IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TERRAN BIOSCIENCES, INC., Plaintiff, v. COMPASS PATHFINDER LIMITED and DOES 1-10, Defendants.	)	Civil Action No. 1:22-cv-01956-ELH

MEMORANDUM OF LAW IN SUPPORT OF
COMPASS PATHFINDER LIMITED'S MOTION TO DISMISS

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I. INTRODUCTION & SUMMARY OF ARGUMENT

Terran Biosciences, Inc. ("Terran"), as sole plaintiff, has filed a Complaint against Defendant Compass Pathfinder Limited ("Compass") and Does 1-10 alleging violations of the federal Defend Trade Secrets Act ("DTSA") (18 U.S.C. § 1836) and Maryland's Uniform Trade Secrets Act ("MUTSA") (Md. Code Ann. Com. Law § 11-1201, *et seq.*), as well as breach of contract. Compass now submits this Memorandum of Law in support of its Motion to Dismiss Terran's Complaint.

Terran's Complaint borders on bad faith. The Complaint fails to state a plausible claim for relief on multiple grounds, as more fully set forth below. Terran asks this Court to assert personal jurisdiction over an alien defendant that has no relevant connection to the State of Maryland. Terran does not even allege that the operative set of facts took place in Maryland. Even worse, the Complaint contains a glaring admission: the trade secrets alleged to have been misappropriated were publicly disclosed prior to the time when Terran obtained any rights in such intellectual property. This devastating admission is only compounded by Terran's further attempt to enforce a contract to which it is not a party. The above miscues are without excuse. The Complaint should be dismissed.

Terran's three insufficiently-pled claims arise from a series of events with which Terran had zero involvement. The allegations all concern Compass's discussions with individual researchers associated with University of Maryland, Baltimore ("UMB"). Specifically, in the summer of 2019, Compass and the researchers discussed a potential partnership—between Compass and the researchers (not Terran)—concerning psilocybin therapy. The Complaint alleges that Compass misappropriated "trade secret" information learned in those discussions and used it to prepare and file a patent application in breach of a confidentiality agreement (the "NDA") with

one of the researchers. Incongruously, the Complaint also alleges that, in 2019, UMB disclosed the alleged misappropriated trade secrets in its own earlier-filed patent application—thereby choosing to destroy any claim of confidentiality and relinquish their status as trade secrets. Terran only claims to have acquired rights in the researchers' psilocybin technology years later, through a licensing agreement entered into in May 2021. The UMB patent application did indeed publish on February 18, 2021, prior to the time when Terran claims to have licensed any psilocybin technology from UMB. The fact and timing of UMB's patent filing and its subsequent publication is fatal to Terran's claims.

As a matter of law, Terran's Complaint demonstrates a lack of personal jurisdiction (Fed. R. Civ. P. 12(b)(2)), lack of standing (Fed. R. Civ. P. 12(b)(1)), and insufficiency of alleged facts (Fed. R. Civ. P. 12(b)(6)). Each of these flaws dooms the Complaint, as explained below.

First, the Court lacks personal jurisdiction over Compass, a UK-based company. General personal jurisdiction, on the one hand, requires "continuous and systematic" contacts with the forum state, such that a defendant may be sued in that state for any reason, regardless of where the relevant conduct occurred. Specific personal jurisdiction, on the other hand, requires that the relevant conduct have such a connection with the forum state that it is fair to require the defendant to defend itself in that state. But Compass has no office in Maryland and sells no product in Maryland. Compass's only in-person meeting with the UMB researcher(s) took place in Illinois. Therefore, Compass does not have the necessary ties with the state for Maryland to exercise general jurisdiction. Nor has Compass purposely availed itself of Maryland law, as necessary for the Court to exercise specific jurisdiction.

Second, Terran lacks standing to assert the claims for several reasons. By Terran's own admission, the alleged trade secrets ceased to exist as of August 2019 with the filing of UMB's

patent application, which published in February 2021. Any rights Terran acquired thereafter, through a supposed UMB license acquired in May 2021, could not have included the alleged trade secrets. Additionally, Terran is neither a party nor an assignee of the NDA that it seeks to assert in its breach of contract claim against Compass. The confidentiality agreement expressly bars assignment without Compass's permission, which Dr. Thompson never obtained. And, in any event, Terran lacks Constitutional standing because Terran's conclusory allegation regarding damages fails to satisfy the Article III requirement of establishing a concrete and particularized injury.

Third, even if the Court could exercise personal jurisdiction and Terran had standing to sue, Terran has not pled facts sufficient to state a DTSA claim. The Complaint unequivocally establishes that the alleged trade secrets were extinguished prior to the time when UMB transferred any trade secret rights to UMB. Terran also failed to plead any facts sufficient to establish the interstate commerce requirement for a DTSA claim. Without a plausible DTSA claim, the Court lacks jurisdiction to adjudicate the two remaining claims, both of which arise under state law.

Fourth, again even if jurisdiction and standing were proper, Terran has not pled facts sufficient to state a breach of contract claim under the NDA attached to Terran's Complaint, because (i) Terran was not a party to or assignee of the NDA and (ii) the NDA does not prohibit the use of public information, like that disclosed in the UMB patent application.

Fifth, and finally, Terran fails to allege any theory of liability whatsoever against the "Doe" defendants.

These fundamental issues with the Complaint—lack of personal jurisdiction, lack of standing, and insufficient plausible facts—cannot be cured through amendment, and provide more than ample grounds to dismiss this case as a matter of law. Furthermore, the Complaint consists

mostly of legal conclusions couched as facts and speculation about Compass's motives. The factual allegations, even when accepted as true, do not state a claim. Compass therefore seeks an Order dismissing the entire Complaint with prejudice.

II. SUMMARY OF FACTS AND ALLEGATIONS[1]

Compass is a UK-based life sciences company that has, for many years, been researching and "developing psilocybin for treatment-resistant depression and trying to understand molecular mechanisms of psilocybin." Compl. ¶¶ 8, 16. Compass filed several patent applications related to its novel psilocybin treatment and is conducting clinical trials of a therapeutic psilocybin product. *Id.* ¶¶ 12, 26, 28.

Research into potential therapeutic use of psilocybin has been ongoing for decades. Psilocybin is a hallucinogen, but researchers have discovered that it can be combined with other elements to reduce the hallucinogenic effects while still maintaining psilocybin's medical benefits. As Terran alleges in its Complaint, by 2016, it was already "known that 5-HT2A antagonists like ketanserin reduce or eliminate the negative hallucinogenic effects of psilocybin." *Id.* ¶ 1.

Dr. Scott Thompson, a professor at UMB, researched the potential use of psilocybin as an antidepressant and medication for other mental health disorders. *Id.* ¶ 14. Terran alleges that Dr. Thompson came up with the idea to co-administer psilocybin with ketanserin to treat depression without causing hallucinations. *Id.* ¶ 1. Terran alleges that Dr. Thompson's "inventions with respect to this potential breakthrough treatment and results of his work were and are the 'Psilocybin Trade Secrets.'" *Id.*

[1] Unless otherwise noted, the exhibits cited herein are attached to the Declaration of Anita M. C. Spieth ("Spieth Declaration").

