

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ZOOMESSENCE, INC.,

Plaintiff,

v.

MCCORMICK & COMPANY, INC., FONA
INTERNATIONAL, LLC, and FONA
TECHNOLOGIES, LLC,

Defendants.

Case No. 2:25-cv-1240-JRG

JURY TRIAL DEMANDED

**DEFENDANTS' RENEWED MOTION TO DISMISS
COUNT III OF ZOOMESSENCE'S FIRST AMENDED COMPLAINT**

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I. INTRODUCTION

ZoomEssence’s First Amended Complaint (“FAC”) does not cure the dispositive defects identified in Defendants’ earlier motion to dismiss (Dkt. 27) and confirms that amendment was futile. In that motion, Defendants demonstrated that Count III—ZoomEssence’s misappropriation claim—is time-barred on the face of the original Complaint, which admitted that ZoomEssence had “long suspected” misappropriation years before filing suit. Rather than oppose Defendants’ motion, ZoomEssence amended its Complaint, excising its prior admissions and replacing them with conclusory allegations that it could not have discovered the alleged misappropriation until 2025. But the amendment does not alter the underlying factual timeline establishing when ZoomEssence knew—or through the exercise of reasonable diligence should have known—of the conduct it now characterizes as misappropriation. A plaintiff cannot revive an untimely claim through strategic redrafting, nor can it nullify the legal consequences of prior factual admissions by removing—without disputing—them from a superseded pleading. Because the FAC preserves the same allegations regarding ZoomEssence’s knowledge of Defendants’ development, testing, and launch of the implicated technology more than five years before filing suit, the limitations defect remains incurable as a matter of law, and Count III must be dismissed with prejudice.

According to ZoomEssence’s FAC, Defendants developed, commercialized, and publicly launched their TrueTaste® technology using Fluid Air equipment and processes that ZoomEssence had already identified, evaluated, and compared against its own technology years earlier. Those allegations are dispositive. Where, as here, ZoomEssence alleges that Defendants’ trade secret misconduct is embodied in a commercial low temperature spray drying process and products that ZoomEssence knew about, investigated, and observed no later than December 2020, the three-year statute of limitations expired by December 2023—nearly two years before ZoomEssence filed suit. The FAC itself establishes that ZoomEssence either discovered—or through the exercise of

reasonable diligence should have discovered—any alleged misappropriation:

- *In 2017*, when “ZoomEssence learned that FONA appeared to be working to develop and commercialize a competing low-temperature drying technology,” Dkt. 34 ¶ 106 (also noting that ZoomEssence had written FONA in 2017 after monitoring FONA’s patent filings and forming the view that FONA might have misappropriated its technology);
- *In 2018*, when FONA expressly informed ZoomEssence that it “had a long-standing relationship with Fluid Air” and had “purchased a Fluid Air drying unit in connection with” its “efforts to develop a commercially viable low-temperature drying business,” *id.* ¶ 111;
- *In 2019*, when FONA and ZoomEssence jointly conducted product comparisons between ZoomEssence’s technology and FONA’s low-temperature drying process employing Fluid Air equipment, *id.* ¶ 118; or
- *In 2020*, when FONA publicly launched what it touted as a “revolutionary low-temperature spray drying” process called TrueTaste®, and boasted that TrueTaste® had capabilities that ZoomEssence claims “resemble those of Zooming Technology,” *id.* ¶ 122.

Each of these pleaded events—individually and collectively—placed ZoomEssence on notice of the conduct it now challenges. The statute of limitations therefore expired years before ZoomEssence filed suit in December 2025, and Count III must be dismissed with prejudice.

