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SAE POWER INCORPORATED, a California corporation, and SAE POWER COMPANY, a Canadian Corporation, Plaintiffs, v. AVAYA INCORPORATED and DELTA PRODUCTS CORPORATION, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY Docket No. L-001136/11 **ORDER**

The Court, having reviewed the moving and opposing papers in connection with Defendant and Cross-Claimant Delta Electronics (Americas) Ltd.'s f/k/a Delta Products Corporation ("Delta") Motion for Judgment Notwithstanding the Verdict, for New Trial, and having heard oral argument of counsel, the Court finds, adjudges and orders, for the reasons stated in the accompanying Statement of Reasons, as follows:

1. That Delta's Motion for Judgment Notwithstanding the Verdict is **DENIED**;
2. That Delta's Motion for New Trial is **WITHDRAWN**;

3. That Plaintiffs are awarded pre-judgment interest in the amount of $1,251,617.41 as of February 28, 2025, based on the calculation method described in the accompanying Statement of Reasons;

4. That a copy of this Order will be deemed served on all parties upon uploading to e-Courts.

IT IS SO ORDERED

Dated: 8/1/25

Hon. Keith E. Lynott, J.S.C.

Statement of Reasons

In this action alleging misappropriation of a trade secret, the Defendant, Delta Electronics (Americas), Ltd., formerly known as Delta Products Corp. ("Delta"), moves for judgment notwithstanding the verdict ("JNOV") as to a jury verdict rendered in favor of the Plaintiffs, SAE Power Incorporated and SAE Power Company (collectively, "SAE"). Delta also initially moved for a new trial but subsequently withdrew that application (see discussion below). Finally, it seeks a determination as to the proper calculation of pre-judgment interest.

For the reasons set forth herein, the Court denies the motion for JNOV. It finds the amount of pre-judgment interest to be awarded to the Plaintiffs, as of February 28, 2025, is $1,251,617.41, based upon the calculation methodology set forth herein.

I

The parties are well aware of the anfractuous procedural history of this case. The Court rehearses herein only those portions of such history and those facts that are relevant to the disposition of this motion.

The Plaintiffs contend that Delta – and former Defendant Avaya, Incorporated ("Avaya") – misappropriated a trade secret developed by SAE in connection with its G655 Power Supply Unit ("PSU"). SAE manufactured and sold this product to Avaya for use in powering Avaya's Gateway 650 telephony system. Avaya initially awarded SAE a contract to supply the PSUs after selecting SAE from among a group of bidders, including Delta.

Avaya's specifications for the PSU units it desired to purchase and incorporate into its product called for redundant PSUs to ensure reliability. As a result, Avaya's quaesitum for the PSUs to be designed and manufactured to specification included a means for electronic communication between the two PSUs to ensure that: (i) the amount of current generated by the two units when operating together did not exceed the power supply needs and/or capacity of the Avaya system, thereby risking damage to the components of such system and in particular the backplane; and (ii) if one or the other PSU units failed, the remaining unit would immediately ramp up to supply all the current necessary to continue the operation of the Avaya system.

Avaya's specifications for the PSUs did not prescribe the actual method by which the supplier it would select proposed to achieve the current sharing/current limiting function. It left to the participating suppliers for the contract to manufacture and sell the PSUs the task of developing a mode of communication and concomitant circuitry that would achieve the result – reliable interoperability – mandated by Avaya.

Avaya initially selected SAE's proposal and design for the PSU units to be incorporated into its product. Evidence in the record permits the conclusion that it determined at the time that SAE's solution to the interoperability specification met its requirement and that Delta's proposal did not.

As part of the contractual arrangements for the manufacture and sale of PSUs to Avaya, SAE retained ownership of its proprietary techniques contained in its product including, as it claimed, the method and circuitry for its current sharing/current limiting functionalities. Avaya and SAE entered into a series of Non-Disclosure Agreements both before and after the development of the SAE PSU.

Shortly after awarding a contract to SAE, Avaya launched a project to secure a second source of supply of PSUs for its equipment. It did so due to concerns about reliance on a single source and to obtain better pricing.

Avaya eventually awarded a contract to Delta for the supply of PSUs. After Delta began large-scale production of its PSUs for Avaya, the latter notified SAE that it would no longer purchase PSUs from SAE, thereby terminating the supply contract with the Plaintiffs.

In this case, SAE alleges that Delta misappropriated the current sharing/current limiting method and circuitry that SAE developed for its PSU product supplied to Avaya. SAE asserts its method for achieving the interoperability requirement of Avaya for the PSU supply to it was a protectable trade secret. It contends that Delta used information concerning such method that it obtained from Avaya to implement a substantially identical means of achieving the interoperability requirement. It asseverates this improper access to SAE's trade secret enabled Delta to supplant SAE as the supplier of PSUs to Avaya.

SAE initially filed an action against Avaya and Delta in the United States District Court for the District of New Jersey. It filed its Complaint as to Delta in that court in October 2010. After a dismissal of the case on jurisdictional grounds, SAE subsequently filed an action against these Defendants in this Court in early 2011.

During the course of the proceedings, the Judge then presiding over the case (Mitterhoff, J., ret.) granted partial summary judgment in favor of Delta. In essence, Judge Mitterhoff determined that the Avaya Gateway 650 telephony system and the SAE PSUs installed in such system were commercially available for sale and thus in the public domain. Accordingly, the Court held that any effort by a competitor, such as Delta, to open and inspect the SAE PSU for purposes of re-engineering and/or duplicating the functionality of the SAE PSU was not unlawful. However, the Court denied summary judgment as to SAE’s claim predicated on alleged conveyance by Avaya and use by Delta of SAE's information, design details or schematics concerning SAE's PSU.

While this case was proceeding, Avaya initiated bankruptcy proceedings in Canada. The Court, on SAE's application, stayed this action pending the disposition of the bankruptcy case. SAE pursued its claim against Avaya in bankruptcy court, ultimately receiving a distribution in the amount of $643,810.65 in satisfaction of such claim.

