

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 11-60247-CIV- LENARD/TURNOFF

THE ULTIMATE SOFTWARE
GROUP, INC.,
a Florida corporation,

Plaintiff,

v.

BRYAN S. CAMP,
an individual,

Defendant.

TEMPORARY RESTRAINING ORDER

This matter is before the Court upon Plaintiff's Motion for a Temporary Restraining Order Without Notice and Preliminary Injunction (the "Motion") pursuant to Rule 65(b) of the Federal Rules of Civil Procedure. After careful consideration of the record, the Court makes the following findings of fact and conclusions of law:

1. Plaintiff's Complaint and sworn pleadings (the Declarations of Greg Swick, Kevin O'Dowd, Mike Ouellette, and Rob Vetter) allege as follows:

A. Plaintiff designs, markets, implements and supports human resources, payroll and talent management solutions principally in the United States and Canada.

B. Plaintiff's success in a highly competitive market is dependent, in part, on its ability to protect its proprietary technology, customer information (both current and prospective), and business forecast information. Plaintiff relies on a combination of copyright, trademark and

trade secret laws, as well as confidentiality agreements and sales and licensing arrangements, to establish and protect its proprietary rights.

C. In November 2005, Plaintiff hired Defendant as a member of its sales team, allowing Defendant to market Plaintiff's products and services to its Northeast sales region (generally including New Hampshire, Vermont, Connecticut, and portions of upstate New York).

D. As a condition of his employment, Defendant executed an "Employee Proprietary Information and Intellectual Property Agreement," dated November 7, 2005 (the "Confidentiality Agreement"), which requires Defendant to both protect Plaintiff's "proprietary information" while employed by Plaintiff and promptly return any such information to Plaintiff upon termination of employment. A true and correct copy of the Confidentiality Agreement is attached to the Complaint as Exhibit 'A.'

E. During his employment, Defendant was frequently and directly informed that his job was in jeopardy due to poor performance. On September 24, 2010, Defendant's supervisor sent a letter to Defendant summarizing Plaintiff's and Defendant's agreement to terminate Defendant's employment (the "Termination Agreement") (together with the Confidentiality Agreement, the "Agreements"). A true and correct copy of the Termination Agreement is attached to the Complaint as Exhibit 'B.' The Termination Agreement provided that Defendant's termination date would be October 29, 2010.

F. Similar to the Confidentiality Agreement, the Termination Agreement again obligated Defendant to protect Plaintiff's confidential and proprietary information following his termination of employment.

G. Prior to his last day of employment, Defendant downloaded to his laptop and subsequently transferred to an external storage device a minimum of eighteen spreadsheets

containing Plaintiff's trade secret, confidential, and proprietary information. Specifically, Defendant downloaded documents identifying all of Plaintiff's prospective accounts, contacts (numbering in the thousands), and leads in Defendant's territory, as well as the accounts, contacts, and leads in an adjoining territory. Defendant also downloaded hundreds of forecasted accounts to be sold in the neighboring territory, in addition to downloading Plaintiff's entire customer list for the Northeast and Mid-Atlantic regions. Finally, Defendant downloaded Plaintiff's 'watch list,' a document containing those clients in the Northeast region that Plaintiff deemed vulnerable to switch to a competitor's products or that had expressed satisfaction concerns with Plaintiff's products.

H. After termination of his employment by Plaintiff, Defendant accepted a position as a salesman with one of Plaintiff's direct competitors. If Defendant were to disclose the information he misappropriated from Plaintiff to his current employer, it would gain an immediate competitive advantage over Plaintiff, and would allow it unfettered access to proprietary data that Plaintiff has fought to protect from its competitors.

2. Pursuant to Federal Rule of Civil Procedure 65(b), a temporary restraining order may be granted without notice to the adverse party only if: (1) it clearly appears from specific facts shown by affidavit or verified complaint that immediate and irreparable injury, loss or damage will result before the adverse party can be heard in opposition, and (2) the applicant's attorney certified the reasons that notice should not be required. Fed. R. Civ. P. 65(b).

3. In light of the foregoing, the Court finds that Plaintiff has clearly demonstrated that immediate and irreparable injury, loss, or damage will result to the Plaintiff before Defendant can be heard in opposition. Plaintiff's Complaint and sworn pleadings allege that Defendant is in possession of, at a minimum, eighteen spreadsheets containing Plaintiff's trade secret,

confidential, and proprietary information. Plaintiff estimates that the improper use or disclosure of this information would immediately and dramatically affect its relationship with current and prospective customers, and would cause irreparable harm for the foreseeable future. Contemporaneous with his termination of employment from Plaintiff, Defendant accepted employment with one of Plaintiff's direct competitors, where he is now selling to the same prospective clients as he did while employed by Plaintiff.

4. Further, in accordance with Rule 65(b)(2), the applicant's attorney has certified why notice should not be required.

5. Based on the foregoing preliminary findings of fact and law, the Court finds that Plaintiff will suffer immediate irreparable injury unless this Order is granted without notice.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion for a temporary restraining order is **GRANTED**;
2. Plaintiff shall immediately post a bond in the amount of One Hundred Thousand Dollars (\$100,000.00), as payment of damages to which Defendant may be entitled for a wrongful injunction or restraint. This temporary restraining order becomes effective upon posting of the bond;
3. The following definitions apply to this Order:
 - (a) The term "Documents" shall include any hard copy documents or electronically stored information – including writings, drawings, graphs, charts, photographs, sound recordings, images, e-mail, text messages, and other data and data compilations – stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.
 - (b) The term "USG Confidential Information" shall mean Documents that Defendant created, obtained and/or gained access to by virtue of his employment with Plaintiff, including, but not limited to, the eighteen spreadsheets downloaded by Defendant as alleged in the Complaint;
4. Defendant and his agents, servants, employees, attorneys, as well as any entities and individuals who are acting in concert or participation with them (collectively, the "Restrained Parties"), are hereby **RESTRAINED AND ENJOINED** as follows pending further Order of this Court:

- (a) The Restrained Parties shall not, directly or indirectly, use, disclose, or in any way exploit USG Confidential Information.
 - (b) The Restrained Parties shall not, directly or indirectly, destroy: (i) any Documents containing USG Confidential Information; (ii) any Documents stored on any of the Restrained Parties' home and business computers and/or any other electronic data storage media; and (iii) any computer servers, or e-mails or other data on those servers, used to carry out any business during Defendant's employment by Plaintiff;
5. Defendant and his agents, servants, employees, attorneys, as well as any entities and individuals who are acting in concert or participation with them, are hereby **DIRECTED** to immediately return to Plaintiff any and all Documents in their possession, custody, or control containing USG Confidential Information;
 6. Plaintiff shall immediately serve this Order, the Complaint, and all present filings upon Defendant;
 7. This Order is binding on the parties to this action, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of this Order until February 18, 2011 at noon;
 8. Defendant may move to modify or dissolve this injunction at any time pursuant to Federal Rule of Civil Procedure 65(b);
 9. A hearing on Plaintiff's Motion for Preliminary Injunction is **SET** for 10 a.m. on February 14, 2011, before Magistrate Judge William C. Turnoff, at 301 North Miami Avenue, 11th Floor, Miami, FL, 33128;
 10. Defendant's written response to Plaintiff's Motion for Preliminary Injunction, shall be filed, and served upon Plaintiff, by 10 a.m. on February 9, 2011.

DONE AND ORDERED in Chambers at Miami, Florida, this 4th day of February, 2011 at 1:50

p.m.



U.S. District Court Judge