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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

YEISER RESEARCH & DEVELOPMENT LLC,	Plaintiff,	
v.		
TEKNOR APEX COMPANY,	Defendant.	

Case No. 17-cv-1290-BAS-RBB

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT’S RULE 12(b)(6)
MOTION TO DISMISS THE
COMPLAINT**

[ECF No. 16]

The dispute before the Court concerns Plaintiff Yeiser Research & Development LLC’s (“YRD”) allegations that Defendant Teknor Apex Company (“Teknor”) unlawfully used YRD’s confidential information to develop and market Teknor’s Zero-G Hose. In late 2013, YRD, an experienced developer of compact garden hoses, began sharing its information with Teknor, a manufacturer which allegedly had no prior experience in building or marketing such hoses. The parties subsequently entered into a Confidentiality Disclosure Agreement (“CDA”) to protect the confidentiality of information YRD shared with Teknor. The CDA stated that any future joint projects would be governed by a Joint Development Agreement (“JDA”). Although the parties allegedly discussed a potential joint project, they

1 never carried out the project, nor entered into a JDA. YRD subsequently brought suit
2 against Teknor. Presently before the Court is Teknor’s Rule 12(b)(6) motion to
3 dismiss all seven claims YRD raises. (ECF No. 16.) YRD has opposed (ECF No.
4 22)¹ and Teknor has replied (ECF No. 21). For the reasons stated below, the Court
5 grants in part and denies in part Teknor’s Rule 12(b)(6) motion.

6 **I. BACKGROUND**

7 **A. Factual Background**

8 Plaintiff YRD, a family business, is a California company, which created a
9 new retail market for compact garden hoses in the 2000s. (ECF No. 1-2 Ex. A
10 (hereinafter “Compl.”) ¶2.) Defendant Teknor is a privately-held Delaware
11 corporation that sells rubber products and has an international presence with
12 extensive retail distribution channels. (*Id.* ¶¶3, 7.)

13 In 2013, Teknor approached YRD through a common customer regarding
14 development of a better compact hose than existed on the market. (*Id.* ¶7.) Although
15 Teknor touted its position in the industry as a major hose manufacturer, Teknor
16 indicated that it had no prior experience building or manufacturing compact hoses,
17 and wanted either to purchase such a hose from YRD or jointly develop one for
18 Walmart and other customers. (*Id.* ¶¶7–8.) YRD educated Teknor on the industry
19 standard approach to flat or collapsible hoses and YRD’s methods for building hoses,
20 the strengths and weaknesses of the hoses on the market, and YRD’s current and
21 recommended marketing methods for building and marketing a new collapsible
22 compact hose. (*Id.* ¶8.) YRD had recently solved technical issues with existing
23 compact hoses on the market, and had effective marketing ideas. (*Id.* ¶11.) John
24 Yeiser (YRD) noted to Michael Melo (Teknor) that Teknor would be an ideal
25 business partner to commercialize what YRD had already discovered. (*Id.* ¶9.)
26 Yeiser shared his expectation that the parties would establish a JDA for any future
27

28 ¹ The Court relies on YRD’s corrected opposition to Teknor’s motion to
dismiss, which the Court permitted YRD to file. (ECF No. 20.)

1 joint commercialization, with a royalty term for YRD of either \$1.50 per product sold
2 or 10% of all Teknor sales. (*Id.*) Teknor acknowledged this expectation. (*Id.*)

3 The parties negotiated a CDA over the course of several months, which was
4 finally executed on January 28, 2014. (*Id.* ¶11; Ex. 1 (hereinafter “CDA”).) The
5 CDA’s purpose was to permit disclosure of confidential information between the
6 parties in order to collaborate and share ideas pertaining to product development.
7 (CDA §1.) The CDA’s confidentiality provisions excluded information that was
8 already in the public domain, a party’s possession at the time of disclosure, disclosed
9 by a third party, or independently developed. (*Id.* ¶12; CDA §§2, 3(a)–(d).)
10 However, the CDA’s five-year non-competition clause, Section 4(g), required certain
11 excluded information to be treated as confidential under certain circumstances.
12 Except for information independently developed, if a party receiving information
13 designated as confidential failed to “immediately notify” the disclosing party in
14 writing that the information was subject to an exclusion, the information could not
15 be used to compete for a term of five years, including from the date of the CDA’s
16 termination. (*Id.* ¶12; CDA §§4(g), 8.)

17 With the CDA in place, YRD provided prototype images, information about
18 product performance, commercialization evaluation, and marketing ideas. (Compl.
19 ¶13.) Between February 2014 and March 2014, Yeiser confirmed with Melo that
20 Teknor considered this information to be new ideas under Sections 3(a)–(c) and
21 Section 4(g) of the CDA. (*Id.* ¶¶13–14.) In mid-March 2014, YRD relied on
22 Teknor’s confirmation and provided more information, including detailed sales
23 sheets and sales data, test results for confidential sleeve concepts, designs with
24 multiple variations, prototypes and samples, and marketing ideas. (*Id.* ¶¶15, 17, 18.)
25 YRD disclosed the sales advantages of its new concept hose, which existed nowhere
26 on the market. (*Id.* ¶18.) Teknor acknowledged that the majority of this information
27 was subject to the CDA’s confidentiality provisions and Section 4(g). (*Id.* ¶¶15, 17,
28 19.) YRD’s disclosures reflected its “revolutionary approach” for a new compact

1 hose and a “breakthrough” consisting of a confidential new interior design and use
2 of a heavy duty outer casing to yield a higher quality, more reliable hose than the
3 existing hoses comprised of cheap materials and thin fabrics. (*Id.* ¶¶16, 17, 22.) The
4 design provided added protection from punctures and reduced fatigue from
5 clamping—features that were key to overcoming the stigma associated with the
6 industry standard expandable flat hose. (*Id.* ¶¶17, 22–23.) YRD advised Teknor that
7 it was developing for sale a new changed, interior hose design based on its disclosures
8 to Teknor and sent Teknor prototypes. (*Id.* ¶18.)

9 Teknor subsequently decided to commercialize part of YRD’s new hose
10 design. (*Id.* ¶19.) Between March and April 2014, the parties had discussions about
11 expanding their relationship, covering marketing, manufacturing, and costs. (*Id.*
12 ¶¶20–21.) Teknor would mass produce the new hose under discussion, YRD would
13 market through its longstanding relationship with QVC, and Teknor would market to
14 its retail channels, starting with YRD’s existing product. (*Id.* ¶20.) Thereafter, Melo
15 solicited information on various production scenarios, which YRD provided subject
16 to the CDA and which Teknor did not dispute was confidential. (*Id.* ¶21.) In July
17 2015, over a year after the parties’ discussions, Yeiser asked Melo about whether
18 Teknor was interested in another hose concept. (*Id.* ¶24.) But Melo was not, nor was
19 Teknor working on anything new or outside of its core business. (*Id.*) Teknor
20 subsequently cancelled YRD’s planned introduction and presentation to QVC. (*Id.*)
21 The CDA remained in place as did the alleged plans for a JDA. (*Id.*)

22 Enter Teknor’s Zero-G Hose: a hose that includes an elastic inner layer, a slip
23 coating layer with lubricating properties that increase the life of the hose, and an outer
24 sheath that covers the inner tube and slip coating layer. (*Id.* ¶25.) The Zero-G Hose’s
25 promotional information touted product attributes based on the confidential
26 information YRD provided, including the hose’s puncture resistance, kink-reducing
27 design, pliable inner core, and durability. (*Id.* ¶¶23, 27.) YRD alleges that the
28 majority of the hose’s features pirated YRD’s new compact hose concept. (*Id.* ¶¶25,

1 27.) While soliciting and receiving confidential information from YRD, Teknor,
2 through Melo, was allegedly actively concealing its plan from the outset to pirate
3 YRD’s confidential information to develop and sell its own competing compact hose
4 to retailers. (*Id.* ¶¶25–28.) By fall 2015, Teknor allegedly had begun secret
5 discussions with Lowes and other retailers to sell its own compact hose. (*Id.* ¶26.)
6 YRD now faces competition from Teknor and the Zero-G Hose. (*Id.* ¶40.)

7 **B. Procedural Background**

8 On May 23, 2017, YRD brought suit against Teknor in California Superior
9 Court, alleging that Teknor breached multiple provisions of the CDA (Count 1),
10 misappropriated YRD’s trade secrets (Count 2), was unjustly enriched by failing to
11 negotiate the JDA (Count 3), converted YRD’s confidential and proprietary
12 information (Count 4), interfered with YRD’s prospective economic advantage
13 (Count 5), engaged in unfair competition by using YRD’s confidential and
14 proprietary information (Count 6), and breached the implied covenant of good faith
15 and fair dealing by failing to negotiate the JDA (Count 7). (Compl. ¶¶29–88.) YRD
16 seeks damages, restitution, and injunctive relief against Teknor. (*Id.* Prayer for
17 Relief.) Teknor subsequently removed the complaint to this District Court (ECF No.
18 1) and now seeks dismissal of the Complaint in its entirety (ECF No. 16-1).

19 **II. LEGAL STANDARD**

20 Federal Rule of Civil Procedure 8(a)(2) requires that a complaint set forth “a
21 short and plain statement of the claim showing that the pleader is entitled to relief, in
22 order to give the defendant fair notice of what the . . . claim is and the grounds upon
23 which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting
24 *Conley v. Gibson*, 355 U.S. 41, 47 (1957)) (internal quotations omitted). A Rule
25 12(b)(6) motion to dismiss tests the legal sufficiency of the complaint. *N. Star Int’l*
26 *v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983). For the purposes of such
27 a motion, the court accepts as true the allegations in the complaint and construes
28 those allegations in the light most favorable to the plaintiff. *Hishon v. King &*

1 *Spalding*, 467 U.S. 69, 73 (1984). To survive a Rule 12(b)(6) motion, a plaintiff is
2 required to set forth “enough facts to state a claim for relief that is plausible on its
3 face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff
4 pleads factual content that allows the court to draw reasonable inferences that the
5 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
6 (2009). Factual allegations must be enough to raise a right to relief above the
7 speculative level. *Twombly*, 550 U.S. at 555. The court need not accept as true legal
8 conclusions pleaded in the guise of factual allegations if those conclusions cannot
9 reasonably be drawn from the facts alleged. *Clegg v. Cult Awareness Network*, 18
10 F.3d 752, 754–55 (9th Cir. 1994). Relatedly, a pleading is insufficient if it offers
11 only “labels and conclusion” or “a formulaic recitation of the elements of a cause of
12 action.” *Twombly*, 550 U.S. at 555; *Iqbal*, 556 U.S. at 676. In ruling on a 12(b)(6)
13 motion to dismiss, a court may consider materials properly submitted as part of the
14 complaint. *Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001).

15 **III. DISCUSSION**

16 **A. Delaware Law Governs the Claims in this Case**

17 Teknor argues that Delaware law governs all of the claims in this action
18 because the CDA contains a valid choice-of-law provision that is enforceable under
19 California law. (ECF No. 16-1 at 7.) Teknor contends that Delaware law also applies
20 to YRD’s tort claims because they relate to the common nucleus of facts centering
21 on Teknor’s alleged misuse of confidential information exchanged under the CDA.
22 (*Id.* at 8.)