In May 2019, Dr. Thompson allegedly executed a non-disclosure agreement ("NDA") with Compass to discuss a potential partnership related to psilocybin research. *Id.* ¶¶ 16-17. UMB did not sign the NDA (nor did Terran or Compass).[2] *Id.*, Ex. A. According to the Complaint, between May and November of 2019, Dr. Thompson and another UMB professor, Dr. Todd Gould (who also did not sign the NDA), engaged in discussions with Compass. *Id.* ¶¶ 16-17. But Compass never entered into a collaboration agreement with Dr. Thompson, Dr. Gould, or UMB. *Id.* ¶ 24 ("Compass e-mailed Thompson saying that they are 'unable to proceed with the collaboration' and declined to fund Thompson's experiments."). The Complaint alleges that "Thompson disclosed the Psilocybin Trade Secrets to Compass" during these 2019 negotiations. *Id.* ¶ 3.

Terran further alleges that, on August 13, 2019, UMB and Dr. Thompson "filed patent applications disclosing and claiming certain of his [alleged] *then*-trade secret inventions related to his research into co-administration of the [psilocybin-ketanserin] combination." *Id.* ¶¶ 1, 14, 27 (emphasis added).[3] The Court may take judicial notice of UMB's August 13, 2019 provisional patent application, which is publicly available and attached to the Spieth Declaration as Exhibit 1. *See infra* n.4. Terran alleges that UMB and Dr. Thompson only "kept his research confidential" "[b]efore he filed his patent applications." *Id.* ¶ 1; *see also id.* ¶¶ 14-15 (alleging the trade secrets were kept secret "[u]ntil he filed patent applications related to the trade secrets") (emphases added). In other words, the alleged trade secrets were not secret after August 13, 2019.

[2] Terran has attached a copy of the NDA to the Complaint. Compl. ¶¶ 61-65, Ex. A. The Court may therefore consider the NDA when ruling on this Motion to Dismiss. *See Cordish Cos. v. Affiliated FM Ins. Co.*, 573 F. Supp. 3d 977, 991-92 (D. Md. 2021); *see also infra* Part III.B. The NDA is not signed by Compass. By filing this Motion, Compass does not admit that it executed the NDA; rather, even if it did, the Complaint fails as a matter of law.

[3] By calling the information "then-trade secrets," Terran expressly admits that the information lost its trade secret status when UMB chose to include it in a patent application.

Terran claims that Compass misappropriated the Psilocybin Trade Secrets (and breached an NDA with Dr. Thompson) by preparing and filing on August 29, 2019 a patent application that "claimed co-administration of 5-HT2A antagonists (including ketanserin) with psilocybin to reduce the negative side effects of psilocybin." *Id.* ¶¶ 26, 64. Terran alleges that Compass "stole the ideas for this patent application from Thompson . . . ." *Id.* ¶ 26.[4] Terran alleges no other facts related to Compass's misappropriation, other than the conclusory and unsupported statement that Compass "continues" to misappropriate Terran's trade secrets. *Id.* ¶ 5.

Terran, the only plaintiff in this litigation, does not claim to have had any involvement in any of the alleged events described above (nor could it). Rather, Terran alleges that on May 7, 2021—nearly two years after UMB and Compass filed their respective patent applications—Terran entered into a Master Licensing Agreement ("MLA") with UMB, whereby Terran allegedly obtained a license to "certain of Thompson's Inventions ('Licensed Inventions') and related Confidential Information, including the Psilocybin Trade Secrets." *Id.* ¶ 29. Over a year later, on August 5, 2022, Terran (alone) brought this suit against Compass. Terran now claims that, as a result of Compass's alleged misappropriation of UMB's trade secrets and breach of the NDA with Dr. Thompson, Terran "has been damaged in an amount not yet ascertained." *Id.* ¶¶ 43, 58; *see also id.* ¶ 65 ("Terran has sustained and will sustain damages as a direct and proximate result of [Compass's] breach of contract."). The Complaint does not further detail the type or manner of injury that Terran has allegedly suffered nor ascribe any particular dollar amount of damages.

[4] Neither UMB's nor Compass's patents have issued, but they have been published to the world and are available via the U.S. Patent and Trademark Office's public portal or a simple Google search. *See, e.g.*, Ex. 1 (UMB's provisional application 62/886,090, filed Aug. 13, 2019); Ex. 2 (UMB's PCT application WO2021/030571, published Feb. 18, 2021, which claims priority to the Aug. 13, 2019 provisional application). The Court can take judicial notice of these patent filings and publication dates. *See infra* Part III.B & nn.7-8.

III. LEGAL STANDARDS

A. Pleading Standards Under Fed R. Civ. P. 12(b)(1), 12(b)(2), and 12(b)(6)

Compass moves to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(2), and 12(b)(6). A motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction "challenges a court's authority to hear the matter brought by a complaint." *TECH USA, Inc. v. Milligan*, No. RDB-20-0310, 2021 U.S. Dist. LEXIS 37961, at *8 (D. Md. Mar. 1, 2021). The plaintiff must "allege[] sufficient facts to invoke subject matter jurisdiction." *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009); *Hufford v. Bank United, FSB*, No. RDB-11-01207, 2011 U.S. Dist. LEXIS 120668, at *4 (D. Md. Oct. 18, 2011) ("A plaintiff carries the burden of establishing subject matter jurisdiction."). "Under Rule 12(b)(1), if a party lacks standing, the court automatically lacks subject matter jurisdiction." *Hufford*, 2011 U.S. Dist. LEXIS 120668, at *4.

In addition, claims must be dismissed pursuant to Rule 12(b)(2) if the Court lacks personal jurisdiction over the defendant. "When a court's personal jurisdiction is properly challenged by a Rule 12(b)(2) motion, the jurisdictional question thus raised is one for the judge, with the burden on the plaintiff ultimately to prove the existence of a ground for jurisdiction by a preponderance of the evidence." *Synergics Energy Servs., LLC v. Algonquin Power Fund (Am.), Inc.*, No. ELH-13-2257, 2014 U.S. Dist. LEXIS 84185, at *13-16 (D. Md. June 20, 2014) (quoting *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989)) (noting that the "courts are not required to look solely to the plaintiff's proof" in determining whether the plaintiff has made the requisite "*prima facie* showing"); *see also Zavian v. Foudy*, 130 Md. App. 689, 692-93 (2000).

Finally, Rule 12(b)(6) tests the sufficiency of the complaint. "To survive a motion under Rule 12(b)(6), a complaint must contain facts sufficient to 'state a claim to relief that is plausible on its face.'" *Cordish*, 573 F. Supp. 3d at 990 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,

570 (2007)), *aff'd*, 2022 U.S. App. LEXIS 10169 (4th Cir. Apr. 14, 2022). Stated differently, the plaintiff must plead content "that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "If a complaint provides no more than 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action,' it is insufficient." *Cordish*, 573 F. Supp. 3d at 991 (quoting *Twombly*, 550 U.S. at 555).

Although the allegations of the Complaint are viewed in the light most favorable to the plaintiff at this stage of the proceedings, the Court "is not required to accept legal conclusions drawn from the facts." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice," and thus the Court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678 (citations omitted). The Court's analysis requires "separating the legal conclusions from the factual allegations, assuming the truth of only the factual allegations, and then determining whether those allegations allow the court to reasonably infer that the plaintiff is entitled to the legal remedy sought." *Cordish*, 573 F. Supp. 3d at 991 (quotations omitted).