Once this action resumed, the parties engaged in additional pre-trial discovery and extensive motion practice. In particular, Delta filed two motions for summary judgment that this Court denied. The Court incorporates herein its written Statements of Reasons as to such motions for background and in lieu of a detailed recitation herein of the Court's prior findings.

This motion practice included a motion for dismissal predicated on a contention that California law – and specifically the California Uniform Trade Secrets Act, Cal. Civ. Code §§ 3426, et seq. (the "CUTSA") – governs in connection with SAE's claim against Delta and that such claim is barred under the three-year statute of limitations applicable to causes of action for misappropriation of trade secrets under the CUTSA. In adjudicating this motion, the Court determined that California law does apply to the claim asserted by SAE against Delta.

As to Delta's motion predicated on the statute of limitations defense, this Court concluded the motion record presented a triable issue of fact as to the applicability vel non of the "discovery rule", tolling the running of the statute of limitations in certain circumstances. Specifically, the Court found a disputed issue of a fact as to the time when SAE discovered or reasonably should have discovered the essential facts forming the basis of its claim for misappropriation of a trade secret. The parties agreed that, under California law, a trial to a jury and not to the Court was necessary to resolve such a disputed issue pertaining to the statute of limitations.

Following the disposition of numerous motions in limine, the Court conducted a jury trial that proceeded for virtually the entirety of the month of November 2024. There were no exceptions to the Court's charge to the Jury or the Verdict Sheet – which instructions were predicated on California law.

The Jury found in favor of SAE, rendering a verdict in its favor and against Delta and awarding compensatory damages in the total amount of $4,072,678.83, prior to assessment of pre-judgment interest and taxed costs. Presented with a question as to whether SAE discovered or reasonably should have discovered the factual basis of its claim at a time that would result in a statute of limitations bar as to such claim, the Jury resolved such issue in favor of SAE.

The Jury found that SAE had satisfied its burden of proving that its current sharing/current limiting methodology was a protectable trade secret under California law. It found that Delta had misappropriated such trade secret of SAE in the course of developing its PSU for sale to Avaya, resulting in damages suffered by SAE. This included loss of profits from diverted sales of PSUs and the value of scrapped inventory at the time of the termination of SAE's supply contract. As noted, the Jury fixed the amount of compensatory damages at $4,072,678.83.

The Court conducted a separate proceeding for the Jury to determine if grounds for an award of punitive damages were extant. Under California law, the Jury determines whether a plaintiff is entitled to punitive damages. When it does so, the Court determines the amount. The Jury's factual findings precluded the claim for punitive damages.

Following trial and the Jury's rendering of its verdict, Delta initially moved for: (i) JNOV; (ii) a new trial; and (iii) a pre-judgment interest award that reflects the results of the bankruptcy proceedings involving Avaya to the full extent (as claimed by Delta). Specifically, Delta contends the interest award must reflect the fact that (i) the Plaintiffs received a substantial distribution in 2019 from the bankruptcy court that presided over the Avaya bankruptcy in partial satisfaction of SAE's claim against Avaya, which distribution itself (Delta contends) contained an interest component; and (ii) this Court (Mitterhoff, J., ret,) stayed these proceedings, in this case, for two years pending the outcome of the Avaya bankruptcy case.[1]

II

Delta's motion for a new trial raised claims of error concerning the conduct of the trial. Delta contended that this Court improperly barred it from adducing testimony of a proposed expert witness as to damages. Delta contended that the applicable measure of damages under California law arising from SAE's claim must be based on the "head start," if any, that Delta received from the claimed misappropriation of SAE's trade secret. Delta expected its proposed expert to opine that such "head start" period was no greater than four weeks.

Delta contended that the Court's ruling on its expert witness was erroneous, both substantively and procedurally. It asserted that California courts have adopted the "head start" measure of damages as the appropriate measure for a case such as this one. It also argued that the Court barred the evidence during trial, resulting in unfair surprise, and thereby disabling Delta from presenting evidence in opposition to SAE's proofs as to damages (though the Jury awarded substantially less than SAE sought). Delta also moved for a mistrial on these grounds during the proceedings.

Delta further contended that the Court erred in admitting into evidence certain documents containing statements by an individual named Al Capra, an Avaya employee who was integrally involved in the initial selection of SAE as the supplier of PSUs to Avaya, and in the evaluation of

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[1] There is no dispute between the parties that Delta is entitled to receive a full, dollar-for-dollar credit for the amount SAE received from the Avaya bankruptcy case in relation to the claim it initially pursued against Avaya in this case. The parties' dispute, as noted, relates to how this payment affects the calculation of pre-judgment interest as to the award against Delta, net of the appropriate credit.

Delta's competing proposals. Mr. Capra passed away before he could be deposed in this case. Delta contended that the statements of Mr. Capra contained in the documents at issue were embedded hearsay and thus inadmissible.

Finally, Delta contended that the Plaintiffs referred to certain financial documents admitted in evidence for an improper purpose. Delta argued the Court admitted such documents pertaining to Delta's revenues from its sales of its PSUs to Avaya solely as evidence of a possible motivation on the part of Delta to engage in the alleged wrongful conduct. Delta asserted in its motion that SAE improperly referred to this evidence as proof or corroboration of its claimed lost sales/revenues and/or profits.

During this motion practice, Delta advised the Court that it was withdrawing its motion for a new trial. The Court confirmed at oral argument that Delta recognized it was thereby waiving, for purposes of any further proceedings in this case, including appeal, the claims of error that it contends warranted a new trial or a mistrial. Accordingly, and in reliance on this acknowledgment, the Court has not considered any of the arguments raised by Delta in support of its former claim for a new trial.

III

Delta's Motion for JNOV

A

On its motion for JNOV, Delta contends it was entitled to judgment in its favor as a matter of law as to the substantive claim of the Plaintiffs alleging misappropriation of a trade secret, as well as to its defense predicated on the expiration of California's three-year statute of limitations applicable to such claim. It contends that no rational fact finder could have found either that the Plaintiffs satisfied their burden of proving the essential elements of a claim for misappropriation of a trade secret under California law or that the "discovery" rule tolled the running of the statute of limitations.