23 A federal court sitting in diversity must apply the forum state’s choice-of-law
24 rules to determine the controlling substantive law. *Fields v. Legacy Health Sys.*, 413
25 F.3d 943, 950 (9th Cir. 2005). Federal courts sitting in diversity in California follow
26 California choice-of-law rules. *Hatfield v. Halifax PLC*, 564 F.3d 1177, 1182 (9th
27 Cir. 2009). Like federal courts in the Ninth Circuit, California state courts look to
28 the Restatement (Second) of Conflicts of Law (1971) for the choice of law rules. *See*

1 *In re Zukerkon*, 484 B.R. 182, 188 (9th Cir. 2012); *Nedlloyd Lines B.V. v. Superior*
2 *Court*, 834 P.2d 1148, 1151 (Cal. 1992). Section 187 of the Restatement applies if
3 parties have entered into an agreement, negotiated at arm's-length, which selects a
4 particular state's law to govern their contractual relationship. *See Nedlloyd*, 834 P.2d
5 at 1151. To determine whether the choice-of-law provision is enforceable, a court
6 must engage in a two-step analysis. First, the court must determine whether: (1) the
7 chosen state has a substantial relationship to the parties or their transaction, or (2)
8 there is any other reasonable basis for the parties' choice of law. *Id.* at 1152. Second,
9 if either is shown, the court must next determine whether the chosen state's law is
10 contrary to a fundamental policy of California. *Id.* Because Teknor has advocated
11 application of Delaware law pursuant to the CDA's choice-of-law provision, it has
12 the burden of establishing either a substantial relationship or reasonable basis. *See*
13 *Pulte Home Corp. v. Am. Safety Indem. Co.*, No. 16-cv-02567-H-AGS, 2017 WL
14 3007215, at *3 (S.D. Cal. July 14, 2017); *see also Wash. Mut. Bank v. Superior Court*,
15 15 P.3d 1071, 1078 (Cal. 2001).

16 Teknor has easily met this burden. The CDA contains a choice-of-law
17 provision which selects Delaware law as the governing substantive law of the CDA.
18 (CDA §12(b).) The parties to a contract have a substantial relationship with the
19 chosen state if at least one of them is incorporated there. *See Nedlloyd*, 834 P.2d at
20 1153; *Hambrecht & Quist Venture Partners v. Am Med. Int'l, Inc.*, 46 Cal. Rptr. 2d
21 33, 41–42 (Cal. Ct. App. 1995). Because Teknor is a company incorporated in
22 Delaware (Compl. ¶3), there is a substantial relationship between Delaware and the
23 parties. Teknor's incorporation in Delaware also provides a reasonable basis for the
24 parties' selection of Delaware law. *Nedlloyd*, 834 P.2d at 1153; *Hambrecht*, 46 Cal.
25 Rptr. 2d at 42. Once the party advocating application of a choice-of-law provision
26 has met its burden, the burden shifts to the opposing party to show that application
27 would violate a fundamental policy of California. *Pulte Home Corp.*, 2017 WL
28 3007215, at *3. YRD concedes in opposition that Delaware law is not contrary to a

1 fundamental policy of California (ECF No. 22 at 11), nor can this Court conclude
2 that application of Delaware law to YRD’s contract claims would violate California
3 public policy. *See Hatfield*, 564 F.3d at 1183 (there was “no basis in the record to
4 conclude” that applying English law would violate California public policy).
5 Accordingly, the Court will apply Delaware law to YRD’s breach of contract claims.

6 Delaware law applies to YRD’s remaining claims as well. (ECF Nos. 16-1 at
7 8–9; 22 at 10–11.) California courts will apply an enforceable contractual choice-of-
8 law provision to claims “arising from or related to” the contract, *Nedlloyd*, 834 P.2d
9 at 1153; *see also VFD Consulting, Inc. v. 21st Servs.*, 425 F. Supp. 2d 1037, 1047
10 (N.D. Cal. 2006) (*Nedlloyd* “supports Defendants’ position that this Court should
11 apply Minnesota law to the trade secret claim” where choice of law provision selected
12 Minnesota law). This is especially true when “the legal relationship between the[]
13 parties emanates from th[e] Agreement and the interpretation of the Agreement will
14 be a central issue” in the case. *Olinick v. BMG Ent.*, 42 Cal. Rptr. 3d 268, 278–79
15 (Cal. Ct. App. 2006) (concluding that New York law applied to FEHA and wrongful
16 discharge claims pursuant to a choice-of-law clause in the agreement which
17 established the parties’ legal relationship). In this case, the legal relationship between
18 YRD and Teknor emanates from the CDA and all of YRD’s claims are “inextricably
19 intertwined with the construction and enforcement of th[at] Agreement.” *Id.* at 279.
20 Accordingly, Delaware law applies to YRD’s remaining claims.

21 In anticipation of this result, Teknor contends that Counts 2 through 7 should
22 be dismissed because they are not pleaded under Delaware law. (ECF No. 16-1 at
23 9.) This argument is unavailing. As YRD correctly observes (ECF No. 22 at 9–10),
24 the focus of the Federal Rules is on whether the factual allegations of the
25 Complaint—not the precise pleading of a specific statute or law—provide Teknor
26 with fair notice of the claims asserted against it. *Twombly*, 550 U.S. at 555; *see also*
27 *Johnson v. City of Shelby*, 135 S. Ct. 346, 346 (2014) (Rule 8(a)(2) “indicates that a
28 basic objection of the rules is to avoid civil cases turning on technicalities.”); *Albert*

1 v. *Carovano*, 851 F.2d 561, 571 n.3 (2d Cir. 1988) (“The failure in a complaint to
2 cite a statute, or to cite the correct one, in no way affects the merits of a claim. Factual
3 allegations alone are what matters.”) YRD’s failure to plead its claims under
4 Delaware law did not deprive Teknor of fair notice of potential claims that might
5 arise from YRD’s factual allegations. It is those allegations which may or may not
6 state a claim under Delaware law.

7 **B. Count 1: Teknor’s Alleged Breaches of the CDA**

8 In Count 1, YRD alleges Teknor breached Sections 4(a)–(d), 4(f), 4(g) and 9
9 of the CDA, resulting in damages. (Compl. ¶¶32–38, 40.) To state a claim for breach
10 of contract under Delaware law, a plaintiff must plead: “(1) the existence of the
11 contract, whether express or implied; (2) the breach of an obligation imposed by that
12 contract; and (3) the resultant damage to the plaintiff.” *Avaya Inc., RP v. Telecom*
13 *Labs, Inc.*, 838 F.3d 354, 390 (3d Cir. 2016) (quoting *VLIW Tech., LLC v. Hewlett-*
14 *Packard Co.*, 840 A.2d 606, 612 (Del. 2003)). “Recovery is limited to those damages
15 that arise naturally from the breach or that were reasonably foreseeable at the time
16 the contract was made.” *Tackett v. State Farm Fire & Cas. Ins. Co.*, 653 A.2d 254,
17 265 (Del. 1995). Teknor does not dispute the existence of a contract, but rather
18 contends that YRD has failed to plead the second element as to all purported breaches
19 of the CDA. (ECF No. 16-1 at 21.)

20 **1. Breaches of Sections 4(a) and (b) Are Adequately Pleaded**

21 Teknor argues that YRD’s breach of contract claim premised on breaches of
22 Sections 4(a) and 4(b) fails because YRD does not plead that the information
23 disclosed was “Confidential Information,” as defined in Section 2 of the CDA. (ECF
24 No. 16-1 at 24–25.) Section 2 of the CDA defines “Confidential Information” as “all
25 non-public business and/or technical information disclosed by a Party” who
26 “considers it to be confidential and proprietary.” (CDA §2.) The CDA provides non-
27 exhaustive examples of confidential information, including “information regarding
28 composition, formulation, raw materials, samples, manufacturing/processing

1 information, packaging, sales and marketing information, and business plans and/or
2 activities.” (*Id.* §2(a).) Section 3 excludes certain information from Section 2,
3 including information that is public, in the receiving party’s possession, received
4 from a third party, or developed independently. (*Id.* §§3(a)–(d).)

5 Teknor argues that YRD does not allege that the information used in violation
6 of Section 4(a) was confidential information under Section 2. (ECF No. 16-1 at 25.)
7 Section 4(a) provides that “[e]ach party agrees only to use the Confidential
8 Information in service of the Purpose.” (CDA §4(a).) The provision solely
9 incorporates the CDA’s general definition of confidential information under Section
10 2 subject to the exclusions in Section 3. YRD generally alleges that its disclosures
11 were confidential under the “provisions of the CDA” or “under the CDA protocol,”
12 without differentiation. (Compl. ¶¶15, 18–19, 21, 26.) These factual allegations
13 encompass Sections 2 and 3 of the CDA. Assuming the truth of YRD’s allegations,
14 the Court can reasonably infer that the information was confidential pursuant to these
15 provisions. Accordingly, YRD has sufficiently pleaded that Teknor breached Section
16 4(a) by using confidential information in violation of the provision.

17 Similarly, the Court finds that YRD has sufficiently pleaded a breach of
18 Section 4(b). Teknor argues that YRD’s general allegation that Teknor’s disclosure
19 of YRD information to third parties fails on its face to plead that the information
20 disclosed was confidential under Section 2. (ECF No. 16-1 at 24.) Section 4(b)
21 generally prohibits a party from disclosing “Confidential Information” to a third party
22 unless that party takes certain actions, such as, in relevant part, by requesting
23 permission from the party who initially disclosed the information. (CDA §4(b).)
24 Like Section 4(a), the provision solely relies on Section 2’s definition of
25 “Confidential Information.” Contrary to Teknor’s argument, YRD alleges that
26 Teknor “transmitt[ed] information provided to [Teknor] by YRD under the CDA, to
27 third parties including retailers Lowes, Walmart, Target, and Home Depot without
28 permission to do so from YRD” and “without even alerting those third parties that it

1 was transmitted YRD Confidential Information.” (Compl. ¶36.) The Court can
2 reasonably infer that the information referenced in this allegation is confidential
3 under Section 2 of the CDA. Teknor’s argument that the purported breach of Section
4 4(b) is otherwise unsupported by any other allegations in the Complaint is also
5 unavailing. (ECF No. 16-1 at 24–25.) YRD alleges that Teknor began discussions
6 with Lowe’s and other retailers to sell the compact hose concept learned from YRD’s
7 confidential information under the CDA, while actively concealing those efforts from
8 YRD. (Compl. ¶¶26– 27.) The Court must assume the truth of these allegations,
9 which identify Teknor’s conduct that allegedly breached Section 4(b). Accordingly,
10 the Court denies Teknor’s motion to dismiss YRD’s breach of contract claim
11 premised on breaches of Section 4(a) and 4(b).

12 **2. Alleged Breaches of Sections 4(c), 4(d) and 4(f) are Insufficiently**
13 **Pleaded**

14 Teknor argues that YRD provides no factual allegations supporting alleged
15 breaches of Sections 4(c), (d), and (f). (ECF No. 16-1 at 24.) The Court agrees. The
16 Complaint contains no factual allegations that Teknor: (1) “chemically analyze[d]”
17 or “reverse engineer[ed] samples received from” YRD, (CDA §4(c)); (2) failed “to
18 exercise the same degree of care as it employs for protection of its own proprietary
19 information” or failed “to restrict disclosure of Confidential Information to only those
20 employees who have a need to know such information to carry out the Purpose,” (*id.*
21 §4(d)); or (3) “fil[ed] a patent application incorporating any of” YRD’s allegedly
22 “Confidential Information disclosed pursuant to th[e CDA],” (*id.* §4(f)). In
23 opposition, YRD contends that its allegations are sufficient to show breaches of
24 Sections 4(c) because of Teknor’s alleged pitch to retailers of Teknor’s hose and 4(f)
25 because Teknor allegedly published confidential information learned from YRD.
26 (ECF No. 22 at 28.) These contentions bear no relation to the CDA provisions at
27 issue, nor the factual allegations in the Complaint. Federal Rule of Civil Procedure
28 8 requires YRD to offer more than conclusory allegations regarding alleged breaches

1 of Sections 4(c), (d), and (f) to provide fair notice to Teknor. *See Twombly*, 550 U.S.
2 at 555. Accordingly, the breach of contract claim is dismissed as to these alleged
3 breaches.

4 **3. Section 4(g) is a Partially Unenforceable Restrictive Covenant**

5 Teknor argues that Section 4(g) of the CDA is an unenforceable non-
6 competition restrictive covenant because it facially prohibits competition based on
7 information that may not be YRD's confidential information. (ECF No. 16-1 at 21-
8 23.) Teknor contends that YRD's breach of contract claim pertaining to Section 4(g)
9 therefore must be dismissed. The Court agrees that this provision is in part
10 unenforceable as written, but YRD has pleaded sufficient facts to sustain a claim
11 against Teknor premised on the portion that is enforceable.