B. Materials to Be Considered

On a motion to dismiss, the Court may consider "the complaint and the documents attached or incorporated into the complaint." *Id.* (quotations and citations omitted); Fed. R. Civ. P. 10(c); *see also Witthohn v. Fed. Ins. Co.*, 164 F. App'x 395, 396 (4th Cir. 2006) ("[A] court may consider official public records, documents central to plaintiff's claim, and documents sufficiently referred to in the complaint . . . ."); *Burt v. Maasberg*, No. ELH-12-0464, 2014 U.S. Dist. LEXIS 41982, at *34-35 (D. Md. Mar. 28, 2014) ("[F]acts and documents subject to judicial notice may be considered by a court, without converting the motion under Rule 12(d)."). Thus, the Court may consider the NDA attached to the Complaint as Exhibit A, which serves as the basis for Terran's

breach of contract claim. The Court need not accept as true, however, any allegations that conflict with documents the plaintiff has incorporated or relied upon. *See Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166-67 (4th Cir. 2016) ("When the plaintiff attaches or incorporates a document upon which his claim is based, or when the complaint otherwise shows that the plaintiff has adopted the contents of the document, crediting the document over conflicting allegations in the complaint is proper.").

The Court also may consider documents filed with a defendant's motion to dismiss, "so long as they are integral to the complaint and authentic." *Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009). Therefore, the Court may consider the patent filings and web postings attached to the Spieth Declaration filed with Compass's Motion, because they are central to the claims, publicly available online, and their authenticity cannot be disputed. *See Burt*, 2014 U.S. Dist. LEXIS 41982, at *35 (Court "may consider the public filings submitted to the SEC that defendants have included as exhibits, because no serious question as to their authenticity can exist[.]") (quotations omitted); *see also Layani v. Ouazana*, No. ELH-20-420, 2021 U.S. Dist. LEXIS 39894, at *61 (D. Md. Mar. 3, 2021) (taking judicial notice, on a motion to dismiss, of a news article); *Classen Immunotherapies, Inc. v. Shionogi, Inc.*, 993 F. Supp. 2d 569, 572 n.1, 580 n.10 (D. Md. 2014) (taking judicial notice, on a motion to dismiss, of patent prosecution history).

Further, on a motion to dismiss, the Court "may properly take judicial notice of matters of public record and other information that, under Federal Rule of Evidence 201, constitute adjudicative facts." *Philips N. Am. LLC v. Hayes*, No. ELH-20-1409, 2020 U.S. Dist. LEXIS 164474, at *15 (D. Md. Sept. 9, 2020) (quotations omitted); *see Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1001 (9th Cir. 2018) (judicial notice of the filing date of a WIPO patent application is appropriate, because it is "verifiable with certainty, and of the same type as other

governmental documents which courts have judicially noticed").[5] The Court "must take judicial notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(c)(2) (emphasis added). Therefore, this Court can take judicial notice of the patent applications referenced in this Motion, including the filing and publication dates, because they are government records. *See, e.g., Classen*, 993 F. Supp. 2d at 572 n.1, 580 n.10.

IV. ARGUMENT

A. The Court Lacks Personal Jurisdiction Over Compass

Terran's Complaint fails the Rule 12(b)(2) standard because this Court lacks personal jurisdiction over Compass. As alleged in the Complaint, Compass is incorporated in the United Kingdom, not the United States. Compl. ¶ 8. To prove that this Court may exercise personal jurisdiction over an alien defendant such as Compass, Terran must allege facts sufficient to satisfy (1) the Maryland long-arm statute and (2) the Due Process Clause of the U.S. Constitution. *See Synergics Energy*, 2014 U.S. Dist. LEXIS 84185, at *21-22 (citing Md. Code § 6-103(b)) (noting that "[b]ecause the limits of Maryland's statutory authorization for the exercise of personal jurisdiction are coterminous with the limits of the Due Process Clause . . . the two inquiries essentially become one. . . . However, the long-arm statute must still be examined as part of the two-step personal jurisdiction analysis.") (citations omitted).[6] Thus, Terran must "demonstrate

[5] Adjudicative facts are facts "not subject to reasonable dispute," in that they are "generally known within the territorial jurisdiction of the trial court" or "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Hayes*, 2020 U.S. Dist. LEXIS 164474, at *15 (quoting Fed. R. Evid. 201(b)).

[6] "When interpreting the reach of Maryland's long-arm statute, a federal district court is bound by the interpretations of the Maryland Court of Appeals." *Maryland v. Exxon Mobil Corp.*, 406 F. Supp. 3d 420, 439 (D. Md. 2019). Despite stating that the inquiries "merge," the Court of Appeals has clarified that "[w]e did not, of course, mean by this that it is now permissible to simply dispense with analysis under the long-arm statute. . . . Rather . . . we interpret the long-arm statute to the limits permitted by the Due Process Clause when we can do so consistently with the canons of statutory construction." *Mackey v. Compass Mktg., Inc.*, 391 Md. 117, 141 n.6 (2006). In other

that [Compass] had sufficient minimum contacts with [Maryland] to satisfy due process." *Cem Corp. v. Pers. Chemistry*, 55 F. App'x 621, 623 (4th Cir. 2003).

Due process recognizes two types of personal jurisdiction, general and specific, depending on the nature of the contacts:

> General personal jurisdiction, on the one hand, requires "continuous and systematic" contacts with the forum state, such that a defendant may be sued in that state for any reason, regardless of where the relevant conduct occurred. Specific personal jurisdiction, on the other hand, requires only that the relevant conduct have such a connection with the forum state that it is fair for the defendant to defend itself in that state.

Synergics Energy, 2014 U.S. Dist. LEXIS 84185, at *23-24 (quoting *CFA Inst. v. Inst. of Chartered Fin. Analysts of India*, 551 F.3d 285, 292 n.15 (4th Cir. 2009)). For the Court to exercise specific jurisdiction, Terran must show that (1) Compass "purposefully availed" itself of "the privilege of conducting business" under Maryland laws; (2) Compass's contacts with the state "form the basis of the suit"; and (3) the "exercise of personal jurisdiction would be constitutionally reasonable." *Id.* at *25-26 (quotations and citations omitted). Terran failed to make a *prima facie* showing sufficient to establish either general or specific jurisdiction over Compass.