Anticipating this result, the FAC again asserts that ZoomEssence could not have known, even “through the exercise of reasonable investigation,” of Defendants’ alleged misappropriation until 2025, when it purportedly obtained “direct evidence.” *See* Dkt. 34 ¶¶ 232–36. But the law does not require a plaintiff to possess “direct” or conclusive evidence for the statute of limitations to run. Rather, “the limitations period begins when the plaintiff *suspects*, or should *suspect*, that it has been wronged.” *Elite Semiconductor, Inc. v. Anchor Semiconductor, Inc.*, No. 5:20-CV-06846-EJD, 2025 WL 82217, at *2 (N.D. Cal. Jan. 13, 2025) (*italics in original*). And ZoomEssence expressly admitted in its original Complaint that—well before 2025—it had “***long suspected***¹ that FONA must have misused ZoomEssence’s innovations to develop TrueTaste®,”

¹ Emphasis added unless otherwise noted.

Dkt. 1 ¶ 125,² an uncontroverted factual admission that did not vanish merely because ZoomEssence excised it from the FAC in response to Defendants’ prior motion to dismiss.

Moreover, as the FAC itself pleads longstanding knowledge of Defendants’ competing development efforts, their use of Fluid Air equipment, and the public launch of TrueTaste® more than five years before suit, ZoomEssence cannot delay accrual by recasting that knowledge as insufficiently definitive. ZoomEssence’s new tolling theories—that misappropriation was inherently undiscoverable and that it reasonably relied on FONA’s 2017 denial—fare no better and are contradicted by ZoomEssence’s own characterizations of FONA’s conduct. And the FAC’s only remaining hook—a 2025 hearsay account of alleged reverse engineering, Dkt. 34 ¶¶ 132, 226—cannot manufacture a new accrual date: “direct evidence” of misappropriation is not required for the statute of limitations to run, Dkt. 34 ¶¶ 125, 129 (claiming ZoomEssence lacked “direct evidence” of misuse), and ZoomEssence’s own prior pleading confirms it had already “long suspected” the very misappropriation it now claims was undiscoverable, Dkt. 1 ¶ 125.

Accordingly, because ZoomEssence’s own pleading establishes that Count III is time-barred, it must be dismissed with prejudice.

II. FACTUAL BACKGROUND AS SET FORTH IN THE AMENDED COMPLAINT

ZoomEssence’s FAC alleges, “upon information and belief,” that Defendants “unlawfully incorporate Zooming Technology into Defendants’ TrueTaste® Technology and Product.” Dkt. 34 ¶ 228. ZoomEssence explains that such products are “made using Fluid Air ‘PolarDry®’ equipment.” *Id.* ¶ 83. Those allegations place Fluid Air’s PolarDry® low-temperature spray-drying equipment at the center of ZoomEssence’s theory and tie any purported misappropriation to

² ZoomEssence even tied its long-held, pre-2025, suspicions directly to FONA’s *2020 launch of TrueTaste®*. See Dkt. 1 ¶¶ 121, 125 (tying pre-2025 suspicions to FONA’s 2020 launch of TrueTaste® and accompanying video).

TrueTaste® products produced with equipment supplied by third-party Fluid Air. However, the Complaint’s own timeline makes clear that ZoomEssence has long known about FONA’s use of Fluid Air equipment for its low-temperature spray-drying business, and suspected trade secret misappropriation at least five years before the filing of the original Complaint.

- **January 28, 2015.** “On January 28, 2015, . . . FONA Technologies, Inc. filed its first provisional patent application covering process conditions for *low-temperature electrostatic spray drying* equipment. This application (No. 62/108904) is directed to ‘Flavor Encapsulation Using Electrostatic Atomization.’” Dkt. 34 ¶ 143.
- **January 27, 2016.** “On January 27, 2016, FONA Technologies, Inc. filed a PCT patent application (PCT/US2016/015136) claiming priority to its provisional application,” which published on August 4, 2016 “as International Publication No. WO2016123224A1.” *Id.*
- **November 3, 2016.** “On November 3, 2016, Defendants’ longtime collaborator, *Fluid Air*, filed a U.S. patent application titled ‘Apparatus And Method For *Spray Drying*,’ which was issued on May 14, 2019 as U.S. Patent No. 10,286,411 . . . Upon information and belief, the ’411 Patent relates to the *Fluid Air PolarDry® equipment*.” *Id.* ¶ 144.
- **July 6, 2017.** On “July 6, 2017, ZoomEssence wrote FONA”³ because “ZoomEssence learned that FONA appeared to be working to develop and commercialize a *competing low-temperature drying technology*” and was concerned that FONA had “*misused . . . ZoomEssence’s confidential and proprietary information*.”⁴ *Id.* ¶ 106.

