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1 when he was terminated. (Ex. A, Decl. David Oakes; Mot. Decl.
2 Mitchell Langstein.) Oakes signed an "Employment Agreement" at the
3 start of his employment in 2004. (Ex. A, Oakes Decl.) The
4 Employment Agreement contained a clause reading: "CAFL [i.e.,
5 Cellular] requests that proprietary information remains the
6 property of this organization and may not leave, either physically
7 or electronically unless approved in writing by Mitch[ell
8 Langstein]." Id. That clause also included Cellular's "customer
9 base" within the sweep of "proprietary information." Id.

10 Oakes also signed a "Statement of Confidentiality" on January
11 7, 2008, which stated that he would not "knowingly disclose, use,
12 or induce or assist in the use or disclosure of any Proprietary
13 Information . . . or anything related to Proprietary Information .
14 . . without the Company's prior express written consent." (Ex. D,
15 Oakes Decl.) "Proprietary Information" was defined in the
16 Statement as:

17 information (a) that is not known by actual or potential
18 competitors of the company or is generally unavailable to the
19 public, (b) that has been created, discovered, developed, or
20 which has otherwise become known to the Company . . . and (c)
21 that has material economic value or potential material
22 economic value to the Company's present or future business.

23 Id. The parties agree that Oakes signed the Statement; however,
24 they disagree as to whether a valid contract was formed thereby.
25 (Def.'s Mot. Summ. J., § III.B.3.a.)

26 In late 2010, shortly before being terminated, Oakes emailed
27 himself a digital file created with the ACT computer program ("ACT
28 file") containing the contact information for some 900+ business

1 and personal contacts. (Ex. B, Oakes Decl.) He also maintained
2 his LinkedIn contact information after his termination. (Ex. C,
3 Oakes Decl.) Finally, Plaintiff alleges that he also emailed
4 himself the direct contact information for the purchasing agents of
5 certain clients, information on clients' billing preferences and
6 procedures, clients' past pricing requests, and at least one
7 internal strategy document regarding a client, Honeywell. (Exs. B-
8 J, L, Decl. Obi Iloputaife.)

9 Plaintiff also alleges that Oakes emailed or otherwise
10 contacted clients after his termination and accused Cellular of
11 "major unethical and deceitful acts done deliberately by management
12 towards its clients." (Ex. N, Iloputaife Decl; Ex. A, Decl.
13 Melanie Cogburn, at transcript pages 182-183.)

14 After leaving Cellular, Oakes started his own company in Texas
15 which eventually became the company known as Trinitas. Trinitas
16 directly competes with Cellular for business in the corporate
17 mobile phone accessory market.

18 Plaintiff brings an action for damages and injunctive relief
19 on claims of "copyright infringement . . . breach of contract,
20 unfair competition, common law unfair competition, trade secret
21 misappropriation, unjust enrichment, intentional interference with
22 prospective business advantage, and trade libel." (Compl. ¶ 4.)

23 In these motions for summary judgment, Plaintiff seeks summary
24 judgment on the issues of breach of contract and unfair competition
25 resulting from that breach. Defendant seeks summary judgment on
26 all issues except copyright infringement, arguing that (1) there is
27 no triable issue of fact on the trade secret claim under the
28 California Uniform Trade Secrets Act ("CUTSA"); (2) Plaintiff's

1 common-law torts are preempted by CUTSA; (3) there was no breach of
2 contract because there was no contract, no breach, and/or no actual
3 damages; and (4) that there is no triable issue of fact with regard
4 to trade libel.

5 **II. LEGAL STANDARD**

6 A party may move for summary judgment with regard to any claim
7 or defense or any part of any claim or defense. Fed.R.Civ.P.
8 56(a). The court must grant summary judgment if "the movant shows
9 that there is no genuine dispute as to any material fact and the
10 movant is entitled to judgment as a matter of law." Id. "[A]
11 complete failure of proof concerning an essential element of the
12 nonmoving party's case necessarily renders all other facts
13 immaterial." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).
14 The moving party bears the burden of identifying "those portions of
15 the pleadings, depositions, answers to interrogatories, and
16 admissions on file, together with the affidavits, if any, which it
17 believes demonstrate the absence of a genuine issue of material
18 fact" regarding a particular claim or defense. Id. (internal
19 quotation marks omitted).