1. Terran's Jurisdictional Allegations

Terran's jurisdictional allegations are thin. Terran alleges that "Compass reached out to Thompson and UMB," both in Baltimore, "to pursue negotiations for a potential partnership . . . ." Compl. ¶ 12. The potential partnership never materialized. *Id.* ¶ 24. According to Terran, "[b]y doing so [i.e., reaching out] and engaging in those discussions pursuant to a confidentiality/nondisclosure agreement, Compass purposefully availed itself of the benefits and

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words, "if to exercise specific jurisdiction in a given case would violate Due Process, we construe our long-arm statute as not authorizing the exercise of personal jurisdiction." *Bond v. Messerman*, 391 Md. 706, 721 (2006) (declining to consider the first step in the analysis when second step conclusively demonstrates Due Process violation).

privileges of the laws of Maryland." *Id.* ¶ 12. Terran also alleges that "Thompson and Compass engaged in numerous substantive discussions and negotiations regarding a potential partnership . . . via e-mail, Zoom, and in-person meetings" *(id.* ¶ 2; *see also id.* ¶¶16-24), but does not allege that any in-person meetings took place in Maryland. The only allegation of an in-person meeting states that Thompson met with Compass at the annual meeting of the Society for Neuroscience ("SFN") in October 2019. *See* Compl. ¶ 24. But that event took place in Chicago, and therefore is irrelevant to the analysis of personal jurisdiction. *See* Ex. 3 (Malievskaia Decl.) ¶ 5; Ex. 4 (Society for Neuroscience, *Past and Future Annual Meetings*, https://www.sfn.org/meetings/past-and-future-annual-meetings).[7]

Terran also alleges (without saying when) that Compass has set up a psilocybin research Centre of Excellence in Towson, Maryland and conducted clinical trials in Baltimore for its psilocybin product. *See* Compl. ¶ 12. These facts are irrelevant as a matter of law to the personal jurisdiction analysis. First, the allegations regarding the Centre for Excellence are allegations of general contacts that are unrelated to the claims, and therefore insufficient to obtain specific jurisdiction. *See Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cnty.*, 137 S. Ct. 1773, 1781-82 (2017) (there is no "sliding scale" of personal jurisdiction; if the claims do not arise out of in-state contact by the defendant, then no specific jurisdiction exists, regardless of a defendant's unconnected activities with the forum). Second, the Centre of Excellence was established in 2021, years after the alleged wrongdoing, and therefore comes too late to be relevant. *See* Compl. ¶¶ 37, 64; Ex. 3 ¶ 7; *see also* Ex. 5 (Compass Pathways, *Centres of Excellence*,

[7] Compass requests that the Court take judicial notice of the fact that the 2019 annual SFN meeting described in the Complaint took place in Chicago, according to SFN's website. *See* Ex. 4; *Layani*, 2021 U.S. Dist. LEXIS 39894, at *61 (judicial notice of news article is proper).

https://compasspathways.com/centres-of-excellence/).[8] "[W]hether general or specific jurisdiction is sought, a defendant's 'contacts' with a forum state are measured as of the time the claim arose." *Hardnett v. Duquesne Univ.*, 897 F. Supp. 920, 923 (D. Md. 1995); *see also Janjua v. Cooper Tire & Rubber Co.*, No. WMN-12-2652, 2014 U.S. Dist. LEXIS 84525, at *10 (D. Md. June 19, 2014) (defendant's Maryland residence and a contract implemented in Maryland were both irrelevant to the minimum contacts analysis, because they occurred after the 2009 car accident that gave rise to the lawsuit).

2. Terran Has Not Pled That Maryland's Long-Arm Statute Authorizes Jurisdiction

Terran cites Md. Code, Cts. & Jud. Proc. § 6-103 as supporting personal jurisdiction, Compl. ¶ 12, but does not state what provision of that section supposedly applies. Under the long-arm statute, the Court may exercise specific jurisdiction over a defendant only if "the cause of action arises from, or is directly related to, the defendant's contacts with [Maryland]." *CSR, Ltd. v. Taylor*, 411 Md. 457, 477, 487 (2009) (neither limited business activity nor alleged effect of injury subjected company to Maryland personal jurisdiction). Terran appears to rely on the "transacts any business" or "causes tortious injury" prongs of the long-arm law. Md. Code, Cts. & Jud. Proc. § 6-103(b)(1), (3)-(4). However, none of these subsections apply.

"Maryland courts have construed the phrase 'transacting business' narrowly, requiring, for example, significant negotiations or intentional advertising and selling in the forum state." *Music Makers Holdings, LLC v. Sarro*, No. RWT-09-1836, 2010 U.S. Dist. LEXIS 71920, at *4 (D. Md. July 14, 2010). And "the words 'transacts any business' in subsection (b)(1) of the long-arm statute must be read with a constitutional gloss, requiring some 'purposeful activity' by the defendant as

[8] Compass requests that the Court take judicial notice of the fact that Compass posted a press release on its website dated January 8, 2021 that announces the launch of the Centre of Excellence. *See* Ex. 5.

a prerequisite to the exercise of jurisdiction." *CSR, Ltd.*, 411 Md. at 475. Merely contacting a plaintiff in the state is too attenuated an allegation to constitute transacting business for purposes of the Maryland long-arm statute. *Bond*, 391 Md. at 723 (calls and letters are generally not sufficient); *Zavian*, 130 Md. App. at 699-702 (although athletes contacted agent for professional services, there was no evidence that they entered management agreements because of any Maryland connection); *Marriott Corp. v. Village Realty & Inv. Corp.*, 58 Md. App. 145, 156 (1984) (even if defendant's purpose was to induce the Maryland entity to enter a contract for land in Florida, one trip to Maryland in the course of dealing was not "a substantial enough connection" to subject defendant to specific personal jurisdiction). Terran's bare allegations of Compass's remote communications with persons in Maryland do not suffice to plead long-arm jurisdiction under § 6-103(b)(1).

To the extent Terran may rely on allegations of tortious injury (Md. Code, Cts. & Jud. Proc. § 6-103(b)(3)-(4)), its assertions are likewise insufficient to confer long-arm jurisdiction. *See CSR, Ltd.*, 411 Md. at 479-80 ("[A] defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts . . . .") (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985)). There is no allegation that Compass performed any "act or omission in the State," let alone one that caused tortious injury. Md. Code, Cts. & Jud. Proc. § 6-103(b)(3). As to § 6-103(b)(4), there is no allegation that Compass "regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State," so no "act or omission outside the State" by Compass can form the basis for personal jurisdiction.

In sum, Terran has not pled sufficient jurisdictional facts to show that Maryland's long-arm statute authorizes personal jurisdiction over Compass.

3. Compass Has Not "Purposefully Availed" Itself of Maryland Law as Required for Specific Jurisdiction

Even if Terran's allegations could be read to authorize jurisdiction under the long-arm statute (they cannot), to do so would violate due process. The types of contacts Terran alleges—where the parties negotiated an agreement over email and telephone from their respective home states and defendant never made in-person contact with plaintiff in the forum—are insufficient as to confer specific personal jurisdiction over a foreign defendant. The analysis of minimum contacts necessary for due process "looks to the defendant's contacts with the forum State itself, not the defendants' contacts with persons who reside there." *Allen v. Cort Trade Show Furnishings*, No. ELH-19-2859, 2020 U.S. Dist. LEXIS 117486, at *23-24 (D. Md. July 2, 2020) (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)).