³ The July 6, 2017 letter referred to throughout ZoomEssence’s FAC confirms that ZoomEssence “learned that FONA appeared to be working to develop and commercialize a competing low-temperature drying technology,” *id.* ¶ 106, because ZoomEssence was activity monitoring FONA’s public patent filings. *See* Ex. 1 (stating it noted FONA’s “International Patent Application” during a “review of the patent literature”). Because the July 2017 letter is referred to throughout ZoomEssence’s FAC, it may be considered as part of the pleadings. *See Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 546 (5th Cir. 2010) (“[T]he court may consider documents attached to a motion to dismiss that ‘are referred to in the plaintiff’s complaint and are central to the plaintiff’s claim.’”); *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498–99 (5th Cir. 2000) (“We note approvingly . . . that various other circuits have specifically allowed that ‘[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff’s complaint and are central to her claim.’”).

⁴ ZoomEssence’s original Complaint likewise conceded the fact that ZoomEssence wrote FONA in 2017 because ZoomEssence was “[c]oncerned that *FONA had misused and/or might in the future misuse ZoomEssence’s confidential and proprietary information*.” Dkt. 1 ¶ 104.

- **July 18, 2017.** “On July 18, 2017, FONA Technologies, Inc. filed U.S. Patent Application 15/652,486,” titled “Flavor Encapsulation Using Electrostatic Atomization,” which was “issued on February 1, 2022 as U.S. Patent No. 11,235,303[.]” *Id.* ¶ 145.
- **March 13, 2018.** According to the FAC, the “**TRUE TASTE**” “mark was registered with the U.S. Patent and Trademark Office (‘USPTO’) by FONA International, Inc. on March 13, 2018.” *Id.* ¶ 127 n.42.
- **Late 2018 – Mid-2020.** According to the FAC, FONA and ZoomEssence held discussions “which began in late 2018 and stretched through mid-2020,” *id.* ¶ 111, during which time “ZoomEssence and FONA executed” the 2019 NDA, *id.* ¶ 114. The FAC confirms that “[d]uring these discussions,” FONA expressly told ZoomEssence that “FONA had a long-standing relationship with Fluid Air, and that ***it had recently purchased a Fluid Air drying unit in connection with FONA’s efforts to develop a commercially viable low-temperature drying business.***” *Id.* ¶ 111. The FAC further notes that, during this period, “the parties conducted a study that analyzed and compared the performance of ZoomEssence’s latest technology and the not-commercialized ***process that FONA was capable of conducting (a process that employed equipment supplied by Fluid Air).***” *Id.* ¶ 118.
- **November 9, 2020.** On November 9, 2020, “FONA published a press release announcing the launch of a supposedly brand-new ‘revolutionary ***low-temperature spray drying process***’ that it called ‘***TrueTaste®***’ Technology” and boasting of ***TrueTaste®’s “capabilities that resemble those of Zooming Technology.”*** *Id.* ¶ 122; *id.* n.38.
- **December 23, 2020.** “On December 23, 2020, FONA published a video boasting of ‘its’ unbelievable new technology, and emphasizing that FONA alone had access to the technology.” *Id.* ¶ 123. The FAC then concedes that the implicated “***Fluid Air PolarDry® equipment . . . is even featured by FONA in its promotional video (the ‘TrueTaste Video’).***” *Id.* ¶ 135.

While ZoomEssence’s original Complaint admitted that FONA’s public disclosures from 2020 “didn’t add up” and triggered its suspicion “that FONA must have misused ZoomEssence’s innovations,” Dkt. 1 ¶¶ 123, 125, the FAC makes clear that, despite knowledge of FONA’s “brazen” conduct in 2020, ZoomEssence nevertheless chose to wait five years—until December 19, 2025—to file its Complaint simply due to a lack of “direct evidence,” Dkt. 34 ¶¶ 123, 125.

