

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

CARA WESSELS WELLS

Plaintiff,

v.

**TEXAS TECH UNIVERSITY,
SAMUEL PRIEN, and LINDSAY
PENROSE,**

Defendants.

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CAUSE NO. 5:23-CV-00060-H

**INDIVIDUAL DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT PURSUANT TO FEDERAL RULES OF CIVIL
PROCEDURE 12(B)(1) AND 12(B)(6)**

TO THE HONORABLE U.S. DISTRICT JUDGE JAMES WESLEY HENDRIX:

Defendants Dr. Samuel D. Prien ("Dr. Prien"), and Dr. Lindsay Penrose ("Dr. Penrose"), collectively ("Individual Defendants"), jointly file this Motion to Dismiss ("Motion") pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), requesting the Court to dismiss all claims brought against them in Plaintiff's First Amended Complaint ("Amended Complaint"). Plaintiff's claims against the Individual Defendants should be dismissed because (1) the mandatory dismissal provision of Tex. Civ. Prac. & Rem. Code § 101.106(e) requires automatic dismissal of the tort claims; (2) the § 1983 Equal Protection, correction of inventorship, and patent invalidity claims are barred by sovereign immunity; (3) all claims are barred by official immunity; (4) the Title IX claim cannot be brought against individuals; and (5) Plaintiff fails to state a claim for trade secret misappropriation.

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INTRODUCTION

Plaintiff's Amended Complaint arises out of Plaintiff's student and employment relationships with TTU, and allegedly involves TTU professors, Drs. Prien and Penrose. Plaintiff allegedly worked as a graduate assistant of Drs. Prien and Penrose until graduating with her Ph.D. in 2017. Once she graduated, Plaintiff no longer had either a student or an employment relationship with TTU. Plaintiff's only subsequent involvement with TTU was a short, unpaid volunteer position with the TTU Accelerator Hub, which ended in June 2022.

Nearly six years after she left the employment of TTU, Plaintiff filed this lawsuit against both TTU and the Individual Defendants, alleging discrimination on the basis of sex, retaliation, equal protection, and a host of intentional tort and other claims under federal and state law. Specifically, Plaintiff's "everything but the kitchen sink" complaint alleges causes of action under Title VII for sexual harassment, hostile work environment, and retaliation; Title IX of the Education Amendments of 1972 for sexual harassment; Equal Protection under 42 U.S.C. § 1983; correction of inventorship under 35 U.S.C. § 256; declaratory judgment of patent invalidity under 28 U.S.C. § 2201; tortious interference with contractual relations; trade secret misappropriation; intentional infliction of emotional distress ("IIED"); unjust enrichment; breach of fiduciary duty; fraudulent concealment; and defamation *per se*.

Specifically, against the Individual Defendants, Plaintiff alleges Title IX for sexual harassment (Count 4), Equal Protection under 42 U.S.C. § 1983 (Count 5), correction of inventorship under 35 U.S.C. § 256 (Count 6), declaratory judgment of patent invalidity under 28 U.S.C. § 2201 (Count 7), tortious interference with contractual relations (against Dr. Prien) (Count 8), trade secret misappropriation (against Dr. Prien) (Count 9), IIED (Count 10), unjust enrichment (Count 11), breach of fiduciary duty (Count 12), fraudulent concealment (Count 13), and

defamation *per se* (against Dr. Prien) (Count 14).

As discussed in detail below, Plaintiff's claims against the Individual Defendants should be dismissed in their entirety because: (1) the mandatory dismissal provision of Tex. Civ. Prac. & Rem. Code § 101.106(e) requires automatic dismissal of the tort claims; (2) the § 1983 Equal Protection, correction of inventorship, and patent invalidity claims are barred by sovereign immunity; (3) all claims are barred by official immunity; (4) the Title IX claim cannot be brought against individuals; and (5) Plaintiff fails to state a claim for trade secret misappropriation.