These principles hold true in the context of negotiating agreements, like the circumstances alleged here. For example, in *Consulting Engineers Corp. v. Geometric Ltd.*, the plaintiff CEC (a Virginia corporation with branch offices in India) sued Structure Works (a Colorado corporation) and Geometric (an Indian corporation) for tort and contract claims arising from negotiation and execution of two separate NDAs. 561 F.3d 273, 275-76 (4th Cir. 2009). The parties each negotiated the NDAs from their respective home offices. *Id.* They exchanged "four email exchanges and several phone calls" about one NDA and "twenty-four emails . . . and several phone calls" about the second NDA. *Id.* They held one in-person meeting in India. *Id.* at 276. Even though one of the NDAs contained a Virginia choice-of-law provision, the Fourth Circuit concluded that the "contacts" (email and phone calls) were insufficient to establish personal jurisdiction over the defendants in Virginia. *See id.* at 279-82. That defendants "reached out to [plaintiff] in Virginia . . . even when coupled with the cited communications, is not enough . . . to justify the exercise of personal jurisdiction." *Id.* at 280; *see also Stover v. O'Connell Assocs., Inc.*,

84 F.3d 132, 137 (4th Cir. 1996) ("To conclude that [telephonic communication] establishes presence in a state would upset generally held expectations . . . .").

Here, the facts are even more attenuated than they were in *Consulting Engineers*. The Complaint references a handful of emails and calls between Compass, Dr. Thompson, and Dr. Gould between May 16, 2019 and November 20, 2019. Compl. ¶¶ 16-24. Only one in-person meeting took place during this time, and that occurred in Chicago. *Id.* ¶ 24; *see also* Ex. 3 ¶¶ 5-6; Ex. 4. The NDA that allegedly governed these discussions contained an England and Wales choice-of-law provision. Compl., Ex. A ¶ 12. Terran's jurisdictional allegations, therefore, boil down to the assertion that Compass "reached out" to Dr. Thompson and Dr. Gould in Maryland. Compl. ¶ 12. As the Fourth Circuit has established, "reach[ing] out" alone, particularly by phone or email, does not establish specific jurisdiction. *Consulting Eng'rs*, 561 F.3d at 280; *see also Cricket Grp., Ltd. v. Highmark, Inc.*, 198 F. Supp. 3d 540, 545-46 (D. Md. 2016) (where parties exchanged emails, calls, and instant messages but never met in Maryland, and agreement chose Pennsylvania as governing law, that defendant "may have initiated communications with [plaintiff] in Maryland does not suffice to show that they initiated the relationship with [plaintiff]," and even still, "that fact would not overcome the . . . factors weighing against purposeful availment") (emphases in original).

Notably, Terran does not allege that specific personal jurisdiction exists by virtue of Compass executing an NDA with a Maryland resident (Dr. Thompson). But even if it had, Terran cannot plausibly establish that Compass purposefully availed itself of the privilege of doing business in Maryland just by virtue of executing an NDA. "[A] contract . . . cannot, by itself, establish purposeful availment" without imposing additional "continuing obligations" that have an "effect on the extent, nature, and quality of [defendant]'s contacts with Maryland." *Perdue Foods*

LLC v. BRF S.A., 814 F.3d 185, 189-190 & n.1 (4th Cir. 2016). The NDA imposes no continuing, affirmative obligation to do business in Maryland (and actually disclaims any future obligations beyond maintaining confidentiality). *See* Compl., Ex. A ¶ 7. Additionally, as previously noted, the NDA expressly selects the law of England and Wales as governing. *See* Compl., Ex. A ¶ 12. "A choice of law provision which opts away from the forum state . . . raises the negative implication that personal jurisdiction in the forum state was not contemplated." *Cricket*, 198 F. Supp. 3d at 544-45; *see also Diamond Healthcare of Ohio, Inc. v. Humility of Mary Health Partners*, 229 F.3d 448, 451-52 (4th Cir. 2000) (Virginia lacked personal jurisdiction over Ohio defendant where the parties' agreement contained Ohio choice-of-law provision).

4. Exercising Specific Jurisdiction Over Compass, an Alien Corporation, Would Be Unreasonable

Even if the Court found Compass had minimum contacts with the state of Maryland, Terran has not pled sufficient facts to establish that exercising specific jurisdiction over Compass would be reasonable. To determine reasonableness, "[a] court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief." *Asahi Metal Ind. Co. v. Superior Court*, 480 U.S. 102, 113 (1987). The U.S. Supreme Court has stated that "[t]he unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Id.* at 114. When, as here, the case involves an alien defendant, the Court cautioned that "[foreign] interests, as well as the Federal Government's interest in its foreign relations policies, will be best served by . . . an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the . . . forum State." *Id.* at 115.

On facts analogous to those presented here, the Supreme Court found exercise of specific jurisdiction over a foreign defendant unreasonable. In *Asahi*, the Court held that California lacked specific personal jurisdiction over a Japanese defendant who sold auto parts that ended up in California, noting the burden of traveling from Japan to California and of submitting one's dispute to a foreign nation's judicial system. *Id.* at 114-116. Because California law would not necessarily govern the asserted claim, the forum's interest in asserting jurisdiction was only "slight." *See id.* at 114-15. Also, the plaintiff was not a California resident, which "considerably diminished" the state's interests. *Id.* Likewise, in *United States v. M/V Santa Clara I*, the South Carolina District Court found exercise of specific jurisdiction over a Chilean defendant was unreasonable. *See* 859 F. Supp. 980, 989-90 (D.S.C. 1994). The Court noted the foreign defendant "will be commanded not only to traverse the distance between Chile and South Carolina, but also to submit its dispute . . . to a foreign nation's judicial system." *Id.* at 990. Furthermore, the interests of the plaintiff and the forum were "slight," given that the transaction forming the basis of claim took place in Chile, the claim would be governed by the laws of Chile, and neither party was a South Carolina resident. *See id.*

Like the defendants in *Asahi* and *M/V Santa Clara*, Compass is a foreign company (incorporated in the UK). Compass has no office in Maryland, and unlike the defendant in *Asahi*, has even not sold products to Maryland consumers. If this case were to proceed, Compass would be forced to submit to a foreign nation's judicial system and travel to Maryland to defend itself against claims arising from an NDA it did not sign and a research partnership that was never formed.

Terran has no apparent connection to Maryland either, other than the fact that it claims to have recently executed an MLA with UMB. And of the three asserted claims (DTSA, MUTSA,

and breach of contract), only the MUTSA claim implicates Maryland law: federal law governs the DTSA claim and, by contractual agreement, the law of England and Wales governs any dispute arising out of the NDA (Compl., Ex. A ¶ 12). Particularly where neither party is a citizen of the forum, and the connection to Maryland is tenuous at best, the state has "minimal interest[]" in adjudicating these claims. *See Asahi*, 480 U.S. at 115. Thus, exercising personal jurisdiction over Compass would "offend traditional notions of fair play and substantial justice." *Gray v. Riso Kagaku Corp.*, No. 95-1741, 1996 U.S. App. LEXIS 8406, at *11 (4th Cir. Apr. 17, 1996) (quotations omitted) (South Carolina lacked personal jurisdiction over Japanese defendant); *see also Collins v. AB Biodisk N. Am., Inc.*, No. 5:08-CV-355-H, 2009 U.S. Dist. LEXIS 150456, at *11 (E.D.N.C. Mar. 13, 2009) (North Carolina lacked personal jurisdiction over Swedish defendant); *Colt Def. LLC v. Heckler & Koch Def., Inc*., No. 2:04-cv-258, 2004 U.S. Dist. LEXIS 28690, at *60 (E.D. Va. Oct. 22, 2004) (Virginia lacked personal jurisdiction over German defendant).