Delta argues that the Plaintiffs did not establish that its current sharing/current limiting methodology was a protectable trade secret. It contends that the putative trade secret was ill-defined and at best merely an amorphous "magic trick," as (it asserts) SAE's expert called it. It also contends that, to the extent the method relied on pulse amplitude modulation within an electrical circuit as the essential method of communication between the redundant PSUs, such method is not a protectable trade secret, as the use of pulse amplitude modulation in an electrical circuit was and is a well-known and well-established technology.

Delta argues that SAE failed to establish that its methodology had independent economic value, particularly inasmuch as the methodology, so Delta contends, was reasonably ascertainable by actual or potential competitors in the marketplace employing publicly available resources and within a reasonable time. Delta asserts that no rational trier of the facts could conclude otherwise.

The movant also contends that, even if the method SAE employed for current sharing/current limiting were a protectable trade secret, there was no evidence produced at trial establishing that Delta knowingly misappropriated such trade secret by examining protected or confidential information communicated by Avaya. Delta contends instead that its personnel developed a method for current sharing/current limiting compatible with, if not identical to, SAE's method entirely on their own, through a legitimate process of examining and analyzing the electronic pulses generated by SAE's PSU.

Delta argues that SAE witnesses disclaimed sharing with Avaya any confidential documents or information that disclosed its current sharing/current limiting methodology. Thus, according to Delta, Avaya was not in a position to convey such information to Delta, even if it had desired to do so, to assist Delta in developing a competing product. And, so Delta contends, there was no proof that would permit a fact finder to conclude that Delta knew Avaya was not permitted to transmit any information it did provide to Delta or that Delta otherwise knew it was in receipt of information it was not permitted to possess.

Finally, Delta contends the evidence establishes beyond peradventure that SAE exhibited suspicion that Delta was misusing SAE's confidential information concerning its current sharing/current limiting technique by no later than November 2006, more than three years before SAE initiated this action against Delta in October 2010. As a result, according to Delta, it was entitled to judgment as a matter of law that SAE's claim was time-barred.

Delta posits that, under California law, the statute of limitations runs as to a claim for misappropriation of trade secrets when a party knows or reasonably should know, upon due inquiry, the facts giving rise to the claim. It argues that it is not necessary to establish actual knowledge of all such facts by the aggrieved party, but knowledge sufficient to impose on such party an obligation to inquire further.

Delta argues that the record establishes sufficient knowledge by SAE giving rise to such obligation by no later than November 2006, when Avaya passed along to SAE, on Delta's behalf, certain queries as to the current limiting/current sharing technique employed by SAE. Delta contends a November 2006 internal email from Alan Brown, SAE's then Chief Technical Officer and the progenitor of SAE’s current sharing/current limiting technique, establishes that he suspected at the time that Delta had engaged in improper conduct (specifically noting that Brown employed the phrase “not cricket” in such communication). Delta contends the testimony by Brown that he did not become aware until more than a year later, when he actually examined a

Delta PSU, of any impropriety is irrelevant, as (so Delta contends) SAE was in 2006 in possession of sufficient information to require further inquiry that it failed to undertake at such time.

B

The Defendant's motion for JNOV is governed by R. 4:40. In Conforti v. Ocean Cnty. Bd. of Chosen Freeholders, 255 N.J. 280 (2023), cited by both sides, the Court limned the applicable standard this Court must apply to such motion as follows:

> Thus, we consider whether the evidence presented at trial, together with the legitimate inferences therefrom, could sustain a judgment in favor of the party that prevailed at trial. If, accepting as true all the evidence which supports the position of the party defending against the motion and according that party the benefit of all inferences which can reasonably and legitimately be deduced therefrom, reasonable minds could differ, the motion for JNOV must be denied.
>
> The judicial role in ruling on or reviewing such a motion is therefore mechanical; the Court is not concerned with the worth, value or extent (beyond a scintilla) of evidence, but only with its existence, viewed most favorably to the party opposing the motion.
>
> In sum, a motion for JNOV must only be granted where no rational juror could conclude that the Plaintiff marshaled sufficient evidence to satisfy each prima facie element of the cause of action.
> [Id. *at* 162–163 (citations, internal quotation marks, ellipses, and brackets omitted).]

As this text makes clear, this Court, in examining the motion of Delta for JNOV, is not itself a fact finder, does not determine the truth of the matters asserted, and does not weigh the evidence or assess its credibility. Its sole – and limited – function is to determine if the trial record contained evidence that warranted submission of the Plaintiff's claim for misappropriation of a trade secret to the trier of fact. –

The Court concludes that, when one examines the trial record (as required) through a prism that favors SAE, there was ample evidence to support the Jury's verdict and its findings as to the essential elements of the Plaintiff's claim for misappropriation of a trade secret under California law. Likewise, a rational fact finder could – and did – find as a fact that SAE did not discover and could not reasonably have discovered the basis for its claim of misappropriation by Delta in 2006. Accordingly, there is no basis for a legal conclusion that SAE's claim is barred by the applicable three-year statute of limitations.

To establish a cause of action for misappropriation of a trade secret under the CUTSA, a plaintiff must establish that (i) the claimed trade secret was secret; (ii) the claimed trade secret had actual or potential independent economic value because it was not known to the public or to other persons who can obtain economic value from its disclosure or use; and (iii) the plaintiff undertook reasonable efforts to maintain secrecy. CUTSA, Cal. Civ. Code § 3426.1(d). As noted, Delta did not object to the Court's instructions to the Jury as to these elements or to the related questions on the Jury Verdict Sheet.

As an initial matter, contrary to Delta's assertions, the Plaintiffs adequately framed or described their claimed trade secret – the method and electrical circuitry by which SAE's PSU communicated with the other PSU installed in the Avaya unit to ensure current sharing/current limiting when the other PSU was present and operating and/or when such PSU was not operational, all in accordance with Avaya's specification for the product. There was extensive testimony from both sides concerning this method. There is no reason to believe the trier of fact was in any way confused or left to speculate about the claimed trade secret.

