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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YOUNGEVITY INTERNATIONAL,
et al.,

Plaintiffs,

v.

TODD SMITH, et al.,

Defendants.

Case No.: 16-CV-704-BTM-JLB

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT AS TO
PLAINTIFFS’ SIXTH CAUSE OF
ACTION [ECF No. 307]**

Presently before the Court is Defendants’ motion for summary judgment as to Plaintiffs’ sixth cause of action for misappropriation of trade secrets in violation of California Civil Code section 3426. (ECF No. 307 (“Defs.’ MSJ VI”).) For the reasons discussed below, the Court grants in part and denies in part Defendants’ motion.

I. STANDARD

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure if the moving party demonstrates the absence of a genuine issue of material fact and entitlement to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is material when, under the governing substantive law, it could affect the outcome of the case. *Anderson v. Liberty Lobby*,

1 *Inc.*, 477 U.S. 242, 248 (1986); *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir.
2 1997). A dispute as to a material fact is genuine if there is sufficient evidence for
3 a reasonable jury to return a verdict for the nonmoving party. *Anderson*, 477 U.S.
4 at 323 (1986).

5 A party seeking summary judgment always bears the initial burden of
6 establishing the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at
7 323. The moving party can satisfy this burden in two ways: (1) by presenting
8 evidence that negates an essential element of the nonmoving party's case; or (2)
9 by demonstrating that the nonmoving party failed to establish an essential element
10 of the nonmoving party's case on which the nonmoving party bears the burden of
11 proving at trial. *Id.* at 322-23. "Disputes over irrelevant or unnecessary facts will
12 not preclude a grant of summary judgment." *T.W. Elec. Serv., Inc. v. Pacific Elec.*
13 *Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

14 Once the moving party establishes the absence of genuine issues of material
15 fact, the burden shifts to the nonmoving party to demonstrate that a genuine issue
16 of disputed fact remains. *Celotex*, 477 U.S. at 314. The nonmoving party cannot
17 oppose a properly supported summary judgment motion by "rest[ing] on mere
18 allegations or denials of his pleadings." *Anderson*, 477 U.S. at 256. Rather, the
19 nonmoving party must "go beyond the pleadings and by her own affidavits, or by
20 'the depositions, answers to interrogatories, and admissions on file,' designate
21 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at
22 324 (quoting Fed. R. Civ. P. 56(e)).

23 The court must view all inferences drawn from the underlying facts in the
24 light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith*
25 *Radio Corp.*, 475 U.S. 574, 587 (1986). "Credibility determinations, the weighing
26 of evidence, and the drawing of legitimate inferences from the facts are jury
27 functions, not those of a judge, [when] he [or she] is ruling on a motion for summary
28 judgment." *Anderson*, 477 U.S. at 255.

II. DISCUSSION

1
2 Defendants move for summary judgment on Plaintiffs' sixth cause of action.
3 Plaintiffs allege that Defendants Wakaya, William Andreoli, Dave Pitcock, Patti
4 Gardner, Mike Casperson, and Brytt Cloward misappropriated Youngevity's trade
5 secrets, including its distributor lists and database, wholesale cost and pricing
6 information, and marketing materials. (ECF No. ECF 269, Fourth Am. Compl.
7 ("FAC"), ¶¶ 304–316.)

8
9 To prove trade secret misappropriation, a plaintiff must demonstrate: "(1)
10 the plaintiff owned a trade secret, (2) the defendant acquired, disclosed, or used
11 the plaintiff's trade secret through improper means, and (3) the defendant's
12 actions damaged the plaintiff." *CytoDyn, Inc. v. Ameriummune Pharms., Inc.*,
13 160 Cal. App. 4th 288, 297 (2008).

14 First, Defendants argue that Plaintiffs have failed to identify any trade
15 secrets with particularity. A plaintiff must "describe the subject matter of the trade
16 secret with sufficient particularity to separate it from matters of general
17 knowledge in the trade or of special knowledge of those persons who are skilled
18 in the trade, and to permit the defendant to ascertain at least the boundaries
19 within which the secret lies." *Diodes, Inc. v. Franzen*, 260 Cal. App. 2d 244, 253
20 (1968). Plaintiffs claim that Youngevity's distributor lists and database,
21 wholesale cost information, and marketing materials constitute trade secrets.
22 The Court finds that Plaintiffs have sufficiently identified distributor lists and
23 database, and wholesale cost information with particularity. However, Plaintiffs
24 have failed to describe with particularity "marketing materials," as it is too vague
25 of a description for anyone to "separate it from matters of general knowledge in
26 the trade" or to allow Defendants to "ascertain the boundaries within which the
27 secret lies." See *Diodes, Inc.*, 260 Cal. App. 2d at 253. Additionally, even if the
28 Court were to find that Plaintiffs sufficiently described "marketing materials,"

1 Plaintiffs have provided no evidence to demonstrate that the materials constitute
2 “secrets,” as they were admittedly used in presentations. (See ECF No. 373–1,
3 Ex. D 199:2–200:14.) Thus, Plaintiffs’ allegations as to its “marketing materials”
4 fail.