5. Compass Does Not Have the Continuous and Systematic Contacts with Maryland Required for General Jurisdiction

Terran's Complaint also fails to establish general personal jurisdiction, which is "a more demanding standard than . . . specific jurisdiction." *Consulting Eng'rs*, 561 F.3d at 276 n.3; *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017) (only in an "exceptional case" will a corporate defendant's contacts with another forum "be so substantial and of such a nature as to render the corporation at home in that State") (quotations omitted).

Terran does not even claim that general personal jurisdiction exists. As noted above in Part IV.A.1, however, Terran does make allegations about Compass's contacts with Maryland that are unrelated to the claims. The only potential relevance of such allegations is general, not specific, jurisdiction. *See Bristol-Myers*, 137 S. Ct. at 1781 (mixing general and specific jurisdiction

contacts is prohibited and would result in a "loose and spurious" general jurisdiction standard). Those additional allegations, however, do not show that Compass had "continuous and systematic" contacts with Maryland such that Compass is "essentially at home" in Maryland. *See Synergics Energy*, 2014 U.S. Dist. LEXIS 84185, at *27 (quotations omitted). As noted above, Compass is incorporated in the UK, with its principal place of business in London. Compl. ¶ 8. It does not have an office in Maryland. Ex. 3 ¶ 4. It does not sell a product in Maryland or to Maryland customers. And Compass's later-in-time activities in Maryland are legally irrelevant, because general jurisdiction must be measured at the time of the alleged wrongdoing. *See supra* Part IV.A.1. Moreover, a single business venture such as the Centre for Excellence, even an ongoing one, is insufficient as a matter of law to subject a foreign business to general jurisdiction. *See Tyrrell*, 137 S. Ct. at 1559 (although defendant had over 2,000 miles of railroad track and more than 2,000 employees in Montana, focus of general jurisdiction inquiry is not the magnitude of in-state contacts but the corporation's activities in their entirety); *Bristol-Myers*, 137 S. Ct. at 1781 ("A corporation's 'continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.'") (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011)). As a result, Terran cannot show general personal jurisdiction exists. The Complaint should be dismissed.

B. Terran Lacks Standing, Which Deprives the Court of Subject Matter Jurisdiction

The Court should dismiss the Complaint for the additional reason that Terran lacks standing. For the trade secret claims, Terran alleges it "has the requisite standing to sue [Compass] under the Master License Agreement with UMB and amendment thereto." Compl. ¶¶ 32, 47. For the contract claim, Terran alleges it is a "successor" to Dr. Thompson under the NDA. *Id.* ¶ 63. But the factual allegations in the Complaint show the opposite: Terran has no rights to the alleged

Psilocybin Trade Secrets under the MLA because those purported secrets no longer existed by the time Terran executed the MLA. Because Terran has no license to the asserted trade secrets, it cannot sustain an action for their alleged misappropriation.

Similarly, Terran is not a party to the NDA, and the plain language of the NDA prohibits assignment without the express written permission of Compass (which was not provided, so Terran cannot allege as much). Compl., Ex. A ¶ 9. Terran thus has no right to assert an alleged breach of that agreement, either. And in any event, Terran fails to establish an Article III injury as required for Constitutional standing.

1. The Alleged Trade Secrets Were Extinguished Years Before Terran Acquired Any Rights Under the MLA

The Complaint, on its face, demonstrates that Terran has no basis to sue for trade secret misappropriation. Terran, when it acquired rights pursuant to the MLA, could not have acquired the claimed Psilocybin Trade Secrets. Per the Complaint, UMB and Dr. Thompson only maintained the alleged Psilocybin Trade Secrets as trade secrets until August 13, 2019, when they disclosed them in a patent application. Compl. ¶¶ 1, 14-15, 27; *see also* Ex. 1. Further, UMB's patent application published to the world in February 2021. *See* Ex. 2. Terran did not execute the MLA until May 7, 2021. Compl. ¶ 29. Whatever rights Terran obtained through the MLA in 2021, those rights did not (and could not) include alleged trade secrets that had already been publicly disclosed.

A lawful possessor of a trade secret, including a licensee (as Terran claims to be), may have standing to sue for alleged misappropriation. But standing only exists so long as the trade secret exists. As explained by this Court,

> "one who possesses non-disclosed knowledge may demand remedies as provided by the [MUTSA] against those who misappropriate the knowledge." The Supreme Court has observed, however, that the disclosure of a trade secret "to others who

> are under no obligation to protect the confidentiality of the information extinguishes the property right."

Contracts Materials Processing v. Kataleuna GmbH Catalysts, 164 F. Supp. 2d 520, 535 n.25 (D. Md. 2001) (quoting *DTM Research L.L.V. v. AT&T Corp*., 245 F.3d 327, 332 (4th Cir. 2001) and *Ruckelshaus v. Monsanto Co*., 467 U.S. 986, 1002 (1984)). As the court in *Contracts Materials* stated, where plaintiff "sold the Technology . . . without exacting any agreement . . . to maintain the confidentiality of the Technology,"—i.e., the trade secret was no longer kept secret—the plaintiff's "property right has been extinguished and [plaintiff] has lost any standing to assert" a trade secret claim over the Technology at issue. *Id.*

In a case analogous to this one, *Attia v. Google LLC*, the Ninth Circuit held that the plaintiff lacked standing to bring a trade secret claim under the DTSA because the alleged trade secrets had been published in a patent application before the DTSA was enacted (i.e., before plaintiff had the right to sue under the statute). 983 F.3d 420, 426 (9th Cir. 2020). The Court concluded that "the 2012 publication of Google's patent applications placed the [asserted trade secret] information in the public domain and necessarily extinguished its trade secret status," such that the plaintiff "lack[ed] standing to assert a DTSA claim relating to the patented information." *Id.* at 423, 426; *see also Harris v. Orange S.A.*, 636 F. App'x 476, 484 (11th Cir. 2015) (dismissing trade secret claim for lack of standing because plaintiff failed to establish "any actionable interest in the IP").

The same result is required here. Terran's Complaint unequivocally states that Dr. Thompson and UMB only maintained alleged trade secrets up until filing their patent application on August 13, 2019. Compl. ¶¶ 1, 15. Thus, Terran readily admits that it disclosed its own supposed trade secrets prior to entering into the MLA. That crippling admission, coupled with Terran's failure to allege any efforts to maintain secrecy after UMB's filing of the provisional patent application, affirmatively demonstrates that the information was no longer a trade secret

after August 13, 2019. *See Contracts Materials*, 164 F. Supp. 2d at 535 n.25. Because the Psilocybin Trade Secrets were publicly disclosed prior to the license grant, UMB could not have licensed those trade secrets to Terran in May 2021. By that time, even UMB no longer had any rights to transfer. Thus, Terran has no standing to sue for alleged misappropriation of the Psilocybin Trade Secrets, and the DTSA and MUTSA claims should be dismissed.