BACKGROUND

Plaintiff alleges she was a student of Drs. Prien and Penrose at TTU from 2009 until graduating with her Ph.D. in 2017. *See* Dkt. 19 ¶¶ 32, 33, 64. Plaintiff alleges that she worked as a graduate assistant for Dr. Prien while at TTU. *Id.* ¶¶ 7, 34. Plaintiff also alleges that she participated in an Accelerator Hub mentorship program at TTU during May and June of 2022. *Id.* ¶¶ 108, 110, 112.¹ Plaintiff does not allege that she had an employment relationship with TTU during her brief time as a mentor with the Accelerator Hub program, nor does she allege that she received any type of compensation or benefits as part of that program.

As a graduate assistant at TTU, Plaintiff conducted research. *Id.* ¶¶ 3, 7. Plaintiff alleges that she did not receive credit for her contributions to technological innovations, patents, and academic research. *Id.* ¶ 7. Plaintiff claims she was an inventor of patents for which TTU did not list her as an inventor, *id.* ¶¶ 102, 103, 115, 116, 163, and she is requesting this Court to correct inventorship and/or declare the patent invalid. *Id.* ¶¶ 160-68.

¹ Defendants request the Court to take judicial notice of the TTU Innovation Hub at Research Park website page showing that mentors are experienced in their trade and offer their experience as “mentors” to the TTU Innovation Hub: depts.ttu.edu/research/research-park/meet/iTTUmentors.php. *See* Fed. R. Evid. 201(b)(2) (permitting the Court to take judicial notice of “a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”).

STANDARD OF REVIEW

A. Rule 12(b)(1)

Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a case is properly dismissed when the court “lacks the statutory or constitutional power to adjudicate the case.” *Home Builders Ass'n of Miss., Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998) (quoting *Nowak v. Ironworkers Loc. 6 Pension Fund*, 81 F.3d 1182, 1187 (2d Cir. 1996)). “The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). “Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist.” *Id.* (citing *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980)). Claims barred by sovereign immunity are properly dismissed under Federal Rule of Civil Procedure 12(b)(1). *Warnock v. Pecos Cnty., Tex.*, 88 F.3d 341, 343 (5th Cir. 1996).

B. Rule 12(b)(6)

“To survive a Rule 12(b)(6) motion, the plaintiff must plead ‘enough facts to state a claim to relief that is plausible on its face.’” *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (citations, quotations, and brackets omitted). “Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Katrina Canal*, 495 F.3d at 205 (quoting *Twombly*, 550 U.S. at 555). The Court is not required to conjure up unpled allegations in

order to save a complaint, and “conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice . . .” *Fernandez-Montes v. Allied Pilots Ass’n*, 987 F.2d 278, 284 (5th Cir. 1993).

When reviewing a motion to dismiss for failure to state a claim, “[t]he court’s review is limited to the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint.” *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010); *see also Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 546 (5th Cir. 2010). The Court may also consider facts subject to judicial notice under Federal Rule of Evidence 201. *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 735 (5th Cir. 2019).

ARGUMENT

Plaintiff alleges several claims against either Dr. Prien or both Individual Defendants. For the multiple, alternative reasons set forth below, the Court should dismiss all of those claims.

I. SECTION 101.106(e) OF THE TEXAS TORT CLAIMS ACT REQUIRES IMMEDIATE DISMISSAL OF ALL PLAINTIFF’S TORT CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS.

Many of Plaintiff’s claims against the Individual Defendants are tort claims. The Texas Tort Claims Act (“TTCA”) applies generally to tort claims against governmental entities and their employees. *See* Tex. Civ. Prac. & Rem. Code § 101.001, *et seq.* The Election of Remedies provision states: “If a suit is filed under this chapter against both a governmental unit and any of its employees, the employees shall immediately be dismissed on the filing of a motion by the governmental unit.” *Id.* § 101.106(e); *see also Bustos v. Martini Club Inc.*, 599 F.3d 458, 464 (5th Cir. 2010) (“Since the suit is against ‘both a governmental unit and any of its employees, § 101.106(e) applies. Accordingly, because the City moved to dismiss the Officers, the district

court was required by § 101.106(e) to dismiss the state law claims against them.”); *Univ. of Tex. Health Sci. Ctr. at Houston v. Rios*, 542 S.W.3d 530, 537 (Tex. 2017) (“When a plaintiff sues both a governmental unit and its employees in tort, as [plaintiff] did here, section 101.106(e) requires that ‘the employees shall immediately be dismissed on the filing of a motion by the governmental unit.’”).