5
6 Even if the Court finds that Plaintiffs have identified the information with
7 sufficient particularity, Defendants still urge the Court to grant summary judgment
8 because they argue Youngevity’s distributor lists do not constitute “trade
9 secrets.” A “trade secret” is defined as “information, including a formula, pattern,
10 compilation, program, device, method, technique or process, that: (1) [d]erives
11 independent economic value, actual or potential, from not being generally known
12 to the public or to other persons who can obtain economic value from its
13 disclosure or use; and (2) [i]s subject to efforts that are reasonable under the
14 circumstances to maintain is secrecy.” Cal. Civ. Code. ¶ 3426.1(d). “Information
15 derives independent economic value from not being generally known when its
16 secrecy provides a business with a substantial business advantage.” *Mattel, Inc.*
17 *v. MGA Entm’t, Inc.*, 782 F. Supp. 2d 911, 959 (C.D. Cal. 2011).

18 Plaintiffs claim that Youngevity’s distributor list, specifically the list created
19 by Dave Pitcock and Livinity, Inc., constitutes a “trade secret.” Youngevity
20 purchased Livinity, Inc. from Dave Pitcock which included “substantially all of the
21 assets of [Livinity] used in or relating to the Business.” (ECF No. 293–3, Ex. B,
22 42.) Defendants argue that the list is not a secret because Youngevity’s
23 distributors’ status are already publicly known since the sale of its products
24 depends on its distributor outreach. “[A] customer list can be found to have
25 economic value because its disclosure would allow a competitor to direct its
26 sales efforts to those customers who have already shown a willingness to use a
27 unique type of service or product as opposed to a list of people who only might
28 be interest.” *Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514, 1522 (1997). Here,

1 Youngevity has provided enough evidence to demonstrate that its distributor lists,
2 and in particular the Livinity list, contain information that provides a competitive
3 advantage among multi-level marketing companies. Most notably, Pitcock
4 signed Youngevity's consulting agreement which contains a confidentiality clause
5 that lists "oral and written customer information, and personnel information" as
6 "confidential information," and prohibits a consultant from using "any of the
7 Confidential Information and/or business contacts, information regarding
8 distributors/vendors/suppliers and other business associates of [Youngevity] . . .
9 transmitted to [Pitcock] by [Youngevity], for the purpose of circumventing
10 [Youngevity's] business operations." (ECF No.293-3, Ex. H, § 4(a).)

11
12 Second, Defendants contend that Plaintiffs cannot prove that any
13 Defendant engaged in "misappropriation." The Court agrees in part. Defendants
14 are correct that Plaintiffs have not provided any evidence that Casperson and
15 Cloward have "misappropriated" any trade secrets. Thus, Plaintiffs' claim fails as
16 to them. However, as to Wakaya, Gardner, Andreoli, and Pitcock, Plaintiffs have
17 submitted evidence that creates a genuine issue of material fact as to whether
18 they indeed "misappropriated" Youngevity's distributor list and database, and
19 cost and pricing information. (See ECF No. 307, Ex. B, 20:1-21:16; ECF No.
20 340-2, Ex. P; ECF No. 372-1, Ex. B-C; ECF No. 194-2, Ex. J.)

21
22 Lastly, Defendants argue that Plaintiffs have failed to establish that the
23 alleged misappropriation *caused* Youngevity any damages. Plaintiffs respond
24 that the evidence demonstrates that Youngevity's sales dropped during the time
25 in which Defendants were allegedly misappropriating Youngevity's distributor list
26 and database. (See ECF No. 340-2, Ex. P; ECF No. 292-3, Ex. CC, 17.)
27 Additionally, Plaintiffs point to Brian J. Bergmark's expert report, which evaluates
28 economic damages associated with the claims against Defendants, to argue that
Youngevity suffered damages. (ECF No. 340-2, EX. JJ.) Because at this stage

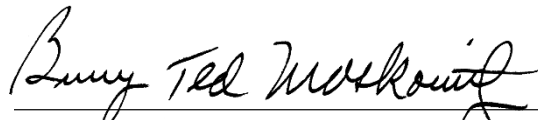
1 the Court must weigh all inferences in Plaintiffs' favor, the Court cannot conclude
2 as a matter of law that no reasonable juror could find for Plaintiffs. Accordingly,
3 Defendants' motion is only granted as to Mike Casperson, Brytt Cloward, and the
4 claims concerning Youngevity's marketing materials.

5
6 **III. CONCLUSION**

7 For the reasons discussed above, the Court **GRANTS in part and DENIES**
8 **in part** Defendants' motion for summary judgment as to Plaintiffs' sixth cause of
9 action (ECF No. 307). Defendants' motion is granted as to Mike Casperson,
10 Brytt Cloward, and the allegations regarding Youngevity's marketing materials.

11 **IT IS SO ORDERED.**

12 Dated: September 17, 2018

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15 Barry Ted Moskowitz, Chief Judge
16 United States District Court
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