The trial record presented ample evidence that SAE's method and electrical architecture for current sharing/current limiting was a protectable trade secret and that SAE undertook various means to protect such secret. SAE presented extensive testimony concerning this subject matter over approximately eight days of trial from Allan Brown, SAE's Chief Technical Officer, who developed the method and designed the circuitry, as well as its qualified expert, Michael Gershowitz. SAE also presented testimony from its Chief Executive Officer and Chief Financial

Officer as to the means employed by SAE to preserve the secrecy of SAE's confidential information and claimed trade secrets.

The evidence presented by SAE to the Jury covering the foregoing elements, including all reasonable inferences to be drawn therefrom, permitted a rational factfinder to render a judgment for SAE. It is evident that the Jury found the testimony, documentary evidence and expert opinion presented by SAE was more credible and persuasive than the contrary evidence presented by Delta.

The record of testimony and documentary evidence the Jury had before it (examined in SAE's favor, as it must be on this motion) permitted findings as follows:

Avaya was in need of a supply of PSUs for its Gateway 650 telephony system. The trial record reflects that Avaya was anxious to bring its telephony system to market as soon as possible. To some extent, its design for the system relied on technology that it understood would eventually be superseded.

Avaya specified that its unit would contain two PSUs to achieve redundancy and continued operation of the telephony system even if one of the PSUs failed. Due to the redundancy feature, it was necessary – and the Avaya specifications explicitly required – that the two PSUs must communicate to ensure that, when both units were functioning, the amount of current supplied by such dual operation of the PSUs did not exceed the demand and capacity of the Avaya unit. Excessive current was a threat to the integrity and operability of the backplane of the unit.

Due to limitations of space on the backplane, the Avaya system accommodated only a single wire for the required communication between the two PSUs. Accordingly, the specifications for the PSU to be supplied required the supplier to design a mode of communication that utilized such single wire. In other words, the design parameters for this interoperability function of the two PSUs did not permit use of a second wire to facilitate the communication function.

The record permits a finding that Avaya sought to fulfill its needs by transmitting specifications for the PSU to potential suppliers, including SAE and Delta. SAE actually assisted Avaya in the development of these specifications, resulting in the entry of one or more Non-Disclosure Agreements even before SAE received a contract to manufacture and supply PSUs.

However, such specifications did not prescribe the method or circuitry for current sharing/current limiting, instead leaving to the potential suppliers the obligation to devise a compliant and reliable means of satisfying the requirement for interoperability. At the same time, Avaya recognized that the suppliers could or would assert that features of their respective designs for the PSUs – including the current sharing/current limiting method – were proprietary. Its contemplated contract for the PSU units permitted the supplier either to convey such proprietary features to Avaya for compensation or to retain ownership.

SAE was, at the relevant time, a relatively small producer of PSUs. According to testimony from its Chief Executive Officer, it specialized in developing design solutions to meet the particular power supply needs of its customers.

Avaya selected SAE as the initial supplier. The trial record permits the conclusion that Avaya's technical personnel concluded that SAE's solution to the interoperability requirement was compliant, reliable, and superior to the proposals of the other bidders. Indeed, the trier of fact could reasonably conclude that, at the time, Delta was unable to provide a specific method for satisfying the interoperability specification.

Allan Brown, Chief Technical Officer of SAE, testified at length as to the solution he developed to the current sharing/current limiting specification. He considered the solution to be novel and a protectable trade secret.

SAE's expert, Michael Gershowitz, testified at length as to the method Brown developed and opined as to the unusual nature of the solution, and, in his opinion, the absence of any comparable method or circuitry in the marketplace. He opined to a reasonable degree of electrical engineering certainty that SAE's method and circuitry for current sharing/current limiting met the factual predicates for a trade secret and that Delta perforce possessed and used SAE-generated information about such method to design and manufacture a substantially identical method in its PSUs. SAE's solution involved the use of a switch within the circuitry that would operate to briefly open and interrupt the supply of current from the PSU, creating a pulse on the current sharing line. The opening of the switch and concomitant momentary interruption of the power signal from the PSU enabled the PSU to "listen" to determine if the other PSU was or was not operating. This mode of listening for the other PSU enabled the electronic controller of the PSU to adjust by either ensuring the PSU supplied all necessary power to operate the telephony system if the other PSU was not detected, or by limiting the current supplied by such PSU to achieve requisite interoperability – and avoid potentially damaging oversupply of current on the backplane – upon detection of the other unit.

It is true that Mr. Gershowitz referred to the technique and circuitry as a "magic trick," a phrase that Delta disparages as insufficient to establish a protectable trade secret. But it is apparent from examination of Mr. Gershowitz's testimony in full that he used the term merely as a means of describing the uniqueness of the technique to the lay jury.

Mr. Gershowitz unmistakably testified, in his professional opinion, that the method SAE devised to achieve current sharing/current limiting was a secret. He stated that he was unaware of any comparable method of using a switch to listen for the other PSU. He specifically stated that:

> [T]his notion of using a single conductor or trace or signal, or whatever you want to say, connection[,] to both share current and figure that out and determine the other guy[] is there, that's not – not at all common….The Delta guys spun their wheels on a bunch of different proposals, none of which got to this.
>
> And even the published documents that were referenced, there were standards for current sharing and papers written on how to do current sharing. None of them talk about using that current sharing signal to detect if someone else is there. Is the – is the supply you're sharing with, is it actually there or not?
>
> So, this is not something – at least, I have not found any technical publications or articles or advertisements for this type of solution other than, you know, my engagement here on this particular investigation.

Delta points to other testimony of Mr. Gershowitz to the effect that he did not conduct a literature search, but one could conclude he was referring to an evaluation to assess whether SAE took action to protect its claimed trade secret. In any event, if and to the extent Mr. Gershowitz provided any inconsistent testimony, the assessment of such inconsistency was a matter of credibility for the Jury to weigh and is not, given the entirety of Mr. Gershowitz's testimony, grounds for the Court to render a judgment as a matter of law.