2. Terran Is Not a Party to the NDA and the NDA Cannot Be Assigned

Terran alleges that Compass breached the NDA by filing a patent application containing the alleged Psilocybin Trade Secrets, in violation of the contract's use restrictions.[9] *See* Compl. ¶¶ 3-4, 17, 64. But Terran has no right to assert a claim based on the NDA, because it is not a party to the purported agreement between Compass and Dr. Thompson. *See, e.g.*, *Riston v. Klausmair*, No. RDB-17-03766, 2018 U.S. Dist. LEXIS 154309, at *15 (D. Md. Sept. 11, 2018); *see also Primerica Life Ins. Co. v. Zapata*, No. GJH-14-01202, 2015 U.S. Dist. LEXIS 31766, at *9 (D. Md. Mar. 16, 2015) ("Because Sandra Foote was not a party to the Policy, she lacks standing to bring an action for breach of contract, unless, of course, she was an intended third-party beneficiary of the Policy, which she was not.").[10]

[9] Importantly, Terran does not allege that Compass published the asserted trade secrets in a patent application, thereby disclosing the information to the public and destroying the value and exclusivity of the secrets. Here, instead, UMB disclosed its own trade secrets in a patent application before Compass is alleged to have filed a patent application allegedly containing the trade secrets. Compl. ¶ 27.

[10] There is no allegation in the Complaint that Terran is an intended or even incidental third party beneficiary, nor could Terran plausibly make such an allegation. The NDA was executed in 2019, years before Terran's partnership with UMB. Terran therefore cannot (and does not) claim "the contract was intended for [its] benefit" and "that the parties intended to recognize [Terran] as the primary party in interest and as privy to the promise." *Century Nat'l Bank v. Makkar*, 132 Md. App. 84, 93-94 (2000) (quoting *Marlboro Shirt Co. v. Am. Dist. Tel. Co.*, 196 Md. 565, 569 (1951)).

Terran could not have later acquired rights to the agreement either, because such transfer was expressly prohibited. Section 9 of the NDA plainly states: "Neither party shall assign this Agreement without the prior written consent of the other party; provided that a party may assign this Agreement without such consent to its successor in interest by way of merger, acquisition, or sale of all or substantially all of its assets." Compl., Ex. A ¶ 9. Terran does not allege that Compass gave "written consent" for assignment (because Compass did no such thing), nor does Terran allege that Dr. Thompson or UMB "sold all of [their] assets" to Terran (because no such sale ever occurred). *See id.* In fact, Terran does not expressly allege that Dr. Thompson formally or informally assigned his rights to Terran, UMB, or anyone else. Terran simply makes the conclusory allegation that Terran is a "successor" to Dr. Thompson. Compl. ¶ 63. But the Complaint is devoid of any factual allegations regarding their relationship that could make Terran the successor to Dr. Thompson. Moreover, the Court must reject this unsupported "successor" allegation because it is directly contradicted by the written document upon which Terran relies—namely, the NDA that explicitly prohibits unilateral assignment. *See Goines*, 822 F.3d at 166-67 ("When the plaintiff attaches or incorporates a document upon which his claim is based . . . crediting the document over conflicting allegations in the complaint is proper.").

The Complaint fails to allege any legitimate means by which Terran could assert rights under the NDA, and the contract claim must be dismissed.

3. Terran Also Lacks Constitutional Standing Because It Has Not Suffered a Cognizable Injury

Even if Terran could overcome the fundamental problems addressed above, the Complaint still would fail. Terran has not alleged any cognizable injury. To have Article III standing, the plaintiff must establish it has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial

decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (quotations and citations omitted). To establish injury, "a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* at 339 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). "[A] statutory violation absent a concrete and adverse effect does not confer standing." *Dreher v. Experian Info. Sols., Inc.*, 856 F.3d 337, 344-46 (4th Cir. 2017); *see also Hancock v. Urban Outfitters, Inc.*, 830 F.3d 511, 514-15 (D.C. Cir. 2016) (finding no concrete injury where plaintiffs failed to allege "any invasion of privacy, increased risk of fraud or identity theft, or pecuniary or emotional injury").

The Complaint contains conclusory allegations of damages that are devoid of fact and insufficient to establish injury-in-fact. Terran merely alleges that as a result of Compass's wrongdoing, Terran "has been damaged in an amount not yet ascertained." Compl. ¶ 43; *see also id.* ¶¶ 41-42 (alleging that Terran has been "substantially threatened by Defendants' further use and/or dissemination of [the Psilocybin Trade Secrets]" and "Defendants have gained, or will gain, substantial benefit from their misappropriation . . . to Terran's substantial detriment"); *id.* ¶ 65 ("Terran has sustained and will sustain damages as a direct and proximate result of [Compass's] breach of contract."); *infra* n.11. But Terran does not allege any specific harm—such as loss of profits, possession, opportunities, or reputation. Indeed, Terran could not have been injured by Compass's alleged conduct, because Terran was not involved at all with the events and negotiations described in the Complaint. *See, e.g.*, *Yarn v. Hamburger Law Firm, LLC*, No. RDB-12-3096, 2013 U.S. Dist. LEXIS 137140, at *12 (D. Md. Sept. 24, 2013) (dismissing complaint for failure to "identify any injury suffered by [plaintiff] directly"). Terran therefore lacks Article III standing, which precludes the Court from exercising subject matter jurisdiction.

C. Terran Fails to State a Plausible DTSA Claim, Which Dooms the Complaint

The DTSA claim should be dismissed for a yet further reason. To survive a Rule 12(b)(6) challenge, the DTSA plaintiff must plausibly allege: "(1) it owns a trade secret which was subject to reasonable measures of secrecy; (2) the trade secret was misappropriated by improper means; and (3) the trade secret implicates interstate or foreign commerce." *Hayes*, 2020 U.S. Dist. LEXIS 164474, at *17-18; *see* 18 U.S.C. § 1836(b)(1). Terran failed to adequately plead the elements required to maintain a DTSA claim. Without the federal DTSA claim, the Court no longer has grounds to assert jurisdiction over the remaining state law claims. Thus, the entire Complaint should be dismissed.

1. Terran Does Not Plead Facts Sufficient to Establish Ownership of Any Trade Secrets

As discussed above, Terran alleges that the Psilocybin Trade Secrets were kept secret only until they were disclosed in UMB's August 13, 2019 patent application. *See supra* Part IV.B.1. Therefore, as of August 13, 2019, the trade secret status of the Psilocybin Trade Secrets was extinguished. Further, the UMB patent application was published worldwide on February 18, 2021. *See* Ex. 2. Terran's license to certain UMB intellectual property, executed in May 2021, therefore could not include the Psilocybin Trade Secrets, since those trade secrets no longer existed as of the patent filing and subsequent publication. On these allegations, Terran does not plausibly allege that "it owns a trade secret which was subject to reasonable measures of secrecy." *Hayes*, 2020 U.S. Dist. LEXIS 164474, at *18; *see* 18 U.S.C. § 1836(b)(1); *see also Contracts Materials*, 164 F. Supp. 2d at 535 n. 25 ("[T]he disclosure of a trade secret . . . extinguishes the property right.").