III. LEGAL STANDARDS

A. Misappropriation of Trade Secret Under 18 U.S.C. § 1836

Under the Defend Trade Secrets Act (“DTSA”), a plaintiff must plead three elements: “(1) ownership of a trade secret that (2) has been misappropriated and that (3) relates to a product or service in interstate commerce.” *Providence Title Co. v. Truly Title, Inc.*, 547 F. Supp. 3d 585, 594 (E.D. Tex. 2021). “Misappropriation” includes, among other things, “acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means.” 18 U.S.C. § 1839(5)(A); *see also* 18 U.S.C. § 1839(5)(B). A civil action under 18 U.S.C. § 1836(b)—as here—“may not be commenced later than 3 years after the date on which the misappropriation with respect to which the action would relate *is discovered or by the exercise of reasonable diligence should have been discovered.*” 18 U.S.C. § 1836(d).

B. Motions to Dismiss

To survive a Rule 12(b)(6) motion, a pleading must contain sufficient factual matter to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In the Fifth Circuit, “[Rule 12] dismissal under a statute of limitation is proper . . . when the complaint makes plain that the claim is time-barred and raises no basis for tolling.” *Doe v. Bd. of Supervisors of Univ. of Louisiana Sys.*, 650 F. Supp. 3d 452, 472 (M.D. La. 2023) (quoting *Petrobras Am., Inc. v. Samsung Heavy Indus. Co., Ltd.*, 9 F.4th 247, 253 (5th Cir. 2021)).

C. Factual Assertions in Superseded Pleadings Remain Evidentiary Admissions

Courts in the Fifth Circuit have repeatedly recognized that factual assertions in a superseded pleading—like those made in ZoomEssence’s original Complaint—continue to have value “as evidentiary admissions.” *White v. ARCO/Polymers, Inc.*, 720 F.2d 1391, 1396 n.5 (5th Cir. 1983) (noting “[a]dmissions made in superseded pleadings” continue to have value “as

evidentiary admissions”); *Bank One, Texas, N.A. v. Prudential Ins. Co. of Am.*, 939 F. Supp. 533, 541 (N.D. Tex. 1996) (same); *see also Cont’l Ins. Co. of New York v. Sherman*, 439 F.2d 1294, 1298 (5th Cir. 1971) (“As a general rule, . . . pleadings in the same action which have been superseded by amendment, withdrawn or dismissed, are admissible as admissions of the pleading party to the facts alleged therein[.]”).

IV. ARGUMENT

A. **Count III is Time-Barred: The FAC Establishes that ZoomEssence Knew or Should Have Known of the Alleged Misappropriation No Later Than 2020**

The FAC leaves no doubt that ZoomEssence knew or, through the exercise of reasonable diligence, should have known about Defendants’ alleged trade secret misappropriation no later than December 2020, meaning the three-year statute of limitations expired by December 2023. *See Sansom v. Mintz*, 781 F. App’x 359, 361 (5th Cir. 2019) (“[T]he discovery rule provides a ‘very limited exception to statutes of limitations’ by tolling the limitations period ‘until the plaintiff knew or, exercising reasonable diligence, should have known of the facts giving rise to the cause of action.’” (internal citations omitted)); 18 U.S.C. § 1836(d). Because the FAC’s own allegations establish that the claim accrued outside the limitations period, Count III cannot survive Rule 12(b)(6). Count III is thus untimely and should be dismissed with prejudice, as any further amendment would be futile. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (listing futility as a basis to deny leave to amend).

ZoomEssence’s strategic decision to excise from the FAC its prior admission of “long suspect[ing]” misappropriation does not cure the limitations defect. That admission—set forth in the original Complaint (Dkt. 1) at paragraph 125—remains available to this Court as an evidentiary admission. *See* Section III.C, *supra*. But even setting it entirely aside, the FAC’s own surviving factual allegations independently establish that ZoomEssence had more than ample grounds to

suspect misappropriation years before the limitations cutoff. The FAC alleges that Count III’s theory of trade secret misappropriation is grounded in Defendants’ use of a low-temperature spray drying process to produce TrueTaste® products using Fluid Air PolarDry® equipment. Dkt. 34 ¶¶ 83, 228. Given those allegations, the FAC’s own chronology shows that ZoomEssence long knew the identity of the implicated products, the equipment used, and the process employed—and thus either discovered or, with reasonable diligence, should have discovered the alleged misappropriation no later than 2020.

