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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KAPU GEMS, ET AL.,  
Plaintiffs,  
v.  
DIAMOND IMPORTS, INC., et al.,  
Defendants.

Case No. [15-cv-03531-MMC](#)

**ORDER GRANTING  
COUNTERDEFENDANTS' PARTIAL  
MOTION TO DISMISS FIRST  
AMENDED COUNTERCLAIM FOR  
DAMAGES**

Re: Dkt. No. 96

Before the Court is the “Partial Motion to Dismiss Diamond Imports, Inc.’s First Amended Counterclaim for Damages,” filed September 21, 2016, by plaintiff/counterdefendant Kapu Gems, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendant/counterclaimant Diamond Imports, Inc. (“Diamond Imports”) has filed opposition, to which Kapu Gems has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.<sup>1</sup>

**BACKGROUND**

Counterclaimant Diamond Imports is a California-based diamond importer and retail supplier. (See First Amended Compl. ¶¶ 2, 8.) Counterdefendant Kapu Gems is a diamond importer and exporter located in the Republic of India. (See id. ¶ 1, 7.)

On February 19, 2016, Diamond Imports filed a “Counterclaim for Damages,” asserting six causes of action against Kapu Gems, Kapu Gems Ltd., and Kalpesh Vaghani (“Vaghani”). By order filed August 12, 2016, the Court dismissed the Counterclaim in its entirety as to Kapu Gems Ltd. and Vaghani and dismissed, with leave

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<sup>1</sup> By order filed November 16, 2016, the Court took the matter under submission.

1 to amend, five of the six causes of action asserted in the Counterclaim against Kapu  
2 Gems.

3           Thereafter, on August 24, 2016, Diamond Imports filed a “First Amended  
4 Counterclaim,” (“FACC”) asserting three causes of action against Kapu Gems. The  
5 FACC is the subject of the instant motion and contains the following allegations.

6           On June 7, 2012, Kapu Gems and Diamond Imports, doing business as Kapu  
7 Gems USA (see FACC Ex. 2), entered into a written agreement whereby they “agree[d]  
8 to open [a] diamond office for Kapu Gems India in [the United States] . . . to s[ell] loose  
9 diamonds all over [the United States]” (see id. Ex. 1). Pursuant to said agreement,  
10 Diamond Imports President Yair Yachdav was to “handle all sales and inventory control  
11 in [the United States].” (See id.).

12           After the parties entered into said agreement, Kapu Gems, “[i]n or about 2013,”  
13 asked “Diamond Imports to share its confidential customer and price list with Kapu  
14 Gems;” (see id. ¶ 12); Kapu Gems said it wished “to ensure that Diamond Imports could  
15 deliver as an experienced diamond seller” (see id.). After receiving Kapu Gems’  
16 assurances that “it or its employees would never contact the customers [on the list]  
17 without Diamond Imports’ knowledge and consent” (see id. ¶ 14), Diamond Imports  
18 shared the list with Kapu Gems (see id. ¶ 12) and, at some point, also “introduced” Kapu  
19 Gems, “[i]n furtherance of the . . . joint venture,” to its customers Blue Nile, Brilliant Earth,  
20 and Ritani (see id. ¶¶ 13, 16, 19).

21           In 2014, Diamond Imports discovered that Kapu Gems had, contrary to its  
22 assurances, “directly solicited Blue Nile, Brilliant Earth, and Ritani” without Diamond  
23 Imports’ permission. (See id. ¶ 22.) In addition, “[s]everal other . . . customers” informed  
24 Diamond Imports that Kapu Gems had “contacted them by offering them diamonds at a  
25 slightly lower price than what Diamond Imports could offer.” (See id.) “[B]ased upon the  
26 misappropriation of Diamond Imports customers,” Diamond Imports “lost over 75% of its  
27 customers” (see id. ¶ 24), resulting in “lost revenue and lost profits of \$963,000” (see id.  
28 ¶ 25.)



1           **A. Second Cause of Action: "Interference with Business Relationship"**

2           In the Second Cause of Action, Diamond Imports alleges it had “existing and  
3 prospective business relationships with customers” (see FACC ¶ 34) and that Kapu  
4 Gems “knew of [said] relationships[s]” (see id. ¶ 35) and “interfered with” said  
5 relationships (see id. ¶ 34) by “using Diamonds Imports’ customer and price list which  
6 Kapu Gems wrongfully misappropriated” (see id. ¶ 37).

