

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.

**ORDER GRANTING PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION**

This matter is before the Court upon Plaintiff The Ultimate Software Group, Inc.'s ("Plaintiff" or "USG") Motion for a Preliminary Injunction (the "Motion," D.E. 4) pursuant to Rule 65 of the Federal Rules of Civil Procedure. On February 4, 2011, the Court entered an Order granting Plaintiff's Motion for a Temporary Restraining Order Without Notice, and scheduled an evidentiary preliminary injunction hearing to be held on February 14, 2011. [D.E. 7].

On February 11, 2011, Defendant Bryan S. Camp ("Defendant") filed a notice withdrawing his opposition to the Motion (the "Notice"). [D.E. 11]. The Notice specifically states that "Defendant consents to the terms of the proposed relief as set forth in Plaintiff's Motion for Preliminary Injunction." Plaintiff's Complaint, the Motion, and the supporting declarations, allege the following facts:

1. Plaintiff designs, markets, implements and supports