Mr. Gershowitz acknowledged that a competitor seeking to understand the functionality of the SAE PSU in this regard by monitoring and measuring the generation of pulses from the PSU on the backplane would observe such pulses. However, he also stated the observer would not, without more, understand the significance of the pulse generation/modulation employed by SAE to achieve the interoperability requirement. As a result, according to Mr. Gershowitz's testimony, the nature and functionality of the SAE unit, insofar as its mode of communicating with the other unit to achieve and maintain interoperability, was not ascertainable by a competitor by employing such means as monitoring and measuring the pulses in the backplane.

According to Mr. Gershowitz's testimony, he was initially uncertain as to how the SAE PSU functioned in relation to the current sharing/current limiting process. He stated there were other ways of achieving the requisite communication between the PSUs than that employed by SAE. He opined that Delta had difficulty making the technique work even after it acquired the design; and that Delta's own expert acknowledged that he did not initially understand the method SAE employed.

The testimony offered by SAE was sufficient to satisfy the elements for a protectable trade secret under California law. Brown and Gershowitz both testified in a manner as to permit a finding that the technique and circuitry developed to meet the current sharing/current limiting technique was in fact an innovation and a secret. It is pellucid that the Jury found this testimony credible and persuasive.

The evidence offered by SAE also permitted the trier of fact to find that the technique had independent economic value, as it enabled SAE to secure the supply relationship with Avaya, resulting in a substantial volume of sales of the SAE PSU. The record permitted the conclusion that Avaya selected SAE as the supplier based substantially on its determination that SAE had presented a reliable solution to the interoperability specification. As noted, the testimony of SAE's witnesses established a basis for a finding that the technique employed by SAE was not ascertainable by such means as monitoring and measuring the pulses on the backplane.

Other witnesses for SAE established the element of undertakings by SAE to maintain the secrecy of the technique. SAE's CEO testified as to the use of need-to-know policies within SAE itself, limiting the internal circulation of information about SAE's proprietary information to those who needed to know it, and by imposing non-disclosure obligations on such individuals. The trial record contained evidence establishing the existence of multiple non-disclosure agreements as between Avaya and SAE, confirming SAE's intention to retain ownership and control of its intellectual property and to protect its rights as to such property.

It is readily apparent that the Jury found the evidence presented by SAE as to these issues was entitled to greater weight and was more persuasive than the contrary evidence presented by Delta. This included the evidence adduced by Delta to the effect that pulse amplitude modulation is a well-established technique for generating signals on an electrical line.

As an initial matter, the trier of fact could find that Delta's principal witness testified that he had developed Delta's technique for current sharing/current limiting to satisfy the Avaya interoperability requirement by May 2005, but also testified that he subsequently acquired an SAE PSU and monitored and measured pulses on the backplane as part of Delta's product development process. The Jury could reasonably have concluded that such testimony was inconsistent or contradictory and impaired the credibility of Delta's principal technical witness.

In all events, SAE countered with evidence from Mr. Gershowitz to the effect that Delta not only duplicated the method developed by SAE for current sharing/current limiting, but employed many identical components, including the switches and the specific arrangement of such switches to achieve the interruption function. Gershowitz testified that Delta thus elected to use the same switches as SAE, even though it could have employed different and less expensive switches to achieve the same functionality. He further established, as noted, a basis for concluding that measuring the pulses on the Avaya backplane alone would not have enabled Delta to achieve the same functionality as the SAE units.

The Jury could certainly have chosen to believe Delta's affirmations that there was nothing new or innovative about SAE's method and circuitry for current sharing/current limiting and that it was amenable to replication by monitoring and measuring the signals on the backplane. But the Jury concluded otherwise and had before it a body of evidence (and unchallenged jury instructions) supporting the findings. There is no basis on which to conclude that SAE failed to marshal sufficient evidence to establish a triable claim of a trade secret with independent economic value.

Delta contends that a necessary element of SAE's proof of "independent economic value" is a showing that the claimed trade secret is not "readily ascertainable" by an actual or potential competitor via reference to one or more public sources of information. It asserts that SAE did not and could not satisfy this required element because, as the Court previously held, the SAE PSU was in the public domain and Delta could have lawfully obtained SAE's trade secret by acquiring a SAE PSU in the marketplace and opening and inspecting it. Delta contends this is so, even though Delta acknowledges that it did not actually open and inspect a SAE PSU and reverse engineer the current sharing/current limiting technique in this fashion.

SAE contends that the applicable California statute – the CUTSA – and interpretive case law does not require a separate showing by a plaintiff that a claimed trade secret is not readily ascertainable. Instead, according to SAE, this element is an affirmative defense relevant to the issue of whether a misappropriation has occurred.

SAE asserts that a defendant relying on this defense must show it actually used the available public means to achieve the duplication of the claimed trade secret. It argues that Delta failed to make such a showing. Indeed, according to SAE, Delta acknowledged that it did not acquire a SAE PSU and open and inspect it for purposes of re-engineering the current sharing/current limiting method and circuitry.

Neither side has cited to what the Court considers to be a controlling and definitive case on this issue. It concludes the most detailed and persuasive discussion of this issue under the CUTSA is set forth in Masimo Corp. v. True Wearables, Inc., 2021 WL 2548690 (C. D. Cal. April 28, 2021), aff'd, 2022 WL 205485 (Fed. Cir. January 24, 2022). In a case involving a claim brought under both the CUTSA and the federal Defend Trade Secrets Act, 18 U.S.C. §§ 1836, et seq. (the "DTSA"), the District Court granted preliminary injunctive relief to the plaintiff that was alleging misrepresentation of a trade secret. The Court of Appeals for the Federal Circuit affirmed.