7           By the instant motion, Kapu Gems argues the Second Cause of Action is subject  
8 to dismissal because California’s Uniform Trade Secrets Act (“CUTSA”) “preempts tort  
9 claims, including tortious interference, brought under the same set of allegations as a  
10 CUTSA claim.” (See Mot. at 6:27-7:3).

11           CUTSA is codified in sections 3426 through 3426.11 of the Civil Code and “has  
12 been characterized as having a comprehensive structure and breadth.” See K.C.  
13 Multimedia, Inc. v. Bank of America Tech. & Operations, Inc., 171 Cal. App. 4th 939, 954  
14 (2009) (internal quotation and citation omitted). As set forth in section 3426.7(b), the only  
15 remedies that CUTSA “does not affect” are “(1) contractual remedies, whether or not  
16 based upon misappropriation of a trade secret, (2) other civil remedies that are not based  
17 upon misappropriation of a trade secret, or (3) criminal remedies, whether or not based  
18 upon misappropriation of a trade secret.” See Cal. Civil Code § 3426.7(b) (emphasis  
19 added); see also Silvaco Data Sys. v. Intel Corp., 184 Cal. App. 4th 210, 234 (2010)  
20 (holding “section 3426.7’s peculiar construction . . . is best understood as assuming that  
21 CUTSA would occupy the field of trade secrets liability, and as seeking to limit [CUTSA’s]  
22 supersessive effect only as it might impair the specified statutes and remedies”)  
23 (emphasis omitted). Consequently, and irrespective of how such claims are titled, all  
24 “common law claims that are based on the same nucleus of facts as the misappropriation  
25 of trade secrets claim for relief” are displaced.<sup>2</sup> See K.C. Multimedia, Inc., 171 Cal. App.

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27           <sup>2</sup> As explained by the California Supreme Court, the preferred word to describe the  
28 “effect the California Code has on . . . other [state law] causes of action” is “displace,”  
rather than “preempt.” See Zengen, Inc. v. Comerica Bank, 41 Cal. 4th 239, 237 n.5  
(2007) (noting “[t]echnically, the doctrine of preemption concerns whether a federal law

1 4th at 958. “[T]he determination of whether a claim is based on trade secret  
2 misappropriation is largely factual.” See id. at 954.

3 Here, as noted, Diamond Imports, in the First Cause of Action, has asserted a  
4 claim for misappropriation of trade secrets. In support thereof, Diamond Imports alleges  
5 that Kapu Gems “acquired by improper means” (see FACC ¶ 29) Diamond Imports’  
6 “customer and pricing list which . . . constituted trade secrets within the definition of Civil  
7 Code Section 3426, et seq” (see id. ¶ 27). In the Second Cause of Action, Diamond  
8 Imports alleges Kapu Gems “usurp[ed] its customers by using [its] customer and price list  
9 which Kapu Gems wrongfully misappropriated” (see id. ¶ 37), in other words, the same  
10 nucleus of facts as alleged in support of the First Cause of Action.

11 In response to the instant motion, Diamond Imports argues it has supported the  
12 Second Cause of Action with additional facts that are “outside of the trade secrets,”  
13 specifically that Kapu Gems “fraudulently induced Diamond Imports to enter into a joint  
14 venture agreement, that Kapu Gems had a close working relationship with Diamond  
15 Imports . . . [and that,] separate from receiving the confidential customer and price list,  
16 Kapu Gems went out and solicited business from Diamond Imports’ customers and took  
17 actions to poach these customers.” (See Opp. at 6:20). As set forth below, the Court is  
18 not persuaded.

19 “The policy of the common law has always been in favor of free competition.” See  
20 A-Mark Coin v. General Mills, Inc., 148 Cal. App. 3d 312, 323-24 (1983) (internal  
21 quotation and citation omitted). Thus, to support a business interference claim, a plaintiff  
22 must “plead that the defendant engaged in an independently wrongful act,” i.e., an act  
23 that “is unlawful.” See Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th 1134,  
24 1158 (2003). Here, the alleged independently wrongful act is Kapu Gems’  
25 misappropriation of trade secrets, specifically, the identity of Diamond Imports’ customers

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28 has superseded a state law or a state law has superseded a local law, not whether one  
provision of state law has displaced other provisions of state law”).