20 **III. DISCUSSION**

21 *A. CUTSA Trade Secret Misappropriation*

22 California has adopted a statutory trade secrets scheme, the
23 California Uniform Trade Secrets Act ("CUTSA"), Cal. Civil Code §
24 3426 et seq. Under CUTSA, "[a]ctual or threatened
25 misappropriation" of trade secrets may be enjoined, Cal. Civ. Code
26 § 3426.2, and a plaintiff may also sue for damages equal to "the
27 actual loss caused by misappropriation" as well as any "unjust
28 enrichment caused by misappropriation that is not taken into

1 account in computing damages for actual loss." Cal. Civ. Code §
2 3426.3. Trade secrets are defined as any

3 information, including a . . . compilation . . . that:

4 (1) Derives independent economic value, actual or potential,
5 from not being generally known to the public or to other
6 persons who can obtain economic value from its disclosure or
7 use; and

8 (2) Is the subject of efforts that are reasonable under the
9 circumstances to maintain its secrecy.

10 Cal. Civ. Code § 3426.1. Misappropriation is defined as, inter
11 alia,

12 [d]isclosure or use of a trade secret of another without
13 express or implied consent by a person who . . . [a]t the time
14 of disclosure or use, knew or had reason to know that his or
15 her knowledge of the trade secret was . . . [a]cquired under
16 circumstances giving rise to a duty to maintain its secrecy or
17 limit its use

18 Id.

19 Three different types of information might be subject to trade
20 secret law in this case. First, the parties do not dispute that
21 Oakes emailed himself the ACT file, as well as numerous additional
22 items described above. Second, the parties also do not dispute
23 that Oakes retained contacts in his LinkedIn social networking
24 account that he created while employed at Cellular. Third,
25 Cellular alleges, and provides exhibits to show, that Oakes emailed
26 himself a number of other files and documents relating to
27 customers, including the direct contact information for those with
28 the power to do business, information about purchasing and billing

1 preferences or requirements, and specific strategy information
2 relating to one client, Honeywell. Defendants do not directly deny
3 that Oakes took all the documents alleged in this third category of
4 information, but neither do they precisely admit it. Defendants'
5 Reply does admit that Oakes took certain documents relating to
6 Honeywell and its "purchasing requirements." (Def.'s Reply, § I.)

7 The removal of the ACT file, containing customer information,
8 is the primary point of contention. "It is well-established that a
9 customer list may constitute a protectable trade secret." Gable
10 Leigh, Inc. v. North Am. Miss, No. CV 01-01019 MMM(SHX); 2001 WL
11 521695 at *15 (C.D. Cal. Apr. 13, 2001) (citing cases). However,
12 such lists are not *automatically* trade secrets, because many
13 customer lists contain no information which is not "easily
14 discoverable through public sources." Scott v. Snelling &
15 Snelling, Inc., 732 F. Supp. 1034, 1044 (N.D. Cal. 1990). But
16 where "the employer has expended time and effort identifying
17 customers with particular needs or characteristics," the list can
18 be a protectable trade secret. Mor-Life, Inc. v. Perry, 56 Cal.
19 App. 4th 1514, 1521 (1997). Thus, the chief factual issue in
20 determining whether a customer list is a trade secret is the amount
21 of effort involved in compiling it. If the methods used to compile
22 the information are "sophisticated," "difficult," or "particularly
23 time consuming," that tends to show that it is a trade secret. Am.
24 Paper & Packaging Products, Inc. v. Kirgan, 183 Cal. App. 3d 1318,
25 1326 (1986). The underlying rationale for requiring that customer
26 lists be the product of some significant effort is that information
27 which is easily and publicly available does not convey enough

1 "independent economic value" to its holder to satisfy the first
2 prong of the § 3426.1 definition. Scott, 732 F. Supp. at 1044.

3 Defendants argue that Plaintiff has failed to carry its burden
4 of showing that the ACT file is the product of significant effort.
5 Defendant contends that all the information in the ACT file is
6 easily obtained through public sources. "Anyone can easily get
7 extensive information about Fortune 1000 companies, through a
8 standard internet search." (Def.'s Mot. Summ. J., § B.1.)