Further, a defendant is entitled to dismissal if plaintiff's suit is (1) based on conduct within the scope of the defendant's employment with a governmental unit and (2) could have been brought against the governmental unit under the TTCA. *See Franka v. Velasquez*, 332 S.W.3d 367, 369 (Tex. 2011); *see also Anderson v. Bessman*, 365 S.W.3d 119, 124 (Tex. App.—Houston [1st Dist.] 2011, no pet.). The scope of employment analysis is objective in nature, asking if there is a connection between the employee's job duties and the alleged tortious conduct. *Laverie v. Wetherbe*, 517 S.W.3d 748, 752 (Tex. 2017). Such conduct may still fall within the scope of employment, even if the employee performs negligently or is motivated by ulterior motives, personal animus, or subjective intent, all of which are irrelevant to this analysis, so long as the conduct itself was pursuant to the employee's job responsibilities. *Id.* at 753. Plaintiff's bare-bone, conclusory proclamations that the Individual Defendants “acted in bad faith and outside the scope of [their] authority” does nothing to circumvent that, by her own account, Individuals Defendants' alleged interactions with Plaintiff occurred solely within the scope of their authority as professors at TTU. Dkt. 19 ¶¶ 173, 179, 185, 193, 198. All of the alleged interactions with the Individual Defendants occurred while Plaintiff was a student and employee at TTU. *Id.* ¶¶ 1-64.

Therefore, Defendants request that the Court dismiss Plaintiff's tort claims against the Individual Defendants, who are employees of TTU, pursuant to § 101.106(e). Pursuant to the mandatory dismissal provision of § 101.106(e), this Court should dismiss Plaintiff's claims against

the Individual Defendants for tortious interference with contractual relations (Count 8), trade secret misappropriation (Count 9), IIED (Count 10), unjust enrichment (Count 11), breach of fiduciary duty (Count 12), fraudulent concealment (Count 13), and defamation *per se* (Count 14). Accordingly, these claims against the Individual Defendants should be dismissed with prejudice.

II. SOVEREIGN IMMUNITY BARS PLAINTIFF’S SECTION 1983 EQUAL PROTECTION, CORRECTION OF INVENTORSHIP, AND PATENT INVALIDITY CLAIMS.

As state employees sued in their official capacities, the Individual Defendants are also protected by the same sovereign immunity held by the State of Texas. *See, e.g., City of Austin v. Paxton*, 943 F.3d 993, 997 (5th Cir. 2019) (“The Supreme Court has recognized that sovereign immunity also prohibits suits against state officials or agencies that are effectively suits against a state. In short, Eleventh Amendment immunity is not limited to cases in which states are named as defendants.”) (citations omitted).

A. Sovereign immunity bars Plaintiff’s Section 1983 Equal Protection Claim.

The Individual Defendants are being sued in their official capacities (“Official Defendants”), as employees of TTU. They are therefore not “persons” subject to suit under § 1983. *See, e.g., Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989) (“We hold that neither a State nor its officials acting in their official capacities are ‘persons’ under § 1983.”); *Stauffer v. Gearhart*, 741 F.3d 574, 583 (5th Cir. 2014) (per curiam) (affirming dismissal of claims for monetary damages against state employees sued in their official capacities because “[n]either a state nor a state official sued in an official capacity is a ‘person’ under § 1983”). Accordingly, Plaintiff’s claims for damages are barred against the Official Defendants, not just TTU. *See, e.g., Chrissy F. v. Miss. Dep’t of Pub. Welfare*, 925 F.2d 844, 849 (5th Cir. 1991) (“The Eleventh Amendment bars claims for damages . . . when the claimant seeks damages from

the State’s officers in their official capacities and the damages would be paid out of the state treasury.”).