1 and the prices it charges. The alleged fraudulent inducement is merely the means by  
2 which Kapu Gems gained access to such information and the alleged solicitation is the  
3 means by which Kapu Gems is alleged to have used it.

4 In sum, the “gravamen of the wrongful conduct asserted” in Diamond Imports’  
5 business interference claim is “the misappropriation of trade secrets,” and, consequently,  
6 said claim is displaced. See K.C. Multimedia, Inc., 171 Cal. App. 4th at 961; see also  
7 Phoenix Tech. Ltd v. Device VM, No. C 09-04697 CW, 2009 WL 4723400, at \*4 (N.D.  
8 Cal., Dec. 8, 2009) (holding “[i]f there is no material distinction between the wrongdoing  
9 alleged in a CUTSA claim and that alleged in a different claim, the CUTSA preempts the  
10 other claim”) (internal quotation, citation, and alteration omitted).<sup>3</sup>

11 Accordingly, the Second Cause of Action will be dismissed without further leave to  
12 amend.

13 **B. Third Cause of Action: “Unfair Competition (Business and Professions Code**  
14 **17200)”**

15 In the Third Cause of Action, Diamond Imports alleges Kapu Gems violated  
16 California’s Unfair Competition Law (“UCL”), Cal. Bus. and Prof. Code § 17200 et. seq.,  
17 by engaging in “unlawful, fraudulent, and unfair business act[s] or practice[s] (see FACC  
18 ¶¶ 42-43). Kapu Gems argues the Third Cause of Action likewise is preempted under  
19 CUTSA. The Court agrees.

20 An unfair competition claim, whether common law or statutory, is displaced under  
21 CUTSA where such claim “rests squarely on its factual allegations of trade secret  
22 misappropriation.” See K.C. Multimedia, Inc., 171 Cal. App. 4th at 961-62.

23 Here, the alleged unlawful business practices are “violations of Civil Code Section  
24 3426, et seq. for misappropriation of trade secrets” (see FACC ¶ 44); the alleged  
25 “fraudulent acts are that Vaghani, as partner and principal in Kapu Gems made false  
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27 <sup>3</sup> In light of the above ruling, the Court does not address herein Kapu Gems’ other  
28 arguments in support of dismissal of the Second Cause of Action.

1 statements to Yachdav to obtain the Diamond Imports confidential customer and price  
2 list” (see id. ¶ 45); and the alleged “unfair business practices” are “[1] inducing Diamond  
3 Imports to form a putative joint venture so to piggyback on Yachdav's knowledge,  
4 trustworthy reputation and his goodwill, [2] forming a putative joint venture with Diamond  
5 Imports to gain entry into the US diamond market and breaching its promise with  
6 Diamond Imports, [3] obtaining the Diamond Imports customer and price list under the  
7 guise of the putative joint venture, and [4] promising not to contact, solicit, and sell  
8 diamonds to the Diamond Imports customers” (see id. ¶ 49).

9 In opposing dismissal of the Third Cause of Action, Diamond Imports again argues  
10 it has alleged “facts outside the trade secrets claim.” (See Opp. at 6:26). As discussed  
11 above, however, the alleged fraudulent inducement was merely the means by which  
12 Kapu Gems is alleged to have gained access to Diamond Imports’ trade secrets, as were  
13 the alleged false promises. Consequently, the “gravamen” of Diamond Imports’ unfair  
14 competition claim being the misappropriation of trade secrets, said claim is displaced  
15 under CUTSA. See K.C. Multimedia, Inc., 171 Cal. App. 4th at 961.<sup>4</sup>

16 Accordingly, the Third Cause of Action will be dismissed without further leave to  
17 amend.

18 **CONCLUSION**

19 For the reasons stated above, Kapu Gems' partial motion to dismiss the First  
20 Amended Counterclaim is hereby GRANTED, and the Second and Third Causes of  
21 Action therein are hereby DISMISSED.

22 **IT IS SO ORDERED.**

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24 Dated: November 22, 2016

  
MAXINE M. CHESNEY  
United States District Judge

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28 <sup>4</sup> In light of the above ruling, the Court does not address herein Kapu Gems’ other arguments in support of dismissal of the Third Cause of Action.