ZoomEssence’s own pleading makes the limitations defect plain. According to the FAC, by July 2017—more than *eight years* before suit was filed—ZoomEssence was already monitoring FONA’s patent filings and had formed the view that FONA might have misappropriated its technology. *Id.* ¶ 106. Indeed, the FAC expressly states that in July 2017, after reviewing FONA’s patent filings and learning that FONA was working to “develop and commercialize a competing low-temperature drying technology,” ZoomEssence wrote FONA because it was concerned that FONA had “misused . . . ZoomEssence’s confidential and proprietary information.” *Id.*

Yet despite ZoomEssence’s suspicion of “misuse” in 2017, the parties entered period of renewed engagement from late 2018 through mid-2020, during which FONA expressly disclosed to ZoomEssence its use of the precise equipment at the center of this lawsuit. FONA told ZoomEssence that it “had a long-standing relationship with Fluid Air” and “had recently purchased a Fluid Air drying unit in connection with FONA’s efforts to develop a commercially viable low-temperature drying business.” *Id.* ¶ 111. In 2019, the parties even conducted side-by-side product comparisons between ZoomEssence’s technology and FONA’s low-temperature process “that employed equipment supplied by Fluid Air.” *Id.* ¶ 118. The FAC thus confirms that ZoomEssence knew by 2019 the precise equipment—a Fluid Air drying unit—FONA was using to develop its

low-temperature drying process, the process the FAC now claims “unlawfully incorporate[s] Zooming Technology.”⁵ *Id.* ¶ 228.

The FAC then describes the moment any *reasonable plaintiff* would have acted. On November 9, 2020, shortly after talks between FONA and ZoomEssence ended, FONA publicly launched what it touted as a “revolutionary low-temperature spray drying” process called TrueTaste®, boasting of capabilities that ZoomEssence claims “resemble those of Zooming Technology.” *Id.* ¶ 122. The FAC itself characterizes this as “shocking”—FONA had allegedly told ZoomEssence its technology was virtually worthless, then announced, just months later and just after breaking off negotiations, that it had independently developed a commercially ready, “game chang[ing]” process. *Id.* ¶ 122. Shortly thereafter, on December 23, 2020, FONA published a promotional video prominently featuring the Fluid Air PolarDry® equipment—“the very equipment,” per the FAC, that Defendants used to make TrueTaste® products allegedly incorporating ZoomEssence’s trade secrets. *Id.* ¶¶ 123, 135. The FAC even describes FONA’s 2020 public disclosures as “brazen.” *Id.* ¶ 123.

Under the DTSA’s discovery rule, these 2020 disclosures triggered accrual. The limitations period begins when a plaintiff has *reason to suspect* a specific wrongful act—not when it later obtains “direct” or conclusive evidence. *See Access Optical Networks, Inc. v. Seagate Tech. LLC*, No. 24-CV-03745-EKL, 2025 WL 240799, at *4 (N.D. Cal. Jan. 17, 2025) (“Under the delayed discovery rule, a cause of action accrues and the statute of limitations begins to run when the plaintiff has reason to *suspect* an injury and some wrongful cause[.]”); *Elite Semiconductor*, 2025 WL 82217, at *2 (“the limitations period begins when the plaintiff *suspects*, or should

⁵ According to the FAC, “‘Zooming Technology’ refers collectively to the conversion technology, the dried powder produced by the conversion technology, and all related proprietary information and know how.” *Id.* ¶ 1 n.2.