The District Court stated that "there is one key difference between the CUTSA and the DTSA: whether a trade secret can be 'readily ascertainable.'" Id. at * 3. The court determined that the California Legislature had expressly declined to include the phrase "readily ascertainable" in the definition of a trade secret and that the "Ninth Circuit therefore has written that 'whether information is "readily ascertainable" is not part of the definition of a trade secret in California.'" Ibid. (quoting Imax Corp. v. Cinema Technologies, Inc., 152 F.3d 1161, 1168 n.10 (9th Cir. 1998)).

The District Court concluded that, under the CUTSA, "ready ascertainability is a defense that 'will be based upon an absence of misappropriation, rather than trade secret.'" Ibid. (quoting ABBA Rubber Co. v. Seaquist, 235 Cal. App. 3d 1, 21 n.9 (1991)). The court further held that "under the CUTSA, ready ascertainability is only a defense insofar as the defendant actually gained knowledge of a trade secret by the use of those materials which make the trade secret readily ascertainable." Ibid.

In addressing the element of ready ascertainability, the court noted that if it were to accept the defendant's argument, "a competitor who wishes to copy a particular trade secret is incentivized to engage in misappropriation of the competitor's trade secret instead of acquiring the readily ascertainable information through other legitimate means." Id. at *4. The court stated that "[e]ven if the [d]efendants did engage in misappropriation, they could always claim that it was unnecessary to use the legitimate means since the mere existence of the other means undermines the protection of the trade secret." Ibid. The court declared that "[t]he California Legislature expressly chose to eliminate such an incentive for misappropriation by allowing for ready ascertainability to be a defense to misappropriation, even if it does not serve as a defense to the existence of a trade secret in the first place." Ibid. The court reasoned that "[c]competitors are encouraged to take advantage of publicly available means of obtaining the trade secret they are interested in." Ibid.

The Court of Appeals for the Federal Circuit explicitly addressed the defendant's claim of error by the District Court on this point. It noted that the District Court explained that the defendant "could not avail itself of a defense based on ready ascertainability because it failed to show that [the defendant] obtained [its] knowledge of the [claimed trade secret] based upon [a publication] and independently of his knowledge of [the plaintiff's] trade secret." Masimo Corp v. True Wearables, Inc., 2022 WL 205485 (Fed. Cir. January 24, 2022) at * 3. The Court of Appeals found "no legal error" in the District Court's analysis. Ibid.

None of the cases cited by Delta specifically addressed in any comparable detail the role of ready ascertainability in the statutory framework. Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc., 226 Cal App. 4th 26 (2014); San Jose Construction, Inc. v. S.B.C.C., Inc., 155 Cal. App. 4th 1528 (2007); GSI Technology Inc., v. United Memories, Inc., 2015 WL 5655092 (N.D. Cal. September 25, 2015). The GSI Technology court described the issue of ready ascertainability as an affirmative defense and stated "The more difficult information is to obtain, and the more time and resources expended by an employer in gathering it, the more likely it is to not be readily ascertainable." GSI Technology, 2015 WL 5655092 at *12.

Moreover, in San Jose Construction, the court found there was a triable issue of fact as to whether the claimed trade secret "was indeed readily ascertainable – that is, whether South Bay could have replicated each offer within the short period it claimed to have needed." San Jose Construction, 155 Cal. App. 4th at 1543 (emphasis in original). In Altavion, the Court of Appeals affirmed a judgment and award of damages, following a bench trial, in favor of a plaintiff claiming a misappropriation of a trade secret.

On the basis of its examination of the case law cited by the parties, the Court concludes that ready ascertainability of a claimed trade secret bars a claim for misappropriation of a trade secret under the CUTSA only if the defendant actually used the publicly available means of duplicating the trade secret to do so. In this case, the Defendant abjured any undertaking to acquire, open and examine a SAE unit for purposes of re-engineering the claimed trade secret.

To the extent Delta asserts it had the ability to reproduce SAE's current sharing/current limiting method by monitoring or measuring pulses from a SAE PSU on an Avaya backplane, the Court finds that such contention was a matter for the Jury to resolve. As already discussed herein, SAE adduced evidence from Mr. Gershowitz that it was not possible to duplicate SAE's current sharing/current limiting method and circuitry solely by conducting such an analysis. The record also contained evidence that even after Delta developed a design for its PSU with a means of achieving interoperability that mirrored the SAE methodology, it had difficulty over many months in getting it to work, notwithstanding its efforts to monitor and measure pulse on the Avaya backplane. The Jury plainly found the evidence presented by SAE was more credible than the testimony to the contrary adduced by Delta.

Contrary to Delta's assertions, there was also sufficient evidence in the trial record on which to find – as the Jury determined – tortious misappropriation of SAE's trade secret and resulting damages. Although there was no “smoking gun” presented as to such conduct by Delta, a rational trier of the facts could – and did – find malfeasance by Delta based on a constellation of facts placed before it.

The evidence (once again, examined through a lens that favors SAE) permitted the trier of fact to so determine. Such evidence included the following:

- As noted, Avaya did not specifically prescribe a required method for achieving current sharing/current limiting, leaving to the potential suppliers the means of satisfying its requirement for reliable interoperability between redundant PSU units. One could reasonably conclude from the evidence at trial that the need for such interoperability and the constraints imposed by the design for Avaya’s product – with room for only a single current sharing line on the backplane – presented an unusual challenge to the designer of a compliant PSU.
- Avaya turned to SAE as a supplier of custom PSUs to develop the specifications for the PSU, as well as for its design of the unit.
- Avaya determined that SAE’s solution to the interoperability requirement was superior. Delta did not propose a specific solution in the first iteration of the bidding for the contract to supply PSU's.
- SAE and Avaya conducted a meeting at which SAE representatives presented Avaya personnel with materials describing its current sharing/current limiting method. The purpose of such meeting was to facilitate, as contemplated by the SAE/Avaya contract, the establishment of an escrow containing SAE’s design materials for possible future use by Avaya in the event SAE were unable to satisfy its contractual obligations to supply PSUs to Avaya. Although the escrow was never established, Mr. Brown testified

that the meeting included a review of the design and function of SAE's PSU, including the means of achieving current sharing/current limiting.