12 Under Delaware law, a restrictive covenant, such as a non-competition
13 provision, is enforceable if: (1) it meets general contract law requirements, (2) is
14 reasonable in scope and duration, (3) advances a legitimate economic interest of the
15 party enforcing the covenant, and (4) survives a balance of the equities. *Kan-Di-Ki,*
16 *LLC v. Suer*, No. 7937-VCP, 2015 WL 4503210, at *19 (Del. Ch. July 22, 2015).
17 Section 4(g) prohibits a party from using "Confidential Information" received from
18 a party to compete with the disclosing party for a period of five years from the date
19 of a given disclosure. (CDA §4(g).) The remainder of Section 4(g) dictates that, for
20 the purposes of non-competition, "Confidential Information" may include
21 information that is public, was already in the receiving party's possession at the time
22 of the disclosure, or was disclosed to the receiving party by a third party. (*Id.* §§3(a)-
23 (c), 4(g).) The non-competition covenant treats such information as confidential if
24 the receiving party fails to provide an immediate notification that the information it
25 received was already disclosed to the party through any of those means. (*Id.* §4(g).)
26 Thus, Section 4(g) expands the scope of the CDA's general confidentiality provisions
27 to include information that may not in fact be YRD's own confidential information.

28 Teknor argues that Section 4(g) is facially unenforceable and advances no

1 legitimate economic interest because of the expansive reach of its terms. (EF No.
2 16-1 at 22.) Delaware law recognizes that a business has a legitimate economic
3 interest in protecting the confidentiality of *its* confidential proprietary information.
4 *See Kan-Di-Ki, LLC*, 2015 WL 4503210 at *20; *Tristate Courier & Carriage, Inc. v.*
5 *Berryman*, No. 20574-NC, 2004 WL 835886, at *10 (Del. Ch. Apr. 15, 2004);
6 *Research & Trading Corp. v. Pfuhl*, No. 12527, 1992 WL 345465, at *12 (Del. Ch.
7 Nov. 18, 1992). The first sentence of Section 4(g), like other provisions of the CDA,
8 tracks this legitimate interest by prohibiting Teknor from competing with YRD based
9 on YRD’s own confidential information, and vice versa. But the remainder of
10 Section 4(g) steps beyond YRD’s legitimate purpose in protecting *its* confidential
11 information by prohibiting Teknor from competing based even on information that
12 is not in fact YRD’s confidential information. Thus, the remainder of Section 4(g)
13 can “serve[] no purpose, save stifling fair competition” and “crippling” Teknor’s
14 legitimate interest to compete with information that is not in fact YRD’s. *See*
15 *Unisource Worldwide v. Swope*, 964 F. Supp. 2d 1050, 1065 (D. Ariz. 2013).

16 However, the Court cannot say that the duration and scope of the non-
17 competition clause would otherwise be unreasonable if solely limited to YRD’s own
18 confidential information. Delaware law has found non-competition covenants with
19 similar or even longer duration reasonable. *See, e.g., Tull v. Turek*, 147 A.2d 658,
20 663–64 (Del. 1958); *Kan-Di-Ki, LLC*, 2015 WL 4503210, at *19 (five-year term and
21 geographic scope of 23 states in a stock sale agreement reasonable); *O’Leary v.*
22 *Telecom Res. Serv., LLC*, No. 10C-03-108-JOH, 2011 WL 379300, at *5 (Del. Super.
23 Ct. Jan. 14, 2011) (finding reasonable four-year non-compete covering the entire
24 United States). Although the non-competition covenant contains no express
25 geographical term, Delaware law treats restriction of activities that are “in
26 competition with” a business as “inherently establish[ing] a geographic limit” that
27 can protect legitimate economic interests. *See Del. Express Shuttle, Inc. v. Older*,
28 No. 19596, 2002 WL 31458243, at *13 (Del. Ch. Oct. 23, 2002); *Tristate*, 2004 WL

1 835886, at *11. Section 4(g)'s prohibition on Teknor from competing with YRD
2 similarly contains an implicit geographic scope as to those areas in which YRD
3 conducts business.

4 As Teknor acknowledges (ECF No. 16-1 at 22), Delaware law will enforce a
5 restrictive covenant to the extent it is reasonable to do so. *See Knowles-Zeswitz*
6 *Music, Inc. v. Cara*, 260 A.2d 171, 175 (Del. Ch. 1969); *see also RHIS, Inc. v Boyce*,
7 No. 18924, 2001 WL 1192203, at *6 (Del. Ch. Sept. 26, 2001) (Under Delaware law,
8 a restriction will not be enforced “that is more restrictive than . . . legitimate interests
9 justify.”). YRD suggests that this Court can “blue pencil” Section 4(g) to reform it
10 in an equitable manner that makes it enforceable. (ECF No. 22 at 27.) At least one
11 federal district court has found that Delaware law permits blue penciling of restrictive
12 covenants. *See WebMD Health Corp. v. Dale*, No. 11-5827, 2012 U.S. Dist. LEXIS
13 112842, at *9 (E.D. Pa. Aug. 10, 2012) (“Delaware courts themselves ‘blue pencil’
14 restrictive covenant agreements that may be otherwise unenforceable, if the equities
15 so dictate.”) (citing *RHIS, Inc.*, 2001 WL 1192203, at *7). Without expressly
16 referencing the “blue pencil” test, Delaware courts have modified non-compete
17 provisions to make them reasonable, or recognize that such modification is
18 permissible. *See Knowles-Zeswitz Music*, 260 A.2d at 176 (plaintiff could seek
19 enforcement of narrower geographic area than specified in covenant); *Hammermill*
20 *Paper Co. v. Palese*, No. 7128, 1983 WL 19786, at *6 (Del. Ch. June 14, 1983)
21 (modification of non-compete provision “is permissible under this State’s laws
22 concerning the review of such contracts.”); *see also FBK Partners, Inc. v. Thomas*,
23 Civil No. 09-292-GFVT, 2010 U.S. Dist. LEXIS 124579, at *16–17 (E.D. Ky. Nov.
24 23, 2010) (“Delaware courts occasionally modify non-competes that impose broader
25 restrictions than necessary.”). In considering the equities, Delaware courts have
26 found that the equities are less favorable to reforming an overly broad restrictive
27 covenant an employer includes in an employment agreement, particularly with low-
28 level employees, given “disparities in resources, bargaining power, and access to

1 information.” *See Del. Elev., Inc. v. Williams*, No. 5596-VCL, 2011 WL 1005181,
2 at *10 (Del. Ch. Mar. 16, 2011) (“The threat of losing all protection gives employers
3 an incentive to restrict themselves to reasonable clauses.”). The equities are different
4 where two sophisticated business parties with relatively equal bargaining power, like
5 YRD and Teknor, have agreed to a restrictive covenant. *See Kan-Di-Ki, LLC*, 2015
6 WL 4503120, at *20 (upholding restrictive covenant because “there was nothing
7 inequitable about allowing [the party] to enforce the Restrictive Covenants for which
8 [the parties] bargained.”). Considering the equities between the parties, the Court
9 finds that Section 4(g) may be equitably reformed to make its enforcement reasonable
10 by limiting its scope to “Confidential Information” as defined in Section 2 subject to
11 the exclusions in Section 3.² In this way, YRD’s legitimate economic interest in
12 protecting its own confidential information is advanced while Teknor is not subjected
13 to an unreasonable restraint on its ability to fairly compete with YRD.

14 YRD has pleaded sufficient facts to support its claim that Teknor violated the
15 non-competition covenant in its enforceable form. The Court has already found that
16 YRD has pleaded sufficient facts showing that it provided confidential information
17 to Teknor under the CDA. YRD further alleges that Teknor is now competing with
18 YRD based on information it received under the CDA. (Compl. ¶¶1, 24–28, 35.)
19 The Court is mindful of Teknor’s concern that some information it received was not
20 in fact YRD confidential information and that YRD’s claim may fail on the merits to
21 the extent this proves to be true. At this stage of the proceedings, however, the Court
22 is required to take as true YRD’s allegations. Accordingly, the Court denies Teknor’s
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24
25 ² Moreover, the CDA contains a severability clause which provides that if any
26 provision is found to be unenforceable, in whole or in part, the remaining provisions
27 are not in any way affected or impaired. (CDA §12(f).) The Court’s modification of
28 Section 4(g) is consistent with the express intention of the parties to permit and accept
judicial modification of the contract’s terms. *See Hammervill Paper Co.*, 1983 WL
19786, at *6 (judicial modification of non-compete clause was consistent with
parties’ agreement).

1 motion to dismiss the breach of contract claim premised on Section 4(g).

2 **4. Section 9 is an Unenforceable Agreement to Agree**

3 Teknor argues that YRD’s claim for a breach of Section 9 should be dismissed
4 because (1) the provision did not require Teknor to negotiate a JDA and (2) it is an
5 unenforceable agreement to agree. (ECF No. 16-1 at 16, 25.) “It is a well-settled
6 principle of Delaware law that an agreement to agree in the future without any
7 reasonably objective controlling standards is unenforceable.” *Heritage Homes of De*
8 *La Warr, Inc. v. Alexander*, No. 1399-K, 2005 WL 2173992, at *3 (Del. Ch. Sept. 1,
9 2005), *aff’d*, 900 A.2d 100 (Del. 2006) (internal quotations omitted). Delaware law,
10 like most jurisdictions, requires that, “to be enforceable, a contract to enter into a
11 future contract must specify all its material and essential terms, and leave none to be
12 agreed upon as the result of future negotiations.” *Id.*; *see also Ramone v. Lang*, No.
13 1592-N, 2006 WL 905347, at *13 n.56 (Del. Ch. Apr. 3, 2006). Section 9 does not
14 satisfy this standard. Section 9 provides that “[b]oth parties agree that any future
15 projects done together will be covered by a specific Joint Development Agreement
16 which will cover all Intellectual Property issues.” (CDA §9.) Although the plain
17 terms of the provision purport to require the parties to enter into a future JDA, Section
18 9 contains no material terms of the JDA, but rather leaves them to the whims of future
19 negotiations which may never materialize and, as YRD alleges in the Complaint
20 (Compl. ¶¶1, 33), did not.

21 The Complaint repeatedly alleges that Teknor knew at least one material term
22 of the JDA—that YRD expected a royalty of \$1.50 per product sold or 10% of
23 Teknor’s sales. (*Id.* ¶¶1, 9, 20, 54, 86.) Delaware law requires the Court to examine
24 the words found in the CDA as the most objective indicia of the parties’ shared intent.
25 *See Sassano v. CIBC World Markets Corp.*, 948 A.2d 453, 462 (Del. Ch. 2008)
26 (footnotes omitted); *see also Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins.*
27 *Co.*, 616 A.2d 1192, 1195 (Del. 1992) (under Delaware law, interpretation of a
28 contract is a question of law). The Court may also consider all deeds given the

1 attendant circumstances and objectives the parties attempted to attain. *See Black*
2 *Horse Capital, LP v. Xstelos Holdings, Inc.*, No. 8642-VCP, 2014 WL 5025926, at
3 *12 (Del. Ch. Sept. 30, 2014). Even accepting the truth of YRD’s allegations,
4 Section 9’s express terms do not use the term “royalty,” nor otherwise refer to YRD’s
5 expected royalty. YRD’s allegations that Teknor “acknowledged” or was “aware”
6 of YRD’s expected royalty after the execution of the CDA, (Compl. ¶¶9, 54, 86),
7 cannot plausibly show that the parties intended the royalty term to be an enforceable
8 obligation under the CDA. Under Delaware law, it is overt manifestation of assent
9 at the time an agreement is made that controls the formation of a contract, not “after-
10 the-fact professed subjective intent.” *See Black Horse Capital, LP*, 2014 WL
11 5025926, at *12 (quoting *Debbs v. Berman*, 1986 WL 1243, at *7 (Del. Ch. Jan. 29,
12 1986)). Although YRD alleges that it communicated its expected royalty term before
13 the CDA was executed (Compl. ¶9), the CDA expressly “supersedes all prior
14 agreements between the parties with respect to its subject matter.” (CDA §12(g).)
15 The Complaint and Section 9 fail to plausibly show that any material terms of the
16 JDA were ever agreed upon.