suspect, that she has been wronged”); *RoboticVISIONTech, Inc. v. ABB Inc.*, 726 F. Supp. 3d 364, 368 (D. Del. 2024) (holding that a party is on “notice when it has facts sufficient to make it *suspicious* or that ought to make it *suspicious*”); *PTP OneClick, LLC v. Avalara, Inc.*, No. C19-0640JLR, 2020 WL 4729174, at *9 (W.D. Wash. May 27, 2020) (“All that is required is a ‘reasonable’ *suspicion* that a specific wrongful act has occurred.”). The FAC confirms that by December 2020, ZoomEssence knew everything it needed to suspect misappropriation: it had shared trade secrets with FONA under NDA, watched FONA abruptly walk away from negotiations, and observed FONA publicly launch a product that ZoomEssence claims has strikingly similar capabilities using the same Fluid Air equipment the parties jointly studied. Those circumstances undoubtedly triggered the statute of limitations.

ZoomEssence’s original Complaint confirmed as much. In original paragraph 125—which ZoomEssence excised from the FAC after Defendants filed their initial motion to dismiss—ZoomEssence admitted that it “had *long suspected* that FONA must have misused ZoomEssence’s innovations to develop TrueTaste®” because, shortly after ending discussions with ZoomEssence in 2020, FONA “publicly launched TrueTaste®, and published a heavily produced video featuring TrueTaste® in action.” Dkt. 1 ¶ 125 (“It didn’t add up.”). That admission—a factual assertion about ZoomEssence’s own state of mind, tied directly to events in 2020—is an evidentiary admission that does not vanish simply because ZoomEssence deleted it from its amended pleading in response to Defendants’ motion. *See White*, 720 F.2d at 1396 n.5; *Sherman*, 439 F.2d at 1298; *Bank One*, 939 F. Supp. at 541. The Court may—and should—consider that prior admission as highly probative evidence of what ZoomEssence actually knew and when it knew it.⁶

⁶ Notably, while ZoomEssence deleted its prior admission from the FAC, the FAC never affirmatively disputes that ZoomEssence “long suspected” misappropriation prior to 2025.

The FAC’s new tolling theory does not overcome this record. ZoomEssence now contends it “could not have, through the exercise of reasonable investigation, discovered Defendants’ misappropriation of its Trade Secrets prior to 2025” because Defendants’ processes are “conducted confidentially and internally” and ZoomEssence therefore “could not determine whether Defendants were using its Trade Secrets as opposed to independently developed or publicly known techniques.” Dkt. 34 ¶¶ 232–33. This argument fails for two independent reasons.

First, it misstates the legal standard. The DTSA does not require a plaintiff to possess “direct” or conclusive proof before the limitations period begins to run. It requires only that the plaintiff have had sufficient facts to *suspect*—or, through reasonable diligence, *should have suspected*—the wrongful conduct. *Elite Semiconductor*, 2025 WL 82217, at *2. ZoomEssence’s argument that it lacked “direct evidence” of Defendants’ alleged misappropriation until 2025, Dkt. 34 ¶¶ 125, 129, 131, 236, is exactly the kind of argument courts have rejected: “[a] plaintiff . . . cannot ‘wait for the facts to find [it]’” and must diligently investigate once suspicion arises. *Elite Semiconductor*, 2025 WL 82217, at *2 (internal citations omitted). Acquiring confirming evidence is merely “a process contemplated by pretrial discovery.” *Id.* (internal citations omitted).

Second, the FAC’s own allegations make the inherent undiscoverability theory implausible. The FAC pleads that ZoomEssence directly compared its technology side-by-side with FONA’s Fluid Air-based process in 2019, *id.* ¶ 118; that FONA’s subsequent public launch of a product with capabilities that “resemble those of Zooming Technology”—just months after abruptly ending NDA-governed discussions—was “shocking,” *id.* ¶ 122; and that FONA was “brazen” in boasting about that technology, *id.* ¶ 123. A plaintiff cannot simultaneously describe

ZoomEssence’s silence on this point is telling—if the original admission were inaccurate, one would expect ZoomEssence to have said so expressly rather than simply excising the language in response to Defendants’ motion to dismiss, which cited it. *See, e.g.*, Dkt. 27 at Section IV.A.1.

a competitor’s conduct as “shocking” and “brazen,” allege that the competitor’s previously worthless technology suddenly matched its own shortly after confidential discussions ended, and then claim it had no basis for suspicion. Those characterizations are ZoomEssence’s own—and they contradict the undiscoverability theory it now advances.