- Almost immediately after Avaya selected SAE as the preferred supplier, it commenced efforts to identify a second source of supply of PSUs. These efforts ultimately focused on Delta, a large producer of power supply units. Avaya considered the establishment of an alternative source of supply for PSUs to be a commercial priority.
- In developing a PSU for supply to Avaya that met Avaya's specifications, it was necessary to achieve compatibility with the then existing supply of SAE PSUs and, in particular, to ensure proper communication between the units as to the existence and quantum of electrical output.
- Delta's initial efforts to meet the interoperability requirement were unsuccessful. One proposed solution required installation of a second wire on the backplane that was not practicable.
- As noted, Delta presented evidence as to its efforts to develop a current sharing/current limiting methodology to meet Avaya's requirements that was, the trier of fact could conclude, inconsistent. On the one hand, its principal fact witness on this subject testified he produced a design by May 2005. On the other hand, so the fact finder could determine, he said that he used the results of monitoring and measurement of pulses from an SAE PSU on the Avaya backplane, conducted after that time, as a basis for his design.
- Avaya and Delta interacted regularly over the course of the development by Delta of its PSU with Avaya providing substantial technical direction and assistance. Avaya directed Delta to employ certain components used in the SAE PSU. Avaya personnel

evinced concern during this time about Delta's ability to meet the interoperability requirement, at least in a timely manner.

- Delta inquired whether it was possible to obtain certain information about SAE’s unit, indicating that SAE could view such information as proprietary.
- Delta explicitly disclaimed opening a SAE PSU to examine its layout, circuitry and functionality – conduct that, as this Court later determined, it could have lawfully engaged in.
- Mr. Gershowitz testified that Delta's PSU employed a method for current limiting/current sharing that was identical to the SAE method, including many of the same components, such as the switches intended to interrupt the signal from its PSU, enabling one PSU to “listen” for the other.
- Mr. Gershowitz testified that, even if one were to duplicate the SAE method and circuitry, it was not necessary to use the same components. Gershowitz acknowledged that the microcontrollers used in the two products were different, but stated they performed the same function.
- Mr. Gershowitz opined that it would not have been possible to duplicate the method SAE employed to achieve the interoperability requirement merely by monitoring and measuring pulses from a SAE PSU on the Avaya backplane using a device such as an oscilloscope. He stated that a party conducting such monitoring and measuring – as Delta claims it did – would detect the pulses, but without more information would not understand the significance of such pulses in relation to the functionality of the current sharing/current limiting method of the SAE PSU.

- Even after it developed a design and circuitry for the current sharing/current limiting functionality, Delta still had difficulty over months enabling it to operate properly, requiring it to entreat Avaya for additional assistance.

Delta contended at the trial that it developed its PSU interoperability entirely on its own, and measured pulses from a SAE unit on the Avaya backplane to ensure its method would work in coordination with the SAE PSU. Although the Jury could have accepted such evidence and concluded that SAE had failed to prove a misappropriation of its claimed trade secret, it is apparent that the Jury accorded greater weight and credibility to SAE's body of proofs.

A rational trier of the facts could find from the evidence adduced by SAE during the trial that Delta and Avaya, working in concert, had the motive and opportunity to misappropriate SAE's proprietary method for current sharing/current limiting. The Jury could – and did- find, on the basis of such evidence, that Delta, with Avaya's assistance, secured the necessary information to replicate SAE's technique and circuitry for current sharing/current limiting enabling Avaya to replace SAE as its supplier with Delta. There was evidence in the trial record by which a fact finder could determine demonstrated that both Avaya and Delta knew that such conduct was wrongful.

Delta asserts there was no evidence placed before the Jury that could enable it so to conclude, warranting a judgment in its favor as a matter of law. To the contrary, for the Court to grant Deltas' motion would overlook ample evidence in the trial record supplying each element of SAE's cause of action under the CUTSA and require the Court to trench on the Jury's role in assessing the credibility and weight of such evidence.

C

The Court reaches the same conclusion as to Delta's claim that it is entitled to judgment as a matter of law as to its defense predicated on California's three-year statute of limitations. As an initial matter, the Court notes in passing that Delta raised this issue on motion for the first time more than a decade into the case.

Although the Court agreed with Delta that California law, including its limitations law, governed the claims and defenses asserted as between SAE and Delta, it found that the summary judgment record established a triable issue of fact concerning whether SAE knew or had reason to know about the claimed misuse by Delta of its proprietary information in November 2006, when Delta posed to Avaya certain queries about the interoperability function of SAE's PSU that Avaya then communicated to SAE. As a result, the Court denied Delta's motion for summary judgment predicated on limitations grounds in favor of a trial.

As previously noted, both parties agreed that under California law (unlike the New Jersey practice), a factual dispute pertaining to the discovery of a cause of action by a potential claimant for purposes of assessing whether an action is time-barred under the applicable statute of limitations is a matter for a jury to determine, not the court via an evidentiary hearing to the bench. Accordingly, the Court submitted the issue to the Jury. Delta did not object either to the Court’s instructions on this issue or to the question presented to the Jury on the Verdict Sheet.

The present application for JNOV revolves principally around an internal memorandum of Mr. Brown in November 2006 that he transmitted after he was presented with inquiries of Avaya and ultimately of Delta as to the functionality of the SAE PSU. Mr. Brown urged that, if SAE elected to answer the inquiries, it should first obtain a license agreement as he believed the information sought by Delta pertained to features of the SAE PSU – specifically, the current sharing/current limiting technique – that Mr. Brown, on behalf of SAE, considered to be proprietary.

In this context, Mr. Brown stated as follows: "his inferences... may have been based on Delta's evaluation of our unit (not cricket!)." Delta posits that this comment by Mr. Brown represents conclusive evidence that SAE, at minimum, suspected or had reason to suspect that Delta was attempting to copy SAE's claimed trade secret, triggering – at SAE's peril – an obligation to investigate further. Delta asserts that the trial (and deposition) testimony of SAE's witnesses – Mr. Brown and Sam Lagis – to the effect that they did not at this time actually know about or suspect misuse of SAE's proprietary methods is not relevant to the standard of inquiry notice established by California law.

