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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CELLULAR ACCESSORIES FOR	)	Case No. CV 12-06736 DDP (SHx)
LESS, INC., a California	)	
corporation,	)	<b>ORDER DENYING PLAINTIFF'S MOTION</b>
	)	<b>FOR SUMMARY JUDGMENT AND GRANTING</b>
Plaintiff,	)	<b>IN PART DEFENDANT'S MOTION FOR</b>
	)	<b>SUMMARY JUDGMENT</b>
v.	)	
	)	[Dkts. 52, 53]
TRINITAS LLC, a Texas	)	
limited liability company;	)	
DAVID OAKS, an individual,	)	
	)	
Defendants.	)	

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Presently before the court are a motion for summary judgment by Plaintiff Cellular Accessories for Less, Inc. ("Cellular") and a motion for summary judgment by Defendants Trinitas LLC ("Trinitas") and David Oakes (collectively, "Defendants"). These motions address one claim in common, a breach of contract claim, but otherwise address distinct issues.

**I. BACKGROUND**

Cellular and Trinitas are both sellers of mobile phone accessories to businesses. David Oakes worked for Cellular as a "Sales Account Manager" from June 2, 2004 to December 27, 2010,

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

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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,<sup>1</sup> 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 <sup>1</sup>"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.<sup>2</sup> 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

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28 <sup>2</sup>This 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.<sup>3</sup> 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 <sup>3</sup>Note 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." Vu 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



DEAN D. PREGERSON  
United States District Judge

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