is nothing new and different in this claim. Yardi's intentional interference claim thus is preempted and superseded by the CUTSA. *K.C. Multimedia, Inc.*, 171 Cal. App. 4th at 958; *Silvaco*, 184 Cal. App. 4th 210, 236.

F. Yardi Cannot Prove Violation of the DMCA.

1. Yardi's DMCA Claim Requires Proof of "Circumvention."

The DMCA provides that "[n]o person shall circumvent a technological measure that effectively controls access to a work protected under this title." 17 U.S.C. § 1201(a). "Circumvent" has a narrow and carefully tailored definition: "to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner." *MDY Indus., LLC v. Blizzard Entm't, Inc.*, 629 F.3d 928, 945 (9th Cir. 2010) (quoting 17 U.S.C. § 1201(a)(3)(A)).

The substantial weight of authority holds that using a normal password or security code to access a copyrighted work, even without authorization, does not constitute "circumvention." *Ground Zero Museum Workshop v. Wilson*, 813 F. Supp. 2d 678, 692 (D. Md. 2011) (use of password to access websites not circumvention); *Burroughs Payment Sys. Inc. v. Symco Group, Inc.*, No. 1:10-cv-03029 (N.D. Ga. Dec. 13, 2011) (Ex. 46.) (providing extensive analysis of case law and concluding unauthorized use of password is not "circumvention"); *Real View, LLC v. 20-20 Techs., Inc.*, 789 F. Supp. 2d 268, 274-275 (D. Mass. 2011) (noting that courts have held unauthorized use of valid login credentials is not circumvention under the DMCA); *R.C. Olmstead, Inc. v. CU Interface, LLC*, 657 F. Supp. 2d 878, 889 (N.D. Ohio 2009) (using the "approved methodology" to access software is not circumvention, even if it involved use of another's credentials); *Egilman v. Keller & Heckman, LLP*, 401 F. Supp. 2d 105, 113 (D.D.C. 2005) (unauthorized use of valid credentials is not circumvention); *I.M.S. Inquiry Mgmt. Sys. v. Berkshire Info. Sys.*, 307 F. Supp. 2d 521, 532-533 (S.D.N.Y. 2004) (using a password is not circumvention). Put differently, "the DMCA targets the *circumvention* of digital walls guarding copyrighted material." *Universal City Studios v. Corley*, 273 F.3d 429, 443 (2d Cir. 2001). Unauthorized access alone does not circumvent these walls. *I.M.S.*, 307 F. Supp. 2d at 532.

A minority of cases, from a single judicial district, have held that unauthorized use of login information or software keys can constitute circumvention under the § 1201(a)(2) and (b)(1) anti-trafficking provisions of the DMCA. *See Actuate Corp. v. IBM*, 2010 U.S. Dist. LEXIS 33095 (N.D. Cal. Apr. 5, 2010) (Spero, M.J.); *Microsoft Corp. v. EEE Bus., Inc.*, 555 F. Supp. 2d 1051, 1059 (N.D. Cal. 2008); *321 Studios v. MGM Studios, Inc.*, 307 F. Supp. 2d 1085, 1098 (N.D. Cal. 2004). Each of the minority rule cases focused on the unauthorized nature of the access, but the pertinent question for the DMCA is whether the narrow standard for "circumvention" is met. *I.M.S.*, 307 F. Supp. 2d at

532. The rationale of these cases therefore "contravenes the plain language of the statute, which is focused on the method of entry." *DISH Network L.L.C. v. World Cable Inc.*, 893 F. Supp. 2d 452, 466 (E.D.N.Y. 2012); *see also Navistar, Inc. v. New Balt. Garage, Inc.*, 2012 U.S. Dist. LEXIS 134369, *10-14 (N.D. Ill. Sept. 20, 2012) (rejecting argument that unauthorized use of a password is "circumvention").

Instead, circumvention requires that defendant "*affirmatively performs an action* that disables or voids the measure that was installed to prevent them from accessing the copyrighted material." *DISH*, 893 F. Supp. 2d at 466. Mere "use" of a technological measure without the authority of the copyright owner appears nowhere in the DMCA definition of circumvention. *Egilman*, 401 F. Supp. 2d at 113. Thus, the substantial weight of authority holds that "circumvention" requires more than unauthorized use of a valid technological measure.