To be sure, there is a narrow exception to sovereign immunity that permits a plaintiff to seek only prospective injunctive relief against a state official for an ongoing violation of federal law. *See, e.g., Fontenot v. McCraw*, 777 F.3d 741, 752 (5th Cir. 2015); *see also Ex parte Young*, 209 U.S. 123, 159–60 (1908) (holding there is no immunity for a state official who is sued in federal court by a plaintiff seeking injunctive relief against the enforcement of a state law that violates the U.S. Constitution). This *Ex parte Young* exception applies where a plaintiff “alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” *Fontenot*, 777 F.3d at 752. To the extent Plaintiff is suing the Official Defendants who are natural persons for prospective injunctive relief, her claim is still barred because she fails to satisfy the requirements of the *Ex parte Young* exception. Specifically, Plaintiff has failed to plead an ongoing violation of federal law because Plaintiff has not been a student or employee at TTU since 2017. Because Plaintiff has not pled an ongoing violation of federal law, Plaintiff’s § 1983 claim (Count 5) is completely barred by sovereign immunity, and this Court should dismiss it.

B. Sovereign immunity bars Plaintiff’s claims related to patent inventorship against the Individual Defendants.

Pursuant to 35 U.S.C. § 256, Plaintiff requests the Court to determine the correct inventorship of U.S. Patent No. 11,169,064 (“’064”) and to allegedly correct the patent either by adding Plaintiff as a joint inventor, or alternatively, by rendering the patent invalid as failing to name the proper inventors. *See* Dkt. 19 ¶¶ 160-68. Specifically, Plaintiff claims that she made independent conceptual contributions to the inventions claimed in the ’064 patent and that Plaintiff is not listed on the ’064 patent as an inventor. *Id.* ¶¶ 161, 163. Plaintiff’s patent claims are barred by sovereign immunity.

Sovereign immunity protects Individual Defendants sued in their official capacities from lawsuits by private individuals seeking to correct inventorship under 35 U.S.C. § 256. *See City of Austin*, 943 F.3d at 997; *see also Xechem Int'l, Inc. v. Univ. of Tex. M.D. Anderson Cancer Ctr.*, 382 F.3d 1324 (Fed. Cir. 2004). In *Xechem*, a private party filed suit against a state university in federal court to change the inventorship of university-owned patents that resulted from a joint research project. Because the university did not consent to the suit, the district court found that sovereign immunity barred the plaintiff's claims for determination and correction of inventorship pursuant to 35 U.S.C. § 256, and the Federal Circuit affirmed. *Xechem Int'l, Inc. v. Univ. of Tex. M.D. Anderson Cancer Ctr.*, No. CIV.A. H-02-1013, 2003 WL 24232747, at *9 (S.D. Tex. Mar. 19, 2003), *aff'd sub nom. Xechem Int'l, Inc. v. Univ. of Tex. M.D. Anderson Cancer Ctr.*, 382 F.3d 1324 (Fed. Cir. 2004).

The same rule applies here. Just as in *Xechem*, Plaintiff here is a private party suing state officials, which is effectively the same as suing the state university. Plaintiff is requesting the Court to correct the inventorship of a patent owned by the university. Moreover, Plaintiff's alternative requested relief that seeks a declaration of patent invalidity is likewise based on Section 256 of the Patent Act. But neither TTU nor its employees have consented to suit for such claims, and Plaintiff cannot identify any statute waiving or abrogating TTU's sovereign immunity against such claims. *See City of Austin*, 943 F.3d at 997; *see also Tegic Commc'ns Corp. v. Bd. of Regents of Univ. of Tex. Sys.*, 458 F.3d 1335, 1340 (Fed. Cir. 2006) (finding that Eleventh Amendment immunity applies to suits pertaining to violations of federal patent laws in suit brought by private party against State university system for a declaratory judgment of patent invalidity and unenforceability); *Univ. of Utah v. Max-Planck-Gesellschaft Zur Forderung Der Wissenschaften E.V.*, 734 F.3d 1315, 1319 (Fed. Cir. 2013) ("[A] state university generally may not be sued for

infringement, nor may it be forced to defend against an action for declaratory judgment of invalidity or non-infringement.”).