17 YRD’s arguments to the contrary (ECF No. 22 at 21–22) are misplaced. First,
18 while it is true that Delaware law may enforce an express contractual promise to
19 negotiate in good faith even where the rest of the contract is unenforceable, YRD
20 points to no express contractual promise by Teknor to negotiate a JDA in good faith,
21 nor does the CDA contain one. *See Transocean Group Holdings Pty Ltd. v. South*
22 *Dakota Soybean Processors, LLC*, 663 F. Supp. 2d 731, 741 (D. Minn. 2009)
23 (provision specified that the “parties agree to negotiate in good faith the terms and
24 conditions of a formal Stockholders Agreement”); *see also SIGA Techs., Inc. v.*
25 *Pharmathene, Inc.*, 67 A.3d 330, 337 (Del. 2013) (similar); *Gillenardo v. Connor*
26 *Broad. Del. Co.*, No. 98C-06-015 WLW, 2002 WL 991110, at *5, 6 (Del. Super. Ct.
27 Apr. 30, 2002) (express contractual obligation to “attempt in good faith to finalize
28 the Sale Agreement”). Second, YRD’s reliance on *Echols v. Pelullo*, 377 F.3d 272

1 (3d Cir. 2004), is unavailing. Unlike in *Echols*, Teknor does not challenge the
2 validity of the entire CDA as an unenforceable agreement to agree based on Section
3 9, *see id.* at 275–76, but rather specifically challenges Section 9. It is that provision
4 which purports to require the parties to agree to a JDA for any future projects without
5 specifying all material terms of the JDA. Accordingly, the Court dismisses YRD’s
6 breach of contract claim premised on Section 9.³

7 **C. Count 2: Teknor’s Alleged Misappropriation of YRD’s Trade**
8 **Secrets**

9 Teknor argues that Count 2 should be dismissed because it fails to plausibly
10 plead misappropriation of trade secrets. (ECF No. 16-1 at 17–21.) To plead a claim
11 under the Delaware Uniform Trade Secrets Act (“DUTSA”), a plaintiff must allege
12 that: (1) a trade secret existed; (2) the trade secret was communicated by the plaintiff
13 to the defendant; (3) such communication occurred pursuant to an express or implied
14 understanding that the secrecy of the matter would be respected; and (4) the trade
15 secret was improperly used or disclosed by the defendant to the injury of the plaintiff.
16 *See Accenture Glob. Servs. GMBH v. Guidewire Software Inc.*, 581 F. Supp. 2d 654,
17 662 (D. Del. 2008); *Savor, Inc. v. FMR Corp.*, No. 00C-10-249-JRS, 2001 WL
18 541484, at *8–9 (Del. Super. Ct. Apr. 24, 2001). Teknor argues that YRD has failed
19 to plead sufficient factual allegations supporting the existence of any trade secrets
20 which Teknor misappropriated. The Court agrees with Teknor in part as to certain
21 alleged trade secrets. YRD, however, has sufficiently pleaded the existence of some
22 trade secrets that were misappropriated by Teknor.

23
24
25 ³ Other district courts have dismissed breach of contract claims that are
26 premised on unenforceable agreements to agree under other states’ laws. *See, e.g.,*
27 *Senter v. JPMorgan Chase Bank, N.A.*, 810 F.Supp.2d 1339, 1351–52 (S.D. Fla.
28 2011) (alleged agreement was an unenforceable agreement to agree under Florida
law because plaintiffs failed to adequately plead essential terms of the agreement);
Beazer Homes Corp. v. VMIF/Anden Southbridge Venture, LP, 235 F. Supp. 2d 485,
490–93 (E.D. Va. 2002) (unenforceable agreement to agree under Virginia law).

1 **1. YRD Has Pleaded the Existence of Some Trade Secrets, But**
2 **Not Others**

3 The Court first considers Teknor’s argument that YRD has failed to plead the
4 existence of a trade secret. (ECF No. 16-1 at 17–19.) Under the DUTSA, a “trade
5 secret” is “information, including a formula, pattern, compilation, program, device,
6 method, technique or process, that (a) derives independent economic value, actual or
7 potential, from not being generally known to, and not being readily ascertainable by
8 proper means by, other persons who can obtain economic value from its disclosure
9 or use; and (b) is the subject of efforts that are reasonable under the circumstances to
10 maintain its secrecy.” 6 Del. C. §2001(4).

11 A plaintiff faces a quandary in pleading trade secrets under the DUTSA. On
12 the one hand, “[c]ourts are in general agreement that trade secrets need not be
13 disclosed in detail in a complaint alleging misappropriation for the simple reason that
14 such a requirement would result in public disclosure of the purported trade secrets.”
15 *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 755 F. Supp. 635, 636 (D. Del.
16 1991); *see also Orthovita, Inc. v. Erbe*, No. 07-2395, 2008 WL 423446, at *9 (E.D.
17 Pa. Feb. 14, 2008); *AutoMed Technologies, Inc. v. Eller*, 160 F. Supp. 2d 915, 921
18 (N.D. Ill. 2001). Moreover, because it is the defendant who knows what it
19 misappropriated, a plaintiff should not be required to plead with specificity all of its
20 possible trade secrets in order to proceed to discovery. *See T-Mobile USA, Inc. v.*
21 *Huawei Device USA, Inc.*, 115 F. Supp. 3d 1184, 1193 (W.D. Wash. 2015). On the
22 other hand, “courts generally require sufficient pleading such that the other party is
23 on notice of what it is alleged to have misappropriated.” *BlueEarth BioFuels, LLC*
24 *v. Hawaiian Elec. Co., Inc.*, 780 F. Supp. 2d 1061, 1078 (D. Haw. 2011); *see also*
25 *MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 522 (9th Cir. 1993) (“[A]
26 plaintiff who seeks relief for misappropriation of trade secrets must identify the trade
27 secrets and carry the burden of showing that they exist.”). This pleading requirement
28 also prevents a plaintiff from “tak[ing] unfair advantage of the UTSA,” and

1 “proceed[ing] on a flimsy basis” at the outset of a litigation only to “tailor[] its
2 identification of trade secrets to the discovery it receives.” *T-Mobile USA, Inc.*, 115
3 F. Supp. 3d at 1193.

4 YRD makes multiple allegations that may support its trade secret
5 misappropriation claim, which can be grouped into three categories: (a) YRD’s new
6 compact hose concept and designs, (b) YRD’s business strategy for selling its
7 products, and (c) YRD’s marketing ideas and sales information. In considering
8 whether YRD’s allegations regarding this information are sufficient to plead the
9 existence of trade secrets, the Court views judicial interpretation of the UTSA more
10 generally as relevant and persuasive guidance. *See* 6 Del. C. §2008 (“This chapter
11 shall be applied and construed to effectuate its general purpose to make uniform the
12 law with respect to the subject of this chapter among states enacting it.”); *Accenture*
13 *Global Servs. GMBH v. Guidewire Software Inc.*, 581 F. Supp. 2d 654, 662 n.6 (D.
14 Del. 2008).

15 **a. YRD’s Concept and Designs for a New Compact Hose**

16 First, YRD alleges that it developed a “new concept” and a “revolutionary
17 approach to build[ing] a compact hose.” (Compl. ¶¶16, 18, 23.) Teknor asserts that
18 YRD’s alleged concept for a new compact hose fails to “rise to the level of a trade
19 secret” based on the allegations. (ECF No. 21 at 8.) The Court does not agree.

20 YRD provides factual allegations describing how its concept “improved” on
21 existing hoses in the market and identifies various attributes of its concept, including
22 the use of protective sleeves at the connectors, a change in the design of the inner
23 hose liner, and use of abrasion resistant outer casings. (Compl. ¶¶17–18.) Teknor’s
24 argument that YRD does not allege it knew how to manufacture or otherwise achieve
25 its alleged concept for a new compact hose is unavailing. (ECF No. 16-1 at 18.)
26 Concepts have value independent of the product they eventually inspire. *See Mattel,*
27 *Inc. v. MGA Ent., Inc.*, 782 F. Supp. 2d 911, 962 (C.D. Cal. 2011) (citing *Learning*
28 *Curve Toys, Inc. v. PlayWood Toys, Inc.*, 342 F.3d 714, 726 (7th Cir. 2003)). For

1 that reason, “trade secrets may reside in confidential disclosures of concepts, or as
2 yet-untested, ideas for a new product or new process.” *Id.* YRD’s factual allegations
3 identifying an alleged new concept for a compact garden hose sufficiently plead a
4 trade secret.

5 Second, and contrary to Teknor’s argument that the Complaint does not allege
6 YRD knew how to achieve its concept for a new compact hose, the Complaint
7 plausibly alleges the existence of trade secrets pertaining to the design of the new
8 compact hose. YRD alleges that it provided Teknor with “the new hose design with
9 multiple variations” including through “videos of new prototypes and samples”,
10 various types of testing results, design techniques, and “new means to manufacture”
11 the hose. (Compl. ¶¶13–14, 16–17, 22–23.) YRD alleges that it provided Teknor
12 with information on production scenarios for variations of the new hose at Teknor’s
13 request. (*Id.* ¶21.) These allegations sufficiently allege the existence of trade secrets.
14 *See, e.g., BioD, LLC v. Amnio Tech., LLC*, No. 2:13-cv-1670-HRH, 2014 WL
15 268644, at *7–8 (D. Ariz. Jan. 24, 2014) (plaintiff pleaded manufacturing methods,
16 prototypes, and product design); *W.L. Gore & Associates, Inc. v. GI Dynamics, Inc.*,
17 No. CV-10-8088-PHX-GMS, 2010 WL 5184254, at *8 (D. Ariz. Dec. 15, 2010)
18 (same); *SOAProjects, Inc. v. SCM Microsystems, Inc.*, No. 10-CV-01773-LHK, 2010 WL
19 5069832, at *10 (N.D. Cal. Dec. 7, 2010) (plaintiff pleaded products and designs).

20 The Complaint also contains allegations bearing on whether the alleged trade
21 secrets had economic value from not being generally known. YRD alleges that its
22 concept for a new compact hose “was not currently being marketed and was not
23 known in the industry outside of YRD.” (Compl. ¶18.) YRD alleges that its new
24 concept hose “would have a huge competitive advantage over expanding hoses”
25 which had manufacturing defects and poor reputations among retailers and
26 consumers. (*Id.* ¶¶10, 16, 18.) Thus, YRD has plausibly alleged trade secrets that
27 derived actual or potential economic value from not being generally known. *See, e.g.*
28 *Joshua David Mellberg LLC v. Will*, 96 F. Supp. 3d 953, 974 (D. Ariz. 2015).

1 Further, YRD alleges efforts to protect these alleged trade secrets by requiring
2 Teknor to enter into the CDA and sharing its alleged trade secrets pursuant to its
3 confidentiality provisions. (Compl. ¶¶1, 11–12, 15, 18–19, 21, 26.) Although the
4 existence of a confidentiality agreement does not make information shared pursuant
5 to it a trade secret, the existence of such an agreement is relevant to whether a party
6 took reasonable steps to ensure secrecy of its alleged trade secrets. *See MAI Sys.*
7 *Corp.*, 991 F.2d at 521; *Vesta Corp. v. Amdocs Mgmt., Ltd.*, 80 F. Supp. 3d 1152,
8 1166 (D. Or. 2015). As even Teknor recognizes, the CDA itself imposed stringent
9 requirements on use and disclosure of confidential information received pursuant to
10 its provisions. Accordingly, YRD has sufficiently pleaded the existence of trade
11 secrets based on its concept for a new hose and designs.⁴ Whether they in fact rise
12 to the level of a trade secret is a question of fact for determination by a jury, not this
13 Court on a motion to dismiss. *See Savor, Inc. v. FMR Corp.*, No. 00C-10-149JRS,
14 2004 WL 1965869, at *7 (Del. Super. Ct. July 15, 2004).