9 However, whether the information in Oakes' ACT file could be
10 so easily obtained is in dispute. Cellular CEO Mitchell Langstein
11 declares that "[t]o build a list of cellular accessories
12 procurement officers requires the expenditure of a significant
13 amount of time and money," that "Cellular hires and pays employees
14 who are tasked with cold-calling companies and working their way
15 past the 'gatekeepers' to reach the right procurement officer,"
16 that David Oakes was similarly required, during his employment with
17 Cellular, to make such calls, that Oakes and other employees were
18 encouraged to "network" with employees at prospect companies, that
19 Oakes made such networking contacts in the course of his
20 employment, and that, in short, "information found in [the]
21 customer list is not available in public directories." (Reply
22 Decl. Mitchell Langstein, ¶¶ 32-35, 39, 40-41, 49-52. See also Ex.
23 M, Opp'n Decl. Rasheed McWilliams (deposition of Mitchell Langstein
24 describing method by which sales agents attempt to identify
25 "decision makers" at target companies).)

26 Indeed, Oakes' own declaration supports this narrative: "I was
27 directed to generate business I was given no leads or
28 customer lists, but was told to begin making cold calls to generate

1 new business for the company Getting business usually
2 depended on a number of factors, including the relationships I was
3 able to form with the individuals As I began to make
4 calls, I would put their information into my ACT file." (Oakes
5 Decl., ¶¶ 2-3.)

6 On the other hand, Oakes also says that "All individuals I
7 talked to-at any company-had already been contacted by other
8 competitors," (Oakes Decl., ¶ 2), and that LinkedIn suggested
9 contacts to him automatically-facts which, if true, tend to show
10 that his information-gathering techniques were not especially
11 "sophisticated" or "difficult." Kirgan, 183 Cal. App. 3d at 1326.

12 In short, there is a genuine issue of fact as to how difficult
13 the information in the ACT file was to obtain.

14 Defendants also argue that David Oakes' LinkedIn contacts were
15 not a trade secret, because Cellular encouraged its employees to
16 create and use LinkedIn accounts, (Oakes Decl. ¶ 2), and Oakes'
17 LinkedIn contacts would have been "viewable to any other contact he
18 has on LinkedIn." (Def.'s Mot. Summ. J., § II.) Plaintiff argues,
19 on the other hand, that LinkedIn information is only available to
20 the degree that the user chooses to share it. (Reply Decl.
21 Mitchell Langstein, ¶ 44; Pl.'s Opp'n, § III.B.5.) Therefore,
22 according to Plaintiff's declarant, it is not automatically the
23 case that contact information is "viewable to any other contact."
24 Oakes' declaration does not say whether this characterization of
25 the functionality of LinkedIn is accurate, or if it is, whether he
26 had set his contacts to be viewable. Because the Court declines to
27 take judicial notice of the functions of LinkedIn, and because the
28 parties' declarants do not make sufficiently clear whether and to

1 what degree Oakes' LinkedIn contacts were indeed made public (and
2 whether this was done with Cellular's explicit or implicit
3 permission), there remain issues of material fact as to the
4 LinkedIn information.

5 As to the third type of information-the emails containing
6 contact information, emails indicating customer preferences, and
7 internal memo-Defendant does not address the matter separately, but
8 asserts that Oakes retained the Honeywell documents "for
9 posterity," and that information about clients' purchasing
10 requirements or preferences cannot be a trade secret because the
11 cellular accessories business is a "commodity business that shifts
12 and changes all the time." (Def.'s Reply, § I.) But it seems
13 clear that if a customer list (gathered with a sufficient amount of
14 effort) can provide independent economic value to a business,
15 documentation of the past behavior and preferences of those
16 customers can be, too-even if market conditions change. As to the
17 Honeywell memo, it appears to describe a successful method for
18 meeting a customer's needs, which could likewise provide
19 independent economic value. "Cellular uses its customer
20 information, in conjunction with additional trade secret
21 information, such as customer product, pricing and payment
22 preferences, to win business from [and] maintain relationships with
23 clients." (Reply Decl. Mitchell Langstein, ¶ 17.) Thus, there is
24 a genuine issue of material fact with regard to the economic value
25 of this information, too.