Nor does ZoomEssence’s reliance-on-representations theory—embedded in the FAC’s account of FONA’s 2017 denial—rescue the claim. Dkt. 34 ¶¶ 109, 234. This argument reads as a fraudulent concealment theory, but it does not function as one here. Fraudulent concealment sufficient to toll a statute of limitations requires affirmative acts of concealment *beyond* a defendant’s mere denial of wrongdoing. *Timberlake v. A.H. Robins Co.*, 727 F.2d 1363, 1366 (5th Cir. 1984). Regardless, even if the Court accepts ZoomEssence’s account at face value, FONA’s outside counsel’s 2017 representation that it could find “no evidence” of misappropriation, Dkt. 34 ¶ 108, is precisely the kind of routine denial that courts hold insufficient to support tolling—particularly where, as the FAC itself makes clear, ZoomEssence continued to harbor suspicions and had independent grounds to investigate based on FONA’s increasingly public conduct through 2020. In any event, any tolling effect from the 2017 denial dissolved no later than when FONA made its “brazen” 2020 launch—the event ZoomEssence’s own prior pleading identified as the source of its longstanding suspicion of misappropriation. Dkt. 1 ¶ 125.

Together, the FAC’s own factual narrative and ZoomEssence’s prior admission establish that ZoomEssence knew or, through the exercise of reasonable diligence, should have known about Defendants’ alleged trade secret misappropriation by no later than December 2020. *See Sansom*, 781 F. App’x at 361; *Trench Tech Int’l, Inc. v. Tech Con Trenching, Inc.*, No. 4:19-CV-00201-O, 2022 WL 1998466, at *3 (N.D. Tex. June 6, 2022) (“Under the discovery rule, the statute of limitations does not begin to run until the plaintiff ‘knew or should have known of facts that in the

exercise of reasonable diligence would have led to discovery of the misappropriation.” (citations omitted)). Because ZoomEssence waited more than three years to file its Complaint in December 2025, Count III is untimely.

B. ZoomEssence’s 2025 “Reverse-Engineering” Allegation Does Not Reset Accrual and Is Thus Legally Irrelevant

ZoomEssence’s only attempt to evade the time-bar—its allegation that in 2025 an unnamed “former consultant” from an unnamed “reverse-engineering firm” provided a hearsay statement that FONA had “reverse engineered” a product, Dkt. 34 ¶¶ 132, 226–27—does not reset accrual of the statute of limitations. The statute does not wait for “definitive evidence.” *Elite Semiconductor*, 2025 WL 82217, at *2; *PTP OneClick*, 2020 WL 4729174, at *8–9; *RoboticVISIONTech*, 726 F. Supp. 3d at 368. Nor can a plaintiff “wait for the facts to find [it].” *Elite Semiconductor*, 2025 WL 82217, at *2. Rather, “[o]nce suspicion arises, ‘plaintiffs are required to conduct a reasonable investigation . . . and are charged with knowledge of the information that would have been revealed by such an investigation.’” *Id.* (internal citations omitted). Here, the FAC’s own surviving allegations—and ZoomEssence’s prior admission that it “long suspected” misappropriation tied directly to events in 2020, Dkt. 1 ¶ 125—foreclose any effort to delay accrual based on the later “reverse-engineering” tip. ZoomEssence cannot manufacture a new accrual date by pointing to hearsay evidence that merely confirmed suspicions it had already harbored for years.

V. CONCLUSION

Because the FAC’s own allegations establish that Count III is time-barred on its face and that any further amendment would be futile, Defendants respectfully request that the Court dismiss Count III with prejudice.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on April 6, 2026. As of this date, all counsel of record had consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A).

/s/ Katherine H. Reardon

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