

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 12/07/2018

TIME: 09:30:00 AM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Gregory W Pollack

CLERK: Terry Ray

REPORTER/ERM: Keren Guevara CSR# 12478

BAILIFF/COURT ATTENDANT: L. Wilks

CASE NO: **37-2017-00044865-CU-AT-CTL** CASE INIT.DATE: 11/27/2017

CASE TITLE: **BECKMAN COULTER INC VS QUIDEL CORP [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Antitrust/Trade Regulation

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

JOHN E SCHMIDTLEIN, counsel, present for Plaintiff(s).

Carl R. Metz, specially appearing for counsel Sarah F. Teich, present for Plaintiff(s).

Timothy Blackford, counsel, present for Plaintiff(s).

Sean P. Gates, counsel, present for Defendant(s).

The Court orally advises the parties of its tentative ruling, after which oral argument is conducted. Upon completion of oral argument, the court makes the below ruling:

RULING AFTER ORAL ARGUMENT: The Court rules on defendant Quidel Corp.'s (Defendant) application to file documents under seal as follows:

Defendant's unopposed application is granted pursuant to California Rules of Court, rule 2.550, as Defendant has established the records at issue meet the requirements to be filed under seal.

IT IS SO ORDERED.

TENTATIVE RULING: The Court rules on plaintiff Beckman Coulter, Inc.'s (Plaintiff) motion for

summary adjudication as follows:

Defendant Quidel Corp.'s (Defendant) Evidentiary Objections. The objections are overruled.

Standard of Review. "A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty." (Code Civ. Proc. §437(c)(f)(1).) It can only be granted if it completely disposes of a cause of action. (*Ibid.*)

Here, Plaintiff asks the Court to summarily adjudicate its declaratory relief claim on the ground that the non-compete clause in the BNP Assay Agreement violates Business and Professions Code section 16600. In response, Defendant contends that the principle case upon which Plaintiff relies, *Edwards v. Arthur Anderson LLP* (2008) 44 Cal.4th 937 (hereafter *Edwards*), is not dispositive and is distinguishable from this case.

The motion is granted for the reasons stated below.

One, the statute of limitations is inapplicable. In *Styne v. Stevens* (2001) 26 Cal.4th 42, 53 (hereafter *Styne*), the California Supreme Court stated that if the result a party seeks is "that he or she owes no obligations under an agreement," "the matter must be deemed a defense to which the statute of limitations does not apply."

Two, aside from the fact that the continued viability of the common law trade secret exception has been called into question post-*Edwards*, the court in *Dowell v. Biosense Webster, Inc.* (2009) 179 Cal.App.4th 564, 577, stated that it would only apply where the terms of the non-compete clause are specifically tailored to the protection of trade secrets. Here, section 5.2.3 of the BNP Assay Agreement is not narrowly tailored toward that end. Instead, it applies broadly to Plaintiff's manufacture or sale of any BNP or NT-proBNP assay, whether or not Plaintiff has access to or misuses any trade secrets.

Three, the non-compete clause is void pursuant to Business and Professions Code section 16600 (section 16600). The statute states, in relevant part, that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." "[T]he general rule is that covenants not to compete are void." (*Kelton v. Stravinski* (2006) 138 Cal.App.4th 941, 946 (hereafter *Kelton*); *Edwards, supra*, 44 Cal.4th at p. 946; *AMN Healthcare, Inc. v. Aya Healthcare Servs, Inc.* (2018) 28 Cal.App.5th 923.) There are only three codified exceptions which permit such agreements. (Bus. & Prof. Code, §§16601, 16602, 16602.5.) None of these exceptions are applicable in this case. Furthermore, courts have held that "covenants not to compete in contracts *other than* for either the sale of goodwill or dissolution of a partnership are void." (Emphasis in original.) (*Kelton, supra*, 138 Cal.App.4th at p. 946.)

Here, section 5.2.3 restrains Plaintiff from developing, marketing, or assisting others in the development and marketing of an assay that measures or detects the presence or absence of BNP or NT-proBNP. (Separate Statement (SS), No. 13.) The cases cited by Defendant are pre-*Edwards* decisions and/or deal with the issue of exclusive dealing contracts in the context of a franchise relationship, which is not at issue here. (*Kelton, supra*, 138 Cal.App.4th at p. 948.) Notably, in *Edwards*, the court rejected both the common law rule of reasonableness (*Edwards, supra*, 44 Cal.4th at p. 945) and the Ninth Circuit's narrow restraint exception (*Id.*, at pp. 949-950) and held that section 16600 voids every contract that restrains anyone from "engaging in a lawful profession, trade, or business of any kind..." (*Id.*, at p. 943). Given the plain meaning of the statute and the case law interpreting it, the Court concludes that section

5.2.3 of the BNP Assay Agreement is void and that no amount of additional discovery would render a different result.

IT IS SO ORDERED.



Judge Gregory W Pollack