15 **b. YRD’s Alleged Business Strategy**

16 In addition to identifying its concept for a new hose and designs as potential
17 trade secrets, YRD claims that its “business strategy” pertaining to how YRD sells
18 its products was also a trade secret. (*See* Compl. ¶42; ECF No. 18 at 25–26.)
19 Although YRD alleges that its business strategy was shared under the provisions of
20 the CDA and was not generally known to the public (Compl. ¶43), the plausibility of
21 this allegation is undermined by YRD’s single factual allegation about the strategy.
22 YRD alleges that its “business strategy” consisted of selling its hose products quickly
23 through QVC online followed by sales through brick and mortar retailers, and that it
24

25 ⁴ Teknor relies heavily on *Accenture Global Servs. GMBH v. Guidewire*
26 *Software Inc.*, 581 F. Supp. 2d 654 (D. Del. 2008), to argue that YRD has failed to
27 plead the existence of trade secrets. That case turned on whether the allegations
28 showed misappropriation, not whether the allegations showed the existence of trade
secrets. *Id.* at 663–64. Indeed, the court found sufficient the plaintiff’s “basic
description” of its trade secrets. *Id.* 663 n.9.

1 experienced great success in selling its earlier products with this strategy. (*Id.* ¶46.)
2 Assuming the truth of this allegation, the Court is hard pressed to see how this
3 strategy, as pleaded, could plausibly constitute a trade secret even if it was shared
4 with Teknor under the provisions of the CDA. “[D]isclosure to the public through
5 marketing and sales . . . is fatal to the existence of a trade secret.” *See Kavanagh v.*
6 *Tuller*, No. 16-cv-01937-H (BGS), 2017 WL 1496436, at *4 (S.D. Cal. Apr. 26,
7 2017). Without further factual allegations describing efforts to maintain the secrecy
8 of this strategy, it appears that a zealous competitor could easily ascertain or reverse
9 engineer through public information the core of YRD’s alleged business strategy
10 regarding when and where YRD sold its prior products. Such an ability defeats the
11 existence of a trade secret. *See id.*; *see also Atlantic Medical Specialists, LLC v.*
12 *Gastroenterology Associates*, No. N15C-06-245 CEB, 2017 WL 1842899, at *9 (Del.
13 Super. Ct. Apr. 20, 2017) (“information is not misappropriated when it is readily
14 ascertainable by reverse engineering”) (internal quotations omitted); *Savor, Inc.*,
15 2004 WL 1965869, at *6 (information “clearly in . . . the public domain” at time of
16 alleged misappropriation is not a trade secret). The Complaint otherwise lacks
17 plausible factual allegations that Teknor misappropriated the alleged strategy. YRD
18 merely alleges that Teknor knew the strategy (Compl. ¶46), but fails to provide
19 further factual allegations showing misappropriation. Mere knowledge, without
20 more, is not sufficient to raise an inference of trade secret misappropriation under
21 Delaware law. *See* 6 Del. C. §2001(2). YRD does not allege that Teknor’s business
22 model for the Zero-G Hose utilized YRD’s business strategy in any way. The Court
23 finds that YRD’s trade secrets misappropriation claim must be dismissed to the extent
24 it is premised on YRD’s “business strategy.”

25 **c. YRD’s Marketing Ideas and Sales Information**

26 Finally, YRD alleges it provided Teknor with (1) “marketing ideas” and (2)
27 “sales sheets” and “sales data.” (Compl. ¶¶15, 17). YRD has failed to plead factual
28 allegations about this information that would support a trade secrets misappropriation

1 claim.

2 First, courts recognize that sales data may constitute a trade if it is not readily
3 ascertainable from a public source but instead developed with a substantial amount
4 of time, effort, and money. *See SBS Worldwide, Inc. v. Potts*, No. 13 C 6557, 2014
5 WL 499001, at *4 (N.D. Ill. Feb. 7, 2014); *Mintel Int’l Grp., Ltd. v. Neergheen*, No.
6 08-cv-3939, 2010 WL 145786, at *11 (N.D. Ill. Jan. 12, 2010). The Complaint
7 contains no factual allegations showing that the sales sheets and data YRD allegedly
8 shared with Teknor were not readily ascertainable from public sources or developed
9 through substantial efforts by YRD. Furthermore, the Complaint lacks factual
10 allegations connecting Teknor’s allegedly unlawful commercialization of the Zero-
11 G Hose to YRD’s sales sheets and data.

12 Second, YRD has failed to plead that its “marketing ideas” are trade secrets.
13 Courts recognize that various types of marketing-related information, such as
14 marketing plans, market analysis, and marketing activities, may constitute a trade
15 secret. *See PepsiCo, Inc. v. Redmond*, 54 F.3d 1262, 1268 (7th Cir. 1995) (marketing
16 plan); *Roton Barrier, Inc. v. Stanley Works*, 79 F.3d 1112, 1117 (Fed. Cir. 1996)
17 (market analysis information); *Mintel Int’l Grp., Ltd.*, 2010 WL 145786, at *11
18 (marketing activities). However, the Complaint references only the attributes of
19 YRD’s compact hose concept and not any marketing ideas. (Compl. ¶¶17, 27.) To
20 the extent YRD’s “marketing ideas” mean its “business strategy” regarding
21 marketing to QVC, the Court has already rejected this theory. Furthermore, YRD
22 has not alleged that Teknor used or disclosed its marketing ideas in its
23 commercialization of the Zero-G Hose. Although YRD refers to Teknor’s
24 promotional information related to the Zero-G Hose (*id.* ¶27), the focus of the
25 allegation is on Teknor’s alleged use of certain attributes of YRD’s concept and
26 design for a compact hose, not Teknor’s use of YRD’s alleged marketing ideas to
27 market the Zero-G Hose. Accordingly, YRD’s trade secrets misappropriation claim
28 is dismissed to the extent it relies on nebulous allegations of “marketing ideas,” or

1 alleged misappropriation of sales sheets and data.

2 **2. YRD Has Pleaded Misappropriation of its Compact**
3 **Hose Concept and Design by Teknor**

4 The Court next considers Teknor’s argument that YRD has failed to plead
5 misappropriation of the compact hose concept and design. Teknor argues that YRD
6 must affirmatively show how the Zero-G Hose incorporates this concept and design.
7 (ECF No. 16-1 at 20.) The Court does not agree and finds sufficient YRD’s
8 allegations.

9 To support its misappropriation claim, YRD must plead that Teknor acquired
10 its trade secrets through improper means, or unlawfully used or disclosed its trade
11 secrets. 6 Del. C. §2001(2)(a)–(b); *see also Savor, Inc.*, 2004 WL 1965869, at *8.
12 “Improper means” includes “theft, bribery, misrepresentation, breach or inducement
13 of a breach of a duty to maintain secrecy, or espionage through electronic or other
14 means.” 6 Del. C. §2001(1). The scope of what might constitute misappropriation
15 is broad. “Misappropriation includes not only wholesale pirating of an ideas, but also
16 the unauthorized utilization of an idea as a starting point or guide in developing a
17 process or as a means to understand what pitfalls to avoid.” *See Savor, Inc.*, 2004
18 WL 1965869, at *8 (internal quotations omitted); *see also Mangren Research & Dev.*
19 *Corp. v. Nat’l Chem. Co.*, 87 F.3d 937, 944 (7th Cir. 1996) (“[I]f trade secret law
20 were not flexible enough to encompass modified or even new products that are
21 substantially derived from the trade secret of another, the protections that law
22 provides would be hollow indeed.”). YRD alleges two types of misappropriation by
23 Teknor. First, YRD alleges that the Zero-G Hose utilizes YRD confidential
24 information that Teknor did not know before its relationship with YRD and could not
25 have known given its alleged lack of prior relevant experience. (Compl. ¶¶2, 7–8,
26 25–26, 34, 46.) Second, YRD alleges that Teknor disclosed its trade secrets, as
27 incorporated into its Zero-G Hose, to specifically named third party retailers without
28 YRD’s consent. (*Id.* ¶¶36, 46.) Allegations of such conduct fall squarely within the

1 DUTSA’s ambit. Teknor’s challenge turns on whether YRD has supported this
2 alleged misappropriation with factual allegations.

3 Teknor’s argument that YRD must affirmatively show in its pleadings how the
4 Zero-G Hose’s development, distribution, or marketing incorporated each of YRD’s
5 alleged trade secrets is premised on a standard that is simply not required at the
6 pleading stage given the realities of trade secrets misappropriation.⁵ A plaintiff is in
7 a precarious position when it seeks to hold another party accountable for trade secrets
8 misappropriation. On the one hand, it is not common for a plaintiff to know, prior to
9 discovery, the details surrounding an alleged theft of trade secrets. *Accenture*, 581
10 F. Supp. 2d at 661. Indeed, a plaintiff “may have minimal facts available to it at the
11 pleading stage.” *Id.* at 662. Courts recognize that a plaintiff oftentimes will not have
12 direct evidence of misappropriation, but rather only circumstantial evidence—even
13 after discovery is completed. *See Savor, Inc.*, 2004 WL 1965869, at *8 (“[I]t is now
14 well-settled that the plaintiff may prove misappropriation of trade secrets with
15 circumstantial evidence.”); *see also Computer Sciences Corp. v. Computer*
16 *Associates, Int’l, Inc.*, Nos. CV 98–1374–WMB SHX, CV 98–1440–WMB SHX,
17 1999 WL 675446, at *12 (C.D. Cal. Aug. 12, 1999) (“[D]irect evidence of trade
18 secret misappropriation is often hard to come by, and . . . misappropriation may
19 therefore be inferred from ambiguous circumstantial evidence . . .”). It follows that
20 a complaint may similarly rely on circumstantial allegations of a defendant’s
21 misappropriation. On the other hand, a court must strike a balance between that
22 reality and the fair notice Rule 8 requires. *Accenture*, 581 F. Supp. 2d at 662. A
23 court will not permit a plaintiff “to conduct a fishing expedition based upon . . . bare
24 allegations” of misappropriation. *Id.* at 663; *see also T-Mobile USA, Inc.*, 115 F.

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26
27 ⁵ Teknor’s reliance on *XpertUniverse, Inc. v. Cisco Sys., Inc.*, No. 09-157-
28 RGA, (D. Del. Mar. 8, 2013), is misplaced. The court was considering a motion for
summary judgment and expressly applying Rule 56’s evidentiary standard, which
does not apply at the motion to dismiss stage.

1 Supp. 3d at 1193. Thus, if a plaintiff seeks to plead trade secrets misappropriation
2 based on circumstantial allegations, the allegations must still “be enough to raise a
3 right to relief above the speculative level.” *Twombly*, 550 U.S. at 555; *see also*
4 *SOAProjects*, 2010 WL 5069832, at *11 (finding trade secrets misappropriation
5 claim plausible based on “circumstantial allegations” of misappropriation).