The Court is mindful of applicable case law establishing that the applicability vel non of the discovery rule in California as a basis for tolling the running of the statute of limitations governing claims for misappropriation of a trade secret turns on whether a claimant had sufficient reason at a given time to suspect malfeasance by another to require it to investigate further. But the Court concludes that the trial record, examined in SAE's favor (as it must be), presented disputed issues of fact as to this issue for the Jury to resolve.

Although the fact finder may well have agreed with Delta as to its claim of inquiry notice as of November 2006, it could also have reasonably concluded otherwise – as it ultimately did. Put differently, there was sufficient evidence adduced by SAE as to this issue to permit the Jury to find in its favor.

It was possible to read Mr. Brown's communication in context not as an expression of suspicion that Delta had undertaken unpermitted use of SAE's trade secret information, but merely as an insistence that SAE carefully evaluates whether and on what basis it would respond to the inquiries in order to protect its rights to its proprietary information in the future. One could reasonably conclude from the communication that Mr. Brown's understood that Delta was having difficulty (which it was) developing its own solution for current sharing/current limiting and was seeking assistance from Avaya and SAE, necessitating in Mr. Brown's opinion steps to protect SAE's proprietary rights in the future if SAE chose to provide such assistance.

Mr. Brown and Mr. Lagis both explained that at the time they had no reason in November 2006 to suspect an improper use of SAE's claimed trade secret. The Jury found such evidence from SAE credible and reasonably concluded that SAE had sustained its burden of proving it was not on inquiry notice of impropriety by Delta at such time to warrant further investigation.

The Court's role in this motion practice is limited to assessing whether there was evidence, beyond a scintilla, in the trial record on which the Jury could reasonably have reached its findings. As the Court concludes there was more than sufficient evidence to permit the trier of fact to find as it did as to all the issues put to it for decision, the Court denies Delta's motion.

Delta's Claim As To the Calculation of Pre-Judgment Interest

Delta recognizes that, if the Jury's verdict withstands legal scrutiny (which Delta asserts it should not), SAE is entitled to an award of pre-judgment interest. However, it asserts that the Court's calculation of the amount of such interest award must perforce take into account that (i) the award previously received by SAE through its participation in the Avaya bankruptcy proceedings in respect of its claim of misappropriation of SAE's trade secret – in respect of which Delta is entitled to a full credit – actually included an interest component; and (ii) this Court stayed this case for nearly two years, against Delta's wishes, due to the Avaya bankruptcy, thereby delaying the trial of SAE's claim against Delta. Delta posits that, if the Court appropriately considers these matters in its determination of the amount of pre-judgment interest to assess, such amount would be substantially reduced from the amount claimed by SAE.

SAE seeks an award of pre-judgment interest in the amount of $1,600,074.27 (through February 28, 2025). It acknowledges that Delta is entitled to a credit due to the receipt by SAE of an award from the bankruptcy court on account of SAE's claim against Avaya, but asserts the amount of pre-judgment interest it seeks properly credits Delta in full for the $643,810.65 it received from and after July 26, 2019, the date of SAE actually received the funds. Its calculation of interest is based upon the full amount of the Jury's award – $4,072,678.83 – from October 2010, when the lawsuit commenced (initially in the United States District Court), to July 26, 2019 and then on that amount, less $643,810.65, from that date to February 28, 2025.

In contrast, Delta contends that that it is apparent from the bankruptcy court's order distributing to SAE $643,810.65 on account of SAE's previously unliquidated claim against Avaya and the amount originally reserved by the bankruptcy court on account of such claim (which reserved amount was substantially greater) included principal of $553,033.35 and pre-judgment interest of $90,770.30. Delta argues that, as the amount SAE received included in interest component, it would be improper to charge Delta for interest on such principal amount a second time. It contends the Court should credit Delta accordingly.

Delta also asserts that the Court should not award any pre-judgment interest for the period from May 5, 2017 to April 29, 2019 as the Court stayed these proceedings during that time – despite Delta's objection. Delta contends that, with due consideration of these factors, the correct amount of pre-judgment interest is $1,251,617.41.

Having considered the parties' positions as to the issues raised by Delta, the Court concludes as follows:

1. It is apparent on this record that the distribution of $643,810.65 to SAE on July 26, 2019 on account of its claim against Avaya did include interest from October 2010 to

July 26, 2019 based on a principal amount of $553,033.25. To assess pre-judgment interest against Delta without considering this fact would result in a windfall. The appropriate manner in which to account for this partial payment of interest through July 26, 2019 is to reduce the initial principal balance for calculation of pre-judgment interest by $553,033.65. After July 26, 2019, the reduction increases to $643,810.65.

2. The Court agrees that the accrual of interest during the period in which a stay was in place is not appropriate. Though it is true that SAE also lost the use of funds during this time, such circumstance was not principally the result of Delta's tortious conduct. Instead, such loss of use of funds was primarily the result of the Avaya bankruptcy and the Court's determination to stay the action at the time. This is so because there was nothing that Delta could have done during this time to move forward with the case in a manner that would have avoided the further accrual of interest. Considerations of fundamental fairness to Delta require recognition of this reality when assessing pre-judgment interest. <u>See</u>, <u>e.g.</u>, <u>Dall' Ava v. H.W. Porter Co</u>., 199 N.J. Super 127, 129-131 (App. Div. 1958) ("The award of interest for the period of the [bankruptcy stay involving Johns-Manville, one of the defendants] would thus not constitute fair reimbursement to plaintiff for monies withheld and used by the defendant").

Based on these findings, the amount of prejudgment interest assessable to Delta through February 28, 2025 is $1,251,617.41. The parties do not otherwise dispute the interest rates and method of calculation. The Plaintiffs shall apply these principles in fashioning a Final Judgment that brings forward the interest calculation to the present date.