If Terran contends that UMB's August 13, 2019 patent application actually did not disclose all of the Psilocybin Trade Secrets, such that certain of those alleged trade secrets remained secret

through May 2021, and Terran acquired a license to those remaining alleged secrets, the Complaint is still insufficient. The Complaint contains no allegations regarding what possible Psilocybin Trade Secrets may still exist beyond what was disclosed in UMB's August 13, 2019 patent application. To the contrary, the Complaint suggests that all of the Psilocybin Trade Secrets were disclosed in the August 13, 2019 patent application. *See* Compl. ¶ 15 ("Until he filed patent applications related to the trade secrets beginning on August 13, 2019, Thompson did not disclose any of the Psilocybin Trade Secrets . . . ."). Without any further specificity of what Trade Secrets remain (including how UMB exercised reasonable security measures over them), Terran fails to plausibly allege a viable DTSA claim. *See Bindagraphics, Inc. v. Fox Grp., Inc.*, 377 F. Supp. 3d 565, 577 (D. Md. 2019) (dismissing trade secret claim because "the complaint is not clear enough as to what Bindagraphics trade secret [defendant] is alleged to have taken"); *see also Trandes Corp. v. Guy F. Atkinson Co.*, 996 F.2d 655, 661-62 (4th Cir. 1993) (plaintiff must "describe the subject matter of its alleged trade secrets in sufficient detail" such that they can be "differentiated . . . from matters of general knowledge in the trade" (quotations omitted)). Terran should not be permitted to proceed into discovery to fish for another claim based on unidentified other trade secrets. *Cf. Structural Pres. Sys., LLC v. Andrews*, No. 12-1850-MJG, 2013 U.S. Dist. LEXIS 203231, at *8-15, *19 (D. Md. Dec. 17, 2013) (ordering plaintiff to identify trade secrets with "particularity" before discovery would commence, noting "growing trend towards requiring some level of pre-discovery identification of trade secrets under the Federal Rules of Civil Procedure," in part to "discourag[e] frivolous pleadings").

2. Terran's Conclusory Allegations of Interstate Commerce Do Not Suffice

The DTSA claim also should be dismissed because Terran failed to adequately plead the alleged trade secrets were "related to a product or service used in, or intended for use in, interstate

or foreign commerce," as required by 18 U.S.C. § 1836(b)(1). The Complaint contains no facts about Terran's business whatsoever. Terran merely recites the statutory "interstate commerce" requirement, with no further explanation or allegation regarding how the asserted trade secrets have been (or will be) commercialized in more than one state. *See* Compl. ¶ 33 ("The Psilocybin Trade Secrets are directed towards methods of treating depression and other mental health issues with psilocybin in combination with a 5-HT2A antagonist, which implicate the development, manufacturing, and sale of products and services used in, and intended for use in, interstate and foreign commerce."). Terran does not allege that anyone is selling a psilocybin/ketanserin product. Terran does not state how it plans to use technology it licensed from UMB, if at all. Alleging that the Psilocybin Trade Secrets hypothetically could "implicate" interstate commerce someday (*id.*) is insufficient to support a DTSA claim. *See Hydrogen Master Rights, Ltd. v. Weston*, 228 F. Supp. 3d 320, 338 (D. Del. 2017) (dismissing complaint for failure to allege interstate commerce and "any nexus between interstate or foreign commerce and" the claimed trade secrets).

3. If the DTSA Claim Is Dismissed, the Court Loses Jurisdiction Over the Remaining Claims

If the DTSA claim fails, this Court loses subject matter jurisdiction over the remaining claims, providing further grounds for dismissal of the case. Terran's only allegations directed to subject matter jurisdiction state that this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331, based on the DTSA claim, and supplemental jurisdiction over the MUTSA and breach of contract claims. Compl. ¶¶ 10-11. Terran has not alleged diversity jurisdiction as an alternative (or in addition to) federal question jurisdiction—likely because it cannot in good faith plausibly plead more than $75,000 in damages, as required by 28 U.S.C. § 1332(a).[11] As this Court

[11] Neither the Complaint nor the Civil Action Cover Sheet (Dkt. No. 1-1) pleads any dollar amount of damages, exclusive of interests and costs.

previously stated, "a federal court must presume that a case lies outside its limited jurisdiction unless and until jurisdiction has been shown to be proper." *TECH USA*, 2021 U.S. Dist. LEXIS 37961, at *16-18 (dismissing MUTSA and breach of contract claims after deciding plaintiff failed to state a DTSA claim, because "[a]bsent a federal question, this court has no basis to exercise jurisdiction over [plaintiff]'s remaining state law claims"). Without federal question jurisdiction, and without plausible allegations supporting diversity jurisdiction, the Court should decline to exercise supplemental jurisdiction over any remaining claims.

D. The Complaint Fails to State a Plausible Claim for Breach of Contract Because the Contract Does Not Prohibit the Use of Public Information

Even if Terran could overcome the issues outlined above, and assuming *arguendo* that the NDA is binding on Compass, Terran fails to state a plausible claim for breach of contract. *See* Fed. R. Civ. P. 12(b)(6). The NDA provides that the parties "shall not distribute, disclose, or otherwise disseminate" each other's Confidential Information to third parties, and may only use the Confidential Information "in connection with exploring possible business arrangements" between them. Compl., Ex. A ¶¶ 1-2. "Confidential Information" is defined as "information . . . that Discloser treats as confidential or proprietary." *Id.* ¶ 1. The only non-conclusory factual allegations relating to a supposed breach are that Compass misused certain Confidential Information covered by the NDA—the Psilocybin Trade Secrets—by preparing and filing a patent application on August 29, 2019. *See* Compl. ¶¶ 62, 64.

These allegations are insufficient to support a breach of contract claim, however, because the plain language of the contract precludes liability based on information that is now in the public domain. The NDA states that "'Confidential Information' shall not include, and the Recipient shall have no [nondisclosure] obligations . . . with respect to, any information that . . . subsequently becomes generally available to the public through no wrongful act or omission of Recipient."

Compl., Ex. A ¶ 2.1. Here, Terran alleges that UMB filed a patent application disclosing the Psilocybin Trade Secrets first, on August 13, 2019, before Compass allegedly breached the NDA by filing a patent application containing the same information. In order words, UMB voluntarily put the asserted "Confidential Information" (the Psilocybin Trade Secrets) in the public domain. *See id*. As a result, those Trade Secrets can no longer serve as the basis for liability, and the contract claim should be dismissed.

E. Terran Fails to Allege Any Theory of Liability Against the "Doe" Defendants

The unnamed defendants "Does 1-10" should be dismissed pursuant to Rule 12(b)(6) as well, for failure to state a plausible claim (or any claim whatsoever) against them. Terran's Complaint is devoid of factual allegations about these individuals or entities, except to say that their identities are "presently unknown" and "can be uncovered through discovery." Compl. ¶ 9. Terran does not allege any fact pattern related to any Does, nor any wrongful conduct by anyone other than Compass. The Court cannot reasonably infer any liability, and so these imaginary co-defendants must be dismissed. *See Bakery & Confectionery Union & Indus. Int'l Pension Fund v. Cont'l Food Prods*., No. TDC-14-0380, 2014 U.S. Dist. LEXIS 174254, at *6 (D. Md. Dec. 16, 2014) (dismissing claims against Doe defendants because a "suspicion" that Doe defendants exist, "without more, is not enough to make the generally disfavored device of a John Doe pleading appropriate").

V. CONCLUSION

For the foregoing reasons, Compass requests that the Court dismiss Terran's Complaint in its entirety.

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Respectfully submitted,

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