6 The Complaint contains more than “bare allegations” of Teknor’s alleged
7 misappropriation. YRD alleges that Teknor did not know how to build a compact
8 hose and was not in the business of compact hoses when it approached YRD in 2014.
9 (Compl. ¶¶7–8, 27.) YRD shared with Teknor, and Melo specifically, its concept for
10 a new compact hose and designs, pursuant to a CDA requiring Teknor to protect
11 confidential information it received and limiting its use by Teknor. (*Id.* ¶¶13–17,
12 21.) YRD also informed Teknor that it intended to commercialize a hose with
13 changed interior design based on the confidential information it was providing to
14 Teknor. (*Id.* ¶18.) Teknor indicated it wanted to commercialize such a concept too,
15 requesting additional information from YRD. (*Id.* ¶¶19, 21.) Teknor subsequently
16 went silent with YRD and disavowed any new product development outside of its
17 core business. (*Id.* ¶24.) Meanwhile, through 2015, Teknor allegedly developed its
18 Zero-G Hose based on confidential information YRD provided and established sales
19 channels with retailers for the hose. (*Id.* ¶¶1, 26–27, 32, 40, 46.) The promotional
20 information for the Zero-G Hose incorporates attributes of YRD’s concept. (*Id.* ¶27.)
21 YRD further alleges that Teknor has gained a “huge competitive advantage” by
22 rolling out the Zero-G Hose based on YRD’s confidential information. (*Id.* ¶¶ 28,
23 40.) These allegations sufficiently identify the contours of Teknor’s alleged
24 misappropriation and are substantial enough to justify opening the door to discovery.
25 *See, e.g., Spears Pharm., Inc. v. William Blair & Co., LLC*, 610 F. Supp. 2d 278, 283
26 (D. Del. 2009). Accordingly, the Court denies Teknor’s motion to dismiss Count 2
27 insofar as it concerns alleged misappropriation of YRD’s compact hose concept and
28 designs.

1 **D. DUTSA Preemption of Certain Claims**

2 Teknor argues that the Court should dismiss YRD’s claims for unjust
3 enrichment (Count 3), conversion (Count 4), and unfair competition (Count 6) as
4 statutorily preempted by the DUTSA and the California Uniform Trade Secret Act
5 (“CUTSA”). (ECF No. 16-1 at 9.) In response, YRD argues that preemption under
6 the DUTSA or CUTSA cannot be assessed at the pleading stage, but even if it can,
7 the claims are not preempted because they seek to vindicate contractual rights under
8 the CDA. (ECF No. 22 at 12.) Because the Court has determined that Delaware law
9 governs YRD’s tort law claims, the Court only considers whether the DUTSA
10 preempts Counts 3, 4, and 6.

11 **1. The Scope of the Preemption Inquiry**

12 The DUTSA “displaces conflicting tort, restitutionary and other law of this
13 State providing civil remedies for misappropriation of a trade secret.” 6 Del. C.
14 §2007(a). Section 2007 was intended to “make uniform the law with respect to” trade
15 secrets and to “preserve a single tort cause of action under state law for
16 misappropriation” and “thus to eliminate other tort causes of action founded on
17 allegations of trade secret misappropriation.” *Osco v. Motors Co., LLC v. Marine*
18 *Acquisition Corp.*, No. 13-868-RGA/MPT, 2014 WL 2875374, at *13 (D. Del. June
19 24, 2014); *Leucadia, Inc.*, 755 F. Supp. at 637. Section 2007’s displacement
20 provision, in relevant part, “does not affect (1) [c]ontractual remedies, whether or not
21 based upon misappropriation of a trade secret,” or “(2) [o]ther civil remedies that are
22 not based upon misappropriation of a trade secret.” 6 Del. C. §2007(b). The relevant
23 inquiry for determining whether a civil claim is subject to preemption under the
24 DUTSA is whether the claim is “grounded in the same facts which purportedly
25 support the misappropriation of trade secrets claim.” *Savor, Inc.*, 2001 WL 541484,
26 at *4. The Court should inquire whether the failure of the misappropriation claim
27 “would doom the common law claim.” *Ethypharm S.A. France v. Bentley Pharms.,*
28 *Inc.*, 388 F. Supp. 2d 426, 433 (D. Del. 2005) (citing *Smithfield Ham & Prods. Co. v.*

1 *Portion Pac, Inc.*, 905 F. Supp. 346, 350 (E.D. Va. 1995)). Where a civil claim is
2 based on the same facts as a trade secrets misappropriation claim, it is preempted
3 under the DUTSA. *Savor, Inc.*, 2001 WL 541484, at *4.

4 Relying on *Amron International Diving Supply, Inc. v. Hydrolinx Diving*
5 *Communication, Inc.*, No. 11-cv-1890-H (JMA), 2011 WL 5025178 (S.D. Cal. Oct.
6 21, 2011), YRD argues that the Court cannot undertake the preemption inquiry at the
7 motion to dismiss stage. (ECF No. 22 at 12.) In *Amron*, the court intimated that the
8 defendants’ preemption argument “cannot be addressed until it is determined whether
9 the allegedly misappropriated information constitutes a trade secret” because at the
10 pleading stage “the status of information is merely a matter of allegation.” *Id.* at
11 *10.⁶ The authorities on which the *Amron* court relied similarly contend that
12 preemption on the pleadings is generally not proper because the ultimate status of the
13 information is unknown. *See Genzyme Corp. v. Bishop*, 463 F. Supp. 2d 946, 949
14 (W.D. Wis. 2006) (court lacked “sufficient factual information” based on pleadings
15 “to conclude as a matter of law” that the allegedly received and retained information
16 constituted a trade secret); *Callaway Golf Co. v. Dunlop Slazenger Grp. Am., Inc.*,
17 295 F. Supp. 2d 430, 437 (D. Del. 2003) (“[I]t has not been established that the
18 information at issue may be classified as trade secrets. At this point, the status of the
19 information is merely a matter of allegation.”); *Stone Castle Fin. v. Friedman,*
20 *Billings, Ramsey & Co.*, 191 F. Supp. 2d 652, 658–659 (E.D. Va. 2002) (“[W]here
21 courts have found preemption on a motion to dismiss, they repeatedly establish that
22 the information in issue—as alleged—constitutes trade secrets before reaching the
23 preemption question.”); *Combined Metals of Chicago Ltd. P’ship v. Airtek, Inc.*, 985
24 F. Supp. 827, 830 (N.D. Ill. 1997) (permitting breach of fiduciary duty claim because
25

26 ⁶ The court, however, had already rejected the defendants’ argument that the
27 CUTSA displaced several common law claims because those claims “do not allege
28 claims for relief that were based on identical facts as those claimed in [the plaintiff’s]
misappropriation of trade secrets.” *Amron*, 2011 WL 5025178, at *10. Thus, the
court’s preemption discussion appears to be dicta.

1 it was not clear based on allegations whether die and design specifications would
2 qualify as a trade secret).

3 In contrast, Teknor argues that the potential status of the allegedly
4 misappropriated information is irrelevant because preemption extends to common
5 law claims premised on information that falls short of a trade secret. (ECF No. 21 at
6 3.) Case law supports this position. For example, in *Ethypharm S.A.*, the court
7 determined that “[b]ecause all claims stemming from the same acts as the alleged
8 misappropriation are intended to be displaced, a claim can be displaced even if the
9 information at issue is not a trade secret.” 388 F. Supp. 2d at 433. As such, “a
10 determination of whether the information at issue constitutes a trade secret under the
11 DUTSA need not be addressed prior to making a determination of displacement.” *Id.*
12 Courts have reasoned that in enacting the DUTSA, the Delaware Legislature decided
13 to make unlawful only misappropriation of statutory trade secrets. *See id.; Leucadia,*
14 *Inc.*, 755 F. Supp. at 637; *see also Bliss Clearing Niagara, Inc. v. Midwest Brake*
15 *Bond Co.*, 270 F. Supp. 2d 943, 949 (W.D. Mich. 2003). The Court finds persuasive
16 this broader approach to preemption. The DUTSA is Delaware’s enactment of the
17 Uniform Trade Secrets Act (“UTSA”), which contains identical preemption
18 provisions. *See Atl. Med. Specialists*, 2017 WL 1842899, at *15 (“Because
19 Delaware’s version is *in pari materia* with the provision promulgated in the UTSA,
20 at least as to this [preemption] dispute, they may be referenced interchangeably. . .”)
21 The UTSA preemption provision has generally been interpreted to abolish all free-
22 standing alternative causes of action for theft or misuse of confidential, proprietary,
23 or otherwise secret information falling short of trade secret status. *See Composite*
24 *Marine Propellers, Inc. v. Van Der Woude*, 962 F.2d 1263, 1265 (7th Cir. 1992)
25 (“[UTSA] has abolished all common law theories of misuse of [secret] information.
26 Unless defendants misappropriated a (statutory) trade secret, they did no legal
27 wrong.”); *Hauck Mfg. v. Astec Indus.*, 375 F. Supp. 2d 649, 654–55 (E.D. Tenn.
28 2004). Permitting otherwise displaced tort claims to proceed simply because the

1 information may not rise to the level of a trade secret would defeat the purpose of the
2 UTSA. *See Atl. Med. Specialists*, 2017 WL 1842899, at *14. Delaware courts apply
3 this approach when determining whether claims are displaced under the DUTSA. *Id.*
4 at *15 (“Delaware has joined the ‘majority view’ that section 7 of UTSA precludes
5 claims based on misappropriation of business information even in cases in which the
6 claim does not meet the statutory definition of ‘trade secret’ . . .); *see also Savor, Inc.*
7 *v. FMR Corp.*, 812 A.2d 894, 898 (Del. 2002) (rejecting argument that trial court’s
8 dismissal of common law claims was premature because the “common law claims
9 seek civil remedies based solely on the alleged misappropriation of a trade secret.”).
10 Accordingly, YRD’s common law claims will be preempted under the DUTSA if
11 they are grounded in the same facts that support YRD’s trade secrets
12 misappropriation claim regardless of whether the information would ultimately rise
13 to the level of a trade secret.

14 **2. Counts 4 and 6 Are Preempted, but Count 3 is Not**

15 As a preliminary matter, relying on *Atlantic Medical Specialists*, 2017 WL
16 1842899, YRD argues that none of its claims are preempted because they seek to
17 vindicate contractual rights under the CDA. In *Atlantic Medical Specialists*, the court
18 permitted a tortious interference with contract claim, premised on an alleged
19 inducement to violate a contractual confidentiality provision, to proceed despite
20 DUTSA’s civil remedies displacement provision. *Id.* at *12, 16. However, unlike
21 the tortious interference with contract claim at issue in *Atlantic Medical Specialists*,
22 a claim which expressly required the existence of contract, claims for unjust
23 enrichment, conversion, and unfair competition generally do not require the existence
24 of a contract, nor have courts considered them to provide “contractual remedies”
25 within the scope of UTSA’s exemption of such remedies from displacement. *See,*
26 *e.g., New South Equip. Mats, LLC v. Keener*, 989 F. Supp. 2d 522, 533 n.6 (S.D.
27 Miss. 2013) (collecting cases showing that a majority of courts have found
28 conversion claims preempted under displacement provisions of the UTSA); *Office*

1 *Home Depot, Inc. v. Impact Office Products., LLC*, 821 F. Supp. 2d 912, 922 (N.D.
2 Ohio 2011) (“UTSA expressly preempts this type of ‘restitutionary’ remedy” of
3 unjust enrichment); *Savor, Inc.*, 812 A.2d at 898 (unfair competition claim preempted
4 under DUTSA displacement provisions). A party cannot save a common law claim
5 from preemption by merely asserting that the claim seeks to vindicate a contractual
6 right although the common law claim itself does not require the existence of a
7 contract. Interpreting Section 2007(b)(1)’s exemption of contractual remedies so
8 broadly would eclipse the DUTSA’s otherwise broad displacement of conflicting tort
9 and restitutionary law providing civil remedies for trade secret misappropriation.
10 The Court, therefore, rejects YRD’s argument.⁷

11 The Court finds that Counts 4 and 6 are preempted by the DUTSA because
12 they are grounded in the same facts underlying YRD’s trade secrets misappropriation
13 claim. Count 4, YRD’s conversion claim, is specifically premised on Teknor’s
14 alleged misuse of information shared under the CDA and resulting detriment to YRD,
15 (Compl. ¶¶58–61), and is therefore “clearly preempted” under the DUTSA. *See UD*
16 *Tech. Corp. v. Phenomenex, Inc.*, No. 05-842-GMA, 2007 WL 28295, at *9 (D. Del.
17 Jan. 4, 2007). Likewise Count 6 is premised on YRD’s use of information shared
18 under the CDA and Teknor’s alleged gain of an “unfair competitive advantage over
19 YRD” as a result of its conduct (Compl. ¶75)—an allegation identical to YRD’s
20 allegation in its trade secrets misappropriation claim (*id.* ¶47). Notably, YRD’s
21 unfair competition claim expressly turns on its trade secrets misappropriation claim.
22

23 ⁷ The Court also finds YRD’s argument unpersuasive for another reason as to
24 Counts 3 and 4. YRD cannot avoid DUTSA preemption of these claims by arguing
25 that they seek to vindicate contractual rights when these claims may themselves be
26 displaced by the existence of a contractual remedy. *See, e.g., Khushaim v. Tullow,*
27 *Inc.*, No. N15C-11-212-PRW, 2016 WL 3594752, at *7–8 (Del. Super. Ct. June 27,
28 2016) (under Delaware law, conversion claims are displaced where a valid contract
provides a remedy); *MetCap Secs. LLC v. Pearl Senior Care, Inc.*, No. Civ. A. 2129-
VCN, 2007 WL 1498989, at *5 (Del. Ch. May 16, 2007) (unjust enrichment claims
are displaced where a valid contract provides a remedy).