The *Ex Parte Young* exception is not applicable. *Young* only applies to ongoing violations of federal or constitutional law. *Cory v. White*, 457 U.S. 85, 91 (1982). The *Young* exception has no applicability in this case since Wells has not and cannot identify any activity by the Individual Defendants that constitutes a violation of federal or constitutional law. Similarly, Wells cannot and does not point to any act taken by the Individual Defendants. The only activity would concern the University in prosecuting the patent application before the U.S. Patent and Trademark Office (an activity that the Individual Defendants as inventors had limited involvement in), activities which are neither ongoing nor violations of federal or constitutional law.

Where the State is the only relevant actor to the cause of action and thus the real party in interest, as it clearly is here where the named individuals have committed no act relevant to the conduct complained of, *i.e.*, prosecuting the patent application, the Eleventh Amendment bars an action against the State regardless of the defendants formally named in the complaint. *See Cory*, 457 U.S. at 91; *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984) (The Eleventh Amendment bars a suit against state officials when ‘the state is the real, substantial party in interest.’); *id* (“The general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter.”). Thus, sovereign immunity bars Plaintiff’s patent inventorship and invalidity claims (Counts 6-7), and this Court should dismiss them for lack of jurisdiction.

III. ALL OF PLAINTIFF’S STATE CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS ARE BARRED BY OFFICIAL IMMUNITY UNDER FED. R. CIV. P. 12(B)(6).

The official immunity doctrine governs suits against state officials who are sued in their

individual capacities for alleged violations of state law. *See, e.g., Dupont v. Linden*, 81 F.3d 155, 1996 WL 101418, at *2 (5th Cir. 1996) (per curiam) (applying Texas’ official immunity doctrine to claims brought pursuant to state law against a state official in his individual capacity); *Brown v. Wilson Cnty.*, No. SA-97-CA-1473-OG, 1999 WL 33290666, at *2 (W.D. Tex. Mar. 31, 1999) (same). As the Fifth Circuit has observed, “Texas’ law of qualified or official immunity is substantially the same as federal immunity law,” with the exception that Texas’ official immunity doctrine does not include the “clearly established law” element that federal qualified immunity doctrine includes. *Cantu v. Rocha*, 77 F.3d 795, 808-09 (5th Cir. 1996).

In contrast to claims to vindicate federal rights, the *Young* exception is inapplicable to claims against state officials for the alleged violation of state law. *Pennhurst*, 465 U.S. at 106 (“A federal court’s grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law . . . [I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law.”). Plaintiff fails to allege *ultra vires* claims, which are a “very narrow exception.” *Id.* at 114. A “state officer may be said to act *ultra vires* only when he acts ‘without any authority whatever.’” *Id.* at 101 n. 11.

Under Texas’ official immunity doctrine, “[g]overnment employees are entitled to official immunity from suit arising from the performance of their (1) discretionary duties in (2) good faith as long as they are (3) acting within the scope of their authority.” *City of Lancaster v. Chambers*, 883 S.W.2d 650, 653 (Tex. 1994). A state employee bears the burden to establish these elements. *Id.*

On the face of Plaintiff’s own factual allegations, the Individual Defendants’ only interactions with Plaintiff when she was a student and employee at TTU were in their official

capacities as professors and advisors at TTU. Plaintiff's own allegations make clear that all of those interactions were squarely within the scope of the Individual Defendants' authority and discretionary duties as professors at TTU. Accordingly, the Individual Defendants are entitled to official immunity for all of the state law claims as a matter of law.

IV. PLAINTIFF FAILS TO STATE A CLAIM FOR TITLE IX AGAINST THE INDIVIDUAL DEFENDANTS UNDER FED. R. CIV. P. 12(B)(6).

Plaintiff's Title IX claim against the Individual Defendants should be dismissed for failure to state a claim. Courts have repeatedly held that plaintiffs cannot bring Title IX claims against individual defendants. "Title IX reaches institutions and programs that receive federal funds . . . but it has consistently been interpreted as not authorizing suit against school officials, teachers, and other individuals." *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 257 (2009). "Liability under Title IX does not extend to school officials, teachers and other individuals." *Plummer v. Univ. of Houston*, 860 F.3d 767, 777 n.12 (5th Cir. 2017), *as revised* (June 26, 2017). Accordingly, Plaintiff's Title IX claim against the Individual Defendants must be dismissed.