26 Finally, Defendants argue (presumably with regard to all three
27 kinds of information) that Cellular fails to meet its burden as to
28 the second § 3426.1 definition of trade secret: showing that it

1 took reasonable steps to protect the information. But this, too,
2 is a disputed issue of fact. Cellular claims that it "goes to
3 great lengths to keep its proprietary information confidential and
4 protected, using layers of passwords and SSL encryption," and
5 describes in some detail which items are encrypted or password-
6 protected. (Reply Decl. Mitchell Langstein, ¶ 23-24.) Oakes
7 disputes this, admitting that his email was password-protected but
8 asserting that employee computers were generally left on and
9 unprotected. (Oakes Decl., ¶ 7.)

10 With regard to both prongs, then, Defendants ask the Court to
11 make credibility determinations between competing statements by
12 motivated parties on both sides, each putting forth some factual
13 allegations which are not facially incredible. That, however, is
14 not the Court's role at summary judgment,¹ which may be granted
15 only where "there is no genuine dispute as to any material fact"
16 Fed.R.Civ.P. 56(a).

17 Defendant's motion for summary judgment as to trade secret
18 misappropriation is denied.

19 *B. Preemption*

20 CUTSA "has, for the most part, superseded prior California
21 common law on trade secret issues." Scott, 732 F. Supp. at 1044.
22 Thus, CUTSA preempts other claims "based on the same nucleus of
23 facts as trade secret misappropriation." K.C. Multimedia, Inc. v.
24 Bank of Am. Tech. & Operations, Inc., 171 Cal. App. 4th 939, 962
25 (2009).

26
27 ¹"That an affidavit is self-serving bears on its credibility,
28 not on its cognizability for purposes of establishing a genuine
issue of material fact." United States v. Shumway, 199 F.3d 1093,
1104 (9th Cir. 1999).

1 Defendant contends that several of Plaintiff's tort
2 claims-statutory and common law unfair competition, unjust
3 enrichment, and interference with prospective business
4 advantage-are based on the same nucleus of facts as its trade
5 secret claim, and are therefore preempted. (Def.'s Mot. Summ. J.,
6 § III.B.2.) Plaintiff responds that Defendant has mischaracterized
7 the factual foundations of its tort claims, insisting that "they
8 arise from David Oakes' defamatory and libelous acts following his
9 termination." (Pl.'s Mot. Summ. J., § II.C.)

10 Plaintiff's Third Cause of Action (statutory unfair
11 competition) and Fourth Cause of Action (common law unfair
12 competition) appear to be based primarily on the allegation of
13 copyright infringement. (Compl. ¶¶ 50-60.) To the extent that
14 these claims may also rely on trade secret misappropriation, see
15 id. at ¶ 58, they are preempted.

16 Plaintiff's Sixth Cause of Action (unjust enrichment) is also
17 preempted, to the extent that it is a *common law* claim based on the
18 same nucleus of facts as the trade secret claim. However, a
19 plaintiff may also recover for unjust enrichment by trade secret
20 misappropriation *under CUTSA itself*. Cal. Civil Code § 3426.3.
21 Such statutory recovery would obviously not be preempted.

22 Finally, Plaintiff's Seventh Cause of Action (interference
23 with prospective business advantage) is based in part on the trade
24 secret claim. (Compl. ¶ 79.) To that extent, it is preempted.
25 However, to the extent that it is based on the trade libel claim,
26 id. at ¶ 80, it is not preempted.

27 Thus, each of these tort claims is preempted, and summary
28 judgment is granted, to the extent that it relies on the nucleus of

1 facts of the trade secrets claim. However, because each is also
2 based on some alternative set of facts as well, each claim survives
3 preemption in part.

4 *C. Trade Libel*

5 In California, trade libel must be proved by showing, "at a
6 minimum: (1) a publication [of a disparaging statement]; (2) which
7 induces others not to deal with plaintiff; and (3) special
8 damages." Nichols v. Great Am. Ins. Companies, 169 Cal. App. 3d
9 766, 773 (1985) (parentheses omitted).

10 Cellular alleges that Defendants "published one or more false
11 statements which were intended to disparage CELLULAR ACCESSORIES's
12 good and services." However, at the time motions for summary
13 judgment were filed, the only evidence Cellular had produced of
14 such statements were a declaration and deposition of its CEO
15 Mitchell Langstein alleging he had heard from some customers that
16 David Oakes had made certain potentially disparaging remarks to his
17 customers via email. (E.g., Opp'n Decl. Mitchell Langstein, ¶¶ 79-
18 86.)