1 YRD expressly alleges that “[YRD] will suffer irreparable harm at the hand of
2 [Teknor] unless [Teknor is] enjoined from utilizing YRD *trade secrets* or distributing
3 products developed from YRD *trade secrets*.” (*Id.* ¶79 (emphasis added).) Courts
4 have dismissed unfair competition claims on preemption grounds where such claims
5 are “grounded in the same facts which purportedly support the Misappropriation of
6 Trade Secrets claim” under the DUTSA. *Savor, Inc.*, 2001 WL 541484, at *4; *see*
7 *also Leucadia, Inc.*, 755 F. Supp. at 636–37. If the Court disregarded the alleged
8 misuse of confidential information to assess the sufficiency of YRD’s conversion and
9 unfair competition claims, the claims would otherwise lack sufficient factual matter
10 to state a claim that is plausible on its face. *See BlueEarth BioFuels*, 780 F. Supp.
11 2d at 1074 (“If this cause of action does not relate to the unlawful retention of trade
12 secrets or confidential information, as Plaintiff represents, there are simply
13 insufficient facts to state a claim for relief that is plausible on its face. . .”). The
14 Complaint is devoid of other allegations, independent of Teknor’s alleged misuse of
15 confidential information, which could support these claims. Accordingly, the Court
16 grants Teknor’s motion to dismiss Counts 4 and 6 as preempted.

17 However, the Court finds that YRD’s unjust enrichment claim (Count 3) is in
18 part not preempted under the DUTSA. Count 3 in part concerns confidential
19 information shared under the CDA with Teknor (Compl. ¶52). To the extent the
20 claim rests on Teknor’s alleged misappropriation of such information, the claim is
21 grounded in the same facts as YRD’s trade secrets misappropriation claim and is
22 preempted by the DUTSA. *See Office Home Depot, Inc.*, 821 F. Supp. 2d at 922
23 (finding partial preemption of unjust enrichment claim). However, YRD alleges
24 other facts in support of the claim, specifically that Teknor was unjustly enriched by
25 failing to enter into the JDA with YRD. (Compl. ¶¶53–54.) YRD’s misappropriation
26 claim otherwise neither makes an express reference to the JDA, nor Teknor’s failure
27 to enter into it. (*See generally id.* ¶¶41–50.) The failure of YRD’s misappropriation
28 claim will not doom its claim that Teknor was unjustly enriched by failing to enter

1 into the JDA. Accordingly, the Court denies Teknor’s motion to dismiss Count 3 on
2 this basis.

3 **E. Displacement of Counts 3 and 4 by Alleged Breaches of the CDA**

4 Teknor argues that YRD’s breach of contract claim “independently displaces”
5 Counts 3 and 4 because the claims arise from Teknor’s alleged breach of the CDA.
6 (ECF No. 16-1 at 9.) Although the Court has found that YRD’s conversion claim is
7 subject to preemption under the DUTSA, the Court will also address Teknor’s
8 argument that the claim is independently displaced by YRD’s breach of contract
9 claim. The Court finds that although the unjust enrichment claim is not displaced by
10 YRD’s breach of contract claim, the conversion claim is independently displaced by
11 it.

12 **1. YRD’s Unjust Enrichment Claim is Not Displaced**

13 In Count 3, YRD alleges that Teknor was unjustly enriched by failing to enter
14 into a JDA with YRD while retaining the benefit and profits of highly valuable
15 confidential information it received from YRD through its solo commercialization of
16 the Zero-G Hose. (Compl. ¶¶52–56.) Although Teknor has argued that the CDA did
17 not obligate Teknor to negotiate a JDA, Teknor asserts that the YRD’s corresponding
18 breach of contract claim under the CDA displaces the unjust enrichment claim. (ECF
19 No. 16-1 at 11.) In response, YRD argues both that the CDA obligated Teknor to
20 negotiate a JDA and, if that obligation is not an enforceable contractual provision, it
21 can alternatively sue Teknor for unjust enrichment based on a failure to enter a JDA.
22 (ECF No. 22 at 16.)

23 Under Delaware law, “[u]njust enrichment is defined as the unjust retention of
24 a benefit to loss of another, or the retention of money or property of another against
25 fundamental principles of justice or equity and good conscience.” *Shock v. Nash*,
26 732 A.2d 217, 232 (Del. 1999). It requires: (1) an enrichment, (2) an
27 impoverishment, (3) a relation between the enrichment and impoverishment, (4) the
28 absence of justification and (5) the absence of a remedy provided by law. *U.S. Bank*

1 *Nat'l Ass'n v. Gunn*, Civ. No. 11-CV-1155-RGA, 2015 WL 4641611, at *5 (D. Del.
2 Aug. 5, 2015). Before reaching the elements of an unjust enrichment claim, a court
3 must satisfy itself that no contract already governs the relevant relationship between
4 the parties. Where the complaining party has a legal remedy by virtue of a contract
5 with the party alleged to have been enriched, “the contract remains ‘the measure of
6 [the] plaintiff’s right.’” *MetCap Secs. LLC v. Pearl Senior Care, Inc.*, No. Civ. A.
7 2129-VCN, 2007 WL 1498989, at *5 (Del. Ch. May 16, 2007); *Res. Veterans, Inc.*
8 *v. Res. Mgmt. Int’l, Inc.*, 42 F. Supp. 2d 423, 439 (D. Del. 1999). In some situations,
9 an unjust enrichment claim may survive a motion to dismiss when pleaded as an
10 alternative theory, but that “does not obviate the need for the plaintiff to provide
11 sufficient factual allegations” to support the claim. *See BAE Sys. Info. & Elec. Sys.*
12 *Integration, Inc. v. Lockheed Martin Corp.*, No. 3009-VCN, 2009 WL 264088, at
13 *7–8 (Del. Ch. Feb. 3, 2009).

14 Neither party disputes that the CDA was a valid contract that established a
15 relationship between them concerning the sharing, disclosure, and use of confidential
16 information. Notably, in support of its unjust enrichment claim, YRD alleges that
17 Teknor was obligated to negotiate a JDA, (Compl. ¶53), but—unlike its breach of
18 contract claim (*id.* ¶¶33, 37)—does not allege that such an obligation arose from the
19 CDA. Thus, the unjust enrichment claim is an alternative to YRD’s breach of
20 contract claim. “Unjust enrichment is a quasi-contract theory of recovery to remedy
21 the absence of a formal contract.” *Res. Veterans, Inc.*, 42 F. Supp. 2d at 439 (citing
22 *Kirkwood Kin Corp. v. Dunkin’ Donuts, Inc.*, No. 94C-03-189-WTQ, 1997 WL
23 529587, at *17 (Del. Super. Ct. Jan. 29, 1997)). YRD’s alternative pleading is
24 particularly fortuitous in light of this Court’s determination that the JDA was nothing
25 more than an unenforceable agreement to agree. The CDA does not otherwise
26 address the precise relationship underlying YRD’s unjust enrichment claim: Teknor’s
27 compensation to YRD for use of YRD’s confidential information in the event the
28 parties did not enter into a JDA, or jointly develop a product. Therefore, the CDA

1 cannot be the measure of YRD’s remedy. *See Narrowstep, Inc. v. Onstream Media*
2 *Corp.*, No. 5114-VCP, 2010 WL 5422405, at *16 (Del. Ch. Dec. 22, 2010) (finding
3 that unjust enrichment claim was a “viable, alternative remedial theory” where it was
4 in part unclear that the agreement “comprehensively governs . . . ownership rights to,
5 and proceeds from” confidential information). Accordingly, YRD’s breach of
6 contract claim does not displace Plaintiff’s unjust enrichment claim. The Court
7 denies Teknor’s motion to dismiss this claim.

8 **2. YRD’s Conversion Claim is Displaced**

9 In Count 4, YRD alleges that Teknor converted confidential information
10 shared under the CDA, resulting in harm to YRD. (Compl. ¶¶58–61.) Although the
11 Court has found that this claim is preempted under the DUTSA, Teknor argues that
12 this claim is independently subject to dismissal in light of YRD’s breach of contract
13 claim. The Court agrees. Under Delaware law, “any distinct act of dominion
14 wrongfully exerted over the property of another, in denial of his right, or inconsistent
15 with it, is a conversion . . .” *Drug, Inc. v. Hunt*, 168 A. 87, 93 (Del. 1933). To state
16 a claim for conversion, a plaintiff must establish a property interest in the converted
17 goods, the right to possess the goods, and damages. *J.C. Trading Ltd. v. Wal-Mart*
18 *Stores, Inc.*, 947 F. Supp. 2d 449, 459 (D. Del. 2013); *Hurst v. City of Dover*, No. 04-
19 083 GMS, 2008 WL 2421468, at *4 (D. Del. June 16, 2008). “[W]here a claim for
20 conversion arises solely from a breach of contract, a plaintiff must allege that a
21 defendant violated a legal duty independent from his contractually-imposed duties.”
22 *Moon Express, Inc. v. Intuitive Machs., LLC*, No. 16-344-LPS-CJB, 2017 U.S. Dist.
23 LEXIS 155487, at *35 (D. Del. Sept. 22, 2017). The Complaint alleges that the
24 property Teknor converted was confidential information YRD shared under the
25 CDA. (Compl. ¶¶58–60.) In opposition, YRD itself emphasizes that the claim is
26 grounded in the CDA. (ECF No. 22 at 24.) In order to sustain its claim for
27 conversion, YRD must allege that Teknor violated a legal duty independent of
28 Teknor’s duties under the CDA. The Complaint, however, fails to identify any legal

1 duty independent of Teknor’s obligations under the CDA pertaining to use of that
2 information. Accordingly, the Court grants Teknor’s motion to dismiss YRD’s
3 conversion claim as independently displaced by YRD’s breach of contract claim.

4 **F. Count 5: YRD Has Not Plausibly Pleaded Interference with**
5 **Prospective Economic Advantage**

6 In Count 5, YRD alleges that Teknor intentionally usurped YRD’s opportunity
7 to roll out its own new compact hose products, and seized the initiative for a
8 substantial market share of new compact hose sales. (Compl. ¶68.) “YRD was left
9 to compete with a product it had designed[.]” (*Id.*) YRD allegedly suffered damages
10 as a result. (*Id.* ¶70.) Teknor challenges this claim on the ground that YRD has failed
11 to plausibly allege it had a prospective economic advantage with which Teknor
12 interfered. (ECF No. 16-1 at 14–15.) The Court agrees.