V. PLAINTIFF FAILS TO STATE A CLAIM FOR TRADE SECRET MISAPPROPRIATION UNDER FED. R. CIV. P. 12(B)(6).

While Plaintiff does not identify whether her claim for trade secret misappropriation is a federal claim under Defend Trade Secrets Act ("DTSA") or the Texas Uniform Trade Secrets Act ("TUTSA"), Plaintiff's claim fails to state a claim for relief under either statute. Plaintiff's trade secret misappropriation claim is also barred, as explained above, under the TTCA, § 101.106(e).

Plaintiff alleges that her "data from her research as part of Embryotics and EmGenisys constituted a trade secret." *See* Dkt. 19 ¶ 175. She further alleges that this data was given to Dr. Prien pursuant to a non-disclosure agreement, and that Dr. Prien used the data for his own benefit. *Id.* ¶ 177.

First, Plaintiff fails to identify how the alleged “data from her research” is a trade secret. Under both DTSA and TUTSA, the trade secret must be used by the owner, the owner must take reasonable measures to keep it secret, and it must derive economic value from not being generally known by others in competition with the trade secret holder. 18 U.S.C. § 1839(3); Tex. Civ. Prac. & Rem. Code § 134A.002(6). Under the DTSA, it also must be used in commerce. 18 U.S.C. § 1839(3).

Plaintiff fails to allege how the alleged research data belongs or belonged to her, given that one of the companies she worked for (Embryotics) dissolved in the spring of 2019. *See* Dkt. 19 ¶ 82. She also fails to allege how the non-disclosure agreement was a reasonable measure to keep that data secret, or how it derived economic value from not being generally known by others in competition. She further fails to show that the research data was used in commerce.

Similarly, Plaintiff fails to identify how Dr. Prien allegedly misappropriated the data through improper means. Under TUTSA, for example, misappropriation means disclosure or use of a trade secret of another without express or implied consent and the use of improper means to acquire knowledge of the trade secret. *See* Tex. Civ. Prac. & Rem. Code § 134A.002(2)-(3). In fact, Plaintiff specifically acknowledges that “Dr. Wells shared the data with [Dr. Prien].” *Id.* ¶ 96. She further alleges that the non-disclosure agreement is actually between Dr. Prien and the Accelerator Program—not Dr. Wells. *Id.* (“... this was in violation of the Accelerator Program’s non-disclosure agreement with its mentors.”). Plaintiff has no standing to assert claims for a breach of a non-disclosure agreement in which she is not a party. *See, e.g., Eskridge v. Fed. Home Loan Mortg. Corp.*, No. W-10-CA-285, 2011 WL 2163989, at *5 (W.D. Tex. Feb. 24, 2011) (holding Plaintiff had no standing to challenge contract because she was not a party to the contract); *Woods v. Bank of Am., N.A.*, 3:11-CV-1116-B, 2012 WL 1344343, at *5 (N.D. Tex. Apr. 17,

2012) (same). Finally, although Plaintiff alleges that there was a non-disclosure agreement between Embryotics and a third party at the time, she also admits that Embryotics had dissolved by spring of 2019, Dkt. 19 ¶ 82, and she does not allege that Dr. Prien was a party to that agreement. Because Plaintiff fails to state a legally sufficient claim for trade secret misappropriation and the claim is barred under § 101.106(e) of the TTCA, the Court should dismiss this claim (Count 9).

CONCLUSION

For the foregoing reasons, Defendants Dr. Prien and Dr. Penrose respectfully request that this Court dismiss all of Plaintiff's claims against the Individual Defendants in their entirety.

Dated: July 6, 2023

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2023, the foregoing *Individual Defendants' Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6)* was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to the following counsel of record:

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