19 This evidence suffers two defects. First, Langstein's
20 allegation as to the contents of an email is not the best evidence
21 of the contents of that email. "An original writing, recording, or
22 photograph is required in order to prove its content" Fed.
23 R. Evid. 1002; United States v. Bennett, 363 F.3d 947, 954 (9th
24 Cir. 2004) (holding that "a printout or other representation" of
25 electronically stored data is the best evidence of that data).
26 Second, even if the contents of the email could be acceptably
27 reconstructed through testimony or declarations, Langstein nowhere
28 directly alleges that he personally saw the emails. At best, he

1 alleges that some of his customers alerted him to the contents of
2 the emails. (E.g., Ex. A, Decl. Melanie Cogburn, at transcript
3 pages 79-83.) As there is no direct evidence from those customers
4 (nor does there appear to be any forthcoming at trial), Langstein's
5 statements, based on inadmissible hearsay, are not enough to prove
6 the contents of the email. Fed. R. Evid. 801-802.

7 Cellular attempts to cure these defects by attaching to its
8 reply an email purported to be from another of Cellular's
9 customers, Gary Merritt. (Ex. N, Iloputaife Decl.) This email
10 might meet the best evidence rule—although it is a third party's
11 email quoting the Oakes email, not the Oakes email itself, which
12 could raise hearsay issues.

13 In any event, Cellular has, without explanation, introduced
14 this evidence only at the reply stage, thus denying Defendants the
15 opportunity to respond to it. Given that the email, if authentic,
16 would already have been in Cellular's possession at the time the
17 company initiated this proceeding, the Court sees no reason for
18 such a long delay in presenting this evidence. The Court has the
19 discretion to ignore evidence introduced for the first time in a
20 reply brief, In re McAllister, No. BAP CC-13-1578, 2014 WL 3955008
21 (B.A.P. 9th Cir. Aug. 13, 2014) ("[C]onsideration of new arguments
22 or evidence in a reply falls within the discretion of the trial
23 court."), and because considering the email at this stage would
24 prejudice the Defendants for no good reason, the Court chooses not
25 to do so.

26 Thus, Defendants have successfully pointed to an absence of
27 any admissible evidence to show publication of a disparaging
28 statement that induced others not to deal with Plaintiff, an

1 essential element of the trade libel claim. Summary judgment is
2 granted to the Defendants on this claim.

3 Because Cellular's interference with prospective business
4 advantage survives only to the extent that it relies on the facts
5 of the trade libel claim, § III.B. supra, and because those facts
6 are not proven, Defendants are granted summary judgment on that
7 claim as well.

8 *D. Breach of Contract and Related Claims*

9 Plaintiff and Defendants both move for summary judgment on the
10 issue of breach of contract.² Cellular argues that it is
11 undisputed that David Oakes signed both the Employment Agreement
12 and the Statement of Confidentiality; that those documents mandated
13 that Oakes not disclose or remove proprietary information; and that
14 it is also undisputed that Oakes took the ACT file and certain
15 other information as well. Thus, Cellular contends, as a matter of
16 law it is entitled to judgment as to breach of contract.

17 Defendant Oakes counters that there was no valid contract as
18 to the Statement of Confidentiality, because there was no new
19 consideration; that even if there was a contract, there was no
20 breach, because the information in question was not confidential or
21 proprietary; and that there is no allegation of actual damages.

22 The Court finds that both the Employment Agreement and the
23 Statement of Confidentiality could be found by a rational trier-of-
24 fact to be valid agreements. As a starting point, the Employment
25 Agreement does not appear to contain any provision specifying its
26 length or end date, and so it is presumed to be an at-will
27

28 ²This claim is solely against Defendant Oakes.

1 agreement. Cal. Labor Code § 2922. Absent some sort of
2 integration or anti-modification clause, an at-will employment
3 agreement can generally be modified by an employer at any time; the
4 modification essentially terminates the prior agreement and creates
5 a new, unilateral contract, which the employee accepts by
6 continuing to work for the employer under the modified terms. See
7 DiGiacinto v. Ameriko-Omserv Corp., 59 Cal. App. 4th 629, 633
8 (1997) (holding that a modification to an at-will employment
9 contract reducing the employee's salary did not breach, but rather
10 terminated and replaced, the employment contract). The opportunity
11 for continued employment is, itself, consideration for the new
12 agreement. Id.