2. Entrata Did Not Engage in "Circumvention."

Here, Yardi has alleged that Entrata "obtained log-in credentials and/or license files issued to Yardi clients, and used such log-in credentials and/or license files to access the Voyager software without authorization." (D83; Am. Compl. ¶ 83.) The undisputed evidence establishes that the *only* ways that Entrata accessed Yardi software or databases were through login/password combinations, or through license files that were provided either by mutual Yardi-Entrata clients or by Yardi itself. (D83; Ex. 14; Ex. 27; Shroff Tr. 98:21-100:3; Hanna Tr. 130:11-14, 141:23-142:6; Shoemaker Tr. 47:18-24, 48:9-15; Yardi Tr. 24:2-9; Bateman Tr. 64:21-65:25.) And, as discussed above, Entrata obtained a license file to Voyager from a mutual customer with the full knowledge of Yardi. (D33; Ex. 13; Shoemaker Tr. 42:21-44:24; Yardi 12/11/14 Tr. 19:9-21:2; Bateman Tr. 63:1-65:25.)

There is no allegation, much less any evidence, that Entrata accessed Yardi software other than through user login credentials, or license files originally generated by Yardi. Nor is there evidence that Entrata disabled or voided access controls or that Entrata intruded upon "digital walls" created to protect Voyager.

See Universal City Studios, 273 F.3d at 435; *DISH Network L.L.C.*, 893 F. Supp. 2d at 466. Rather, Entrata simply used the methods that Yardi had built into its software to access Voyager and Voyager databases in exactly the same fashion as a Yardi property management customer. *I.M.S.*, 307 F. Supp. 2d at 532 (no circumvention where defendant accessed software like customer). Because Entrata never "descramble[d] a scrambled work, [] decrypt[ed] an encrypted work, or otherwise [] avoid[ed], bypass[ed], remove[d], deactivate[d], or impair[ed] a technological measure," Yardi's claim under the DMCA fails.

G. "The Voyager Software Program in Its Entirety" Cannot Be a Trade Secret.

In order to constitute a trade secret, the claimed information must (1) derive independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, and (2) be the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Cal. Civ. Code. § 3426.1(d). Claiming an entire software platform as trade secret fails on both counts. *IDX Sys. Corp. v. Epic Sys. Corp.*, 285 F.3d 581, 584 (7th Cir. 2002). Designating an entire software package as a trade secret is improper because it simply "invite[s] the court to hunt through the details in search of items meeting the statutory definition" of a trade secret and involves "self-revealing" information and "readily observable material." *Id.* Similarly, running a computer program cannot constitute misappropriation of a trade secret because "[t]o the extent the mere use of a program does disclose 'how it works,' the program is in no sense 'secret' and therefore fails the most basic test for protection under CUTSA." *Silvaco*, 184 Cal. App. 4th at 229; *see also Lilith Games (Shanghai) Co. v. uCool, Inc.*, 2015 WL 4149066 (N.D. Cal. Jul. 9, 2015) (plaintiff's description of trade secrets "would have been inadequate if it had simply declared that [its software program] contained valuable trade secrets").

Here, Yardi claims that "the Voyager software program in its entirety" is a

trade secret. (D69; Ex. 25 at ¶ 23.) But Yardi's CEO admits that some portions of Voyager, such as over a dozen user interface screens, are *not* trade secrets. (D70; Ex. 38; Yardi 12/11/14 Tr. 275:12-278:3.) Indeed, some visual aspects of Voyager are publicly available from Yardi's own website. (D71; Ex. 38; Yardi 12/11/14 Tr. 273:25-275:8.) The indisputable evidence in this case therefore shows that Voyager contains non-trade secret elements, precluding "Voyager in its entirety" from being a trade secret. *IDX*, 285 F.3d at 584 (software not a trade secret because it contained "self-revealing" and "readily observable" material). Yardi also admits that Voyager is used by around 100,000 to 250,000 people every day. (D73; Yardi 3/12/15 Tr. 110:19-25.) Yardi cannot establish that "Voyager in its entirety" derives economic value from not being known or is subject to reasonable efforts to maintain secrecy. *See IDX*, 285 F.3d at 584; *Silvaco*, 184 Cal. App. 4th at 229.

IV. CONCLUSION

For the reasons stated above, Entrata requests that the Court enter summary judgment in its favor on Yardi's claims for misappropriation of trade secrets, intentional interference with contractual relations, implied breach of contract, and violation of the DMCA. Entrata further requests summary judgment that Yardi cannot recover copyright or DMCA damages, if any are ultimately proven, for conduct before October 21, 2010.

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Respectfully submitted,

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