13 In order to state a claim for tortious interference with prospective economic
14 advantage, Delaware law requires a plaintiff to allege facts establishing: (1) a
15 reasonable probability of a business opportunity, (2) intentional interference with that
16 opportunity, (3) proximate causation, and (4) damages. *See eCommerce Indus., Inc.*
17 *v. MWA Intelligence, Inc.*, No. 7471-VCP, 2013 WL 5621678, at *40 (Del. Ch. Oct.
18 4, 2013). Delaware courts “permit a broad range of legitimate business
19 expectancies, including the prospect of . . . [any] relations leading to potentially
20 profitable contracts,” but the “mere hope” or “mere perception of a prospective
21 relationship or contract will not suffice.” *World Energy Ventures, LLC v. Northwind*
22 *Gulf Coast LLC*, No. N15C-03-241 WCC, 2015 WL 6772638, at *7 (Del. Super. Ct.
23 Nov. 2, 2015) (internal quotations omitted). The factual allegations must identify a
24 party who was prepared to enter into a business relationship with the plaintiff, but
25 was dissuaded from doing so by the defendant. *Agilent Techs., Inc. v. Kirkland*, No.
26 3512-VCS, 2009 WL 119865, at *7 (Del. Ch. Jan. 20, 2009).

27 YRD’s intentional interference claim does not contain factual allegations
28 identifying opportunities with any entity, but rather refers only to “retailer sales

1 channels” and “market share” that YRD did not receive. (*See generally* Compl.
2 ¶¶66–72.) Although it is true that a plaintiff need not provide the specific name of
3 the entity with which it had a reasonable probability of a business opportunity, *see*
4 *Agilent Techs., Inc.*, 2009 WL 119865, at *7, YRD’s undifferentiated and generalized
5 allegations are insufficient to survive a motion to dismiss. *See Organovo Holdings,*
6 *Inc. v. Dimitrov*, 162 A.3d 102, 123 (Del. Ch. Ct. 2017); *cf. Kimbleton v. White*, No.
7 12-974-GMS, 2014 WL 4386760, at *8 (D. Del. 2014) (allegations of interference
8 with “all prospective home buyers” insufficient to establish a reasonable probability
9 of business opportunity). YRD argues in opposition that it had a reasonable
10 probability of business opportunities with Lowes, Home Depot, and other customers
11 who purchased Teknor’s Zero-G Hose, rather than YRD’s product. (ECF No. 22 at
12 20.) The Complaint, however, contains no factual details showing or supporting an
13 inference that YRD had a reasonable probability of a business opportunity with these
14 entities for its own hose. The Court has also considered whether YRD’s factual
15 allegations regarding its relationship with QVC support its intentional interference
16 claim. The Court concludes they do not. As YRD underscores in opposition, its
17 claim concerns Teknor’s alleged interference with YRD’s own “competing” hose.
18 (*Id.*) The allegations pertaining to QVC do not concern that product, but rather the
19 hose YRD alleges it would have developed with Teknor which would have been
20 marketed through QVC. (*Id.*; Compl. ¶¶10, 20, 24.) Thus, allegations concerning
21 QVC do not support YRD’s intentional interference claim as pleaded.
22 Accordingly, the Court grants Teknor’s motion to dismiss this claim.

23 **G. Count 7: YRD Cannot Plausibly Claim that Teknor Breached the**
24 **Implied Covenant of Good Faith and Fair Dealing**

25 In Count 7, YRD alleges that Section 9 of the CDA and the implied covenant
26 of good faith and fair dealing obligated Teknor to negotiate a JDA with YRD by fall
27 2016. (Compl. ¶¶84–85.) At that point, YRD alleges that Teknor began to develop,
28 manufacture, and plan distribution of its Zero-G Hose based on confidential

1 information imparted by YRD. (*Id.* ¶84.) YRD alleges that under a JDA it would
2 have received a royalty of \$1.50 per product sold or on 10% of Teknor’s sales. (*Id.*
3 ¶¶86–87.) Teknor argues that the implied covenant claim should be dismissed
4 because YRD fails to plead the existence of an implied obligation arising outside of
5 the explicit terms of the CDA. (ECF No. 16-1 at 15–16.) The Court agrees that this
6 claim must be dismissed.

7 “Under Delaware law, an implied duty of good faith and fair dealing is
8 interwoven into every contract.” *Anderson v. Wachovia Mortg. Corp.*, 497 F. Supp.
9 2d 572, 581 (D. Del. 2007). In general, the implied covenant requires “a party in a
10 contractual relationship to refrain from arbitrary or unreasonable conduct which has
11 the effect of preventing the other party to the contract from receiving the fruits of the
12 bargain.” *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 442 (Del. 2005)
13 (citations omitted). In order to plead successfully a breach of the implied covenant,
14 the plaintiff must allege a specific implied contractual obligation, a breach of that
15 obligation by the defendant, and resulting damage to the plaintiff. *Fitzgerald v.*
16 *Cantor*, Civ. No. 16297-NC, 1998 WL 842316, at *1 (Del. Ch. Nov. 10, 1998). As
17 noted by the Delaware Supreme Court, “[a]pplying the implied covenant is a cautious
18 enterprise and we will only infer contractual terms to handle developments or
19 contractual gaps that the asserting party pleads neither party anticipated.” *Gerber v.*
20 *Enter. Products Holdings, LLC*, 67 A.3d 400, 421 (Del. 2013), *overruled on other*
21 *grounds by, Winshall v. Viacom Int’l, Inc.*, 76 A.3d 808 (Del. 2013). Where the
22 express terms of a contract speak directly to the issue in dispute, those terms will
23 always “supersede” the implied covenant. *See Gerber*, 67 A.3d at 419; *Fortis*
24 *Advisors, LLC v. Dialog Semiconductor PLC*, No. 9522-CB, 2015 WL 401371, at *3
25 (Del. Ch. Jan. 30, 2015) (“[I]mplied good faith cannot be used to circumvent the
26 parties’ bargain when the contract speaks directly to the issue.”).

27 This Court has already determined that Section 9 constitutes an unenforceable
28 agreement to agree and contains no express provision requiring Teknor to negotiate

1 a JDA in good faith. The express terms of the CDA otherwise “do[] not require . . .
2 either Party to proceed with any proposed transaction or relationship,” (CDA §7(a)),
3 and do not establish any “business relationship between the Parties, other than as
4 expressly provided for,” (*id.* §7(c)). In light of these terms, YRD’s “claim must fail
5 because the express terms of the contract . . . control [the] claim.” *Kuroda v. SPJS*
6 *Holdings, L.L.C.*, 971 A.2d 872, 888 (Del. Ch. 2009).

7 Also fatal to YRD’s implied covenant claim is its allegation regarding
8 Teknor’s intentions “from the outset” of its discussions with YRD, (Compl. ¶27),
9 which do not plausibly show Teknor would have agreed to the term YRD seeks to
10 imply. “To supply an implicit term, the court looks to the past and asks what the
11 parties would have agreed to themselves had they considered the issue in their
12 original bargaining positions at the time of contracting.” *Allen v. El Paso Pipeline*
13 *GP Co., L.L.C.*, 113 A.3d 167, 184 (Del. Ch. 2014) (internal quotations omitted).
14 The implied covenant only applies where “it is clear from the writing that the
15 contracting parties ‘would have agreed to proscribe the act later complained of . . .
16 had they thought to negotiate with respect to that matter.’” *Cont’l Advisors S.A. v.*
17 *GSV Asset Mgmt., LLC*, No. 14-cv-05609-YGR, 2015 WL 7720752, at *6 (N.D. Cal.
18 Nov. 30, 2015) (quoting *Dunlap*, 878 A.2d at 442). Although YRD alleges that the
19 parties discussed expanding their business relationship, YRD also alleges that Teknor
20 “planned from the outset to pirate YRD’s confidential information for its own use in
21 order to develop a competing compact hose” and “secretly schemed” to develop the
22 Zero-G Hose alone. (*Compare* Compl. ¶20 with ¶1, 27.) Assuming the truth of
23 YRD’s allegations regarding Teknor’s true intentions, an implied term under the
24 CDA requiring Teknor to negotiate the JDA could not plausibly have made its way
25 into the CDA. *See Cont’l Advisors S.A.*, 2015 WL 7720752, at *6 (“Under plaintiffs’
26 theory, defendants never intended for the contemplated transactions to occur.
27 Therefore, a full negotiation regarding the proposed implied term . . . would certainly
28 not have made its way as a negotiated term into the agreements in question.”).

1 Accordingly, the Court dismisses with prejudice YRD’s claim based on a breach of
2 the implied covenant of good faith and fair dealing.

3 **H. Applicability of the DTSA to this Case**

4 Lastly, the Court addresses YRD’s assertion that the Defend Trade Secrets Act
5 (“DTSA”), 18 U.S.C. §1831 *et seq.*, supplies an additional federal cause of action for
6 Teknor’s alleged misappropriation of its trade secrets. The DTSA is the federal
7 analogue to state laws like the DUTSA. Formally enacted on May 11, 2016, the
8 DTSA enables the owner of a trade secret to bring a private cause of action in federal
9 court for trade secret misappropriation. *See* 18 U.S.C. §1836(b)(1). The DTSA
10 defines misappropriation in several ways, including the “acquisition of a trade secret
11 of another by a person who knows or has reason to know that the trade secret was
12 acquired by improper means” or when one “disclos[es]” or “use[s]” another’s trade
13 secret without the consent of the trade secret owner. *Id.* §1839(5)(B); *Brand Energy*
14 *& Infrastructure Servs. v. Irex Contracting Grp.*, No. 16-2499, 2017 WL 1105648,
15 at *3 (E.D. Pa. Mar. 24, 2017). Unlike state trade secret laws, the DTSA has been
16 interpreted to apply to misappropriation of trade secrets that occurred before the
17 DTSA was enacted as long as the misappropriation continues to occur after the
18 enactment date. *Id.* at *4. Importantly, the DTSA generally does not “preempt or
19 displace any other remedies, whether civil or criminal, provided by . . . State . . . law
20 for the misappropriation of a trade secret. . .” 18 U.S.C. §1838. Therefore, YRD
21 may bring both a claim under the DUTSA and the DTSA.


22 YRD has not specifically requested leave to amend the Complaint to allege
23 such a claim, but the Court believes that the prudent course is to treat YRD’s
24 argument as such a request. The Court cannot say that amendment would be futile
25 at this time. *See Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980,
26 986 (9th Cir. 1999). Because the Court has found that YRD sufficiently pleaded a
27 claim under the DUTSA for its compact hose concept and designs, the Court will
28 permit YRD to amend the Complaint to allege a cause of action under the DTSA.

1 **IV. CONCLUSION & ORDER**

2 For the foregoing reasons, the Court **GRANTS IN PART AND DENIES IN**
3 **PART** Defendant Teknor's Rule 12(b)(6) motion to dismiss the Complaint as
4 follows:

- 5 1. The Court **DISMISSES WITHOUT PREJUDICE** YRD's claims for
6 breach of contract (Count 1) as to alleged breaches of Sections 4(c),
7 4(d), and 4(f); conversion (Count 4); interference with prospective
8 economic advantage (Count 5); and unfair competition (Count 6).
9 YRD's claim of trade secrets misappropriation (Count 2) is dismissed
10 to the extent it concerns YRD's alleged marketing ideas, sales
11 information, and business strategy.
- 12 2. The Court **DISMISSES WITH PREJUDICE** YRD's breach of
13 contract claim (Count 1) as to an alleged breach of Section 9, and YRD's
14 claim for breach of the implied covenant of good faith and fair dealing
15 (Count 7).
- 16 3. The Court **DENIES** Teknor's Motion to dismiss YRD's claim (Count
17 1) regarding alleged breaches of Sections 4(a), 4(b), and 4(g); trade
18 secrets misappropriation claim (Count 2) insofar as it concerns alleged
19 new compact hose concept and designs; and unjust enrichment (Count
20 3).
- 21 4. The Court **GRANTS** YRD leave to amend the Complaint to add a claim
22 under the DTSA and cure any pleadings dismissed without prejudice.
23 YRD may file an amended complaint **no later than December 22,**
24 **2017.** Teknor must answer or file a motion to dismiss those new
25 portions of an amended complaint **no later than January 22, 2018.**

26 **DATED: November 29, 2017**

27 
28 **Hon. Cynthia Bashant**
United States District Judge