13 The Statement of Confidentiality being a modification of the
14 Employment Agreement that created a new, valid contract, the
15 question is whether Defendants violated that contract. The
16 Statement of Confidentiality forbade employees to disclose or use
17 proprietary information, which it defined on substantially the same
18 terms as the CUTSA trade secret definition: namely, information
19 that is not known to competitors or the public, obtained by the
20 company, that confers an economic benefit. (Ex. D, Oakes Decl.)
21 Because of this, resolution of the breach of contract claim would
22 require resolution of essentially the same disputed facts discussed
23 above in § III.A.³ Thus, it cannot be said as a matter of law that
24 Defendant Oakes did not breach the contract.

25 However, Defendants are correct that a breach of contract
26 claim requires a showing of damages; those damages are in "the
27

28 ³Note that this does not render the contract claim preempted
by CUTSA. Cal. Civ. Code § 3426.7(b).

1 amount which will compensate the party aggrieved for all the
2 detriment proximately caused [by the breach], or which, in the
3 ordinary course of things, would be likely to result therefrom."
4 Cal. Civ. Code § 3300. The causal element is critical. Damages
5 must be "clearly ascertainable in both their nature and origin."
6 Cal. Civ. Code § 3301. "Causation of damages in contract cases, as
7 in tort cases, requires that the damages be proximately caused by
8 the defendant's breach, and that their causal occurrence be at
9 least reasonably certain." Yu v. California Commerce Club, Inc.,
10 58 Cal. App. 4th 229, 233 (1997).

11 Thus, in order to defeat Defendants' motion for summary
12 judgment, Cellular is required to put forth evidence from which a
13 rational trier-of-fact could conclude that Oakes' breach of the
14 proprietary information provisions in his contract in fact caused
15 Cellular a loss of business. Here, Cellular has not carried that
16 burden.

17 Cellular asserts that "[o]ver the course of three years,
18 Cellular lost and Defendant gained a proportional increase in
19 sales" to those customers. (Pl.'s Opp'n, § III.B.2.) Such a
20 trend, if it could be shown, might well be enough to show damages
21 circumstantially. But Cellular does not show a trend of
22 proportional loss and gain by the parties. Its evidence does
23 satisfactorily show that in the three years after Oakes was
24 terminated from his employment with Cellular, Trinitas' sales
25 volume increased-including sales to some past or current customers
26 of Cellular. (Ex. N, Opp'n Decl. Rasheed McWilliams.) But its
27 exhibits show nothing at all about Cellular's sales; so far as the
28 Court can determine, Plaintiff's sole piece of evidence regarding

1 its own sales figures is Mitchell Langstein's statement that "[i]n
2 2012, there was a large reduction in the volume of Cellular's sales
3 to Atmos Energy." (Opp'n Decl. Mitchell Langstein, ¶ 87.) But
4 that fact, alone, is not sufficient to allow direct comparison
5 between Cellular's and Trinitas' sales. How large is "large"? Was
6 the reduction in fact "proportional" to Trinitas' gain? Did
7 Cellular lose sales in the other years? None of these questions
8 can be answered on Plaintiff's evidence.

9 Plaintiff's proof of causation with regard to damages-and,
10 indeed, the existence of any actual loss at all-is not sufficient
11 to allow a rational trier-of-fact to find for Plaintiff on a breach
12 of contract claim. Defendant's motion is granted on this claim.
13 Any related claims, including unfair competition based specifically
14 on breach of contract, therefore also fail.

15 **IV. CONCLUSION**

16 Defendants' motion for summary judgment is denied as to the
17 CUTSA trade secret claim. It is granted as to the trade libel and
18 interference with prospective business advantage claims. It is
19 granted in part as to the statutory and common law unfair
20 competition claims, inasmuch as they are based on trade secret
21 misappropriation, but denied inasmuch as they may be based on the
22 facts of other claims. The motion is granted in part as to the
23 unjust enrichment claim, inasmuch as it is based on common law
24 principles rather than recovery under CUTSA. Finally, Defendant's
25 motion for summary judgment is granted, and Plaintiff's motion

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1 denied, as to the breach of contract claim and any unfair
2 competition claims dependent on that claim.

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4 IT IS SO ORDERED.

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7 Dated: September 16, 2014

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DEAN D. PREGERSON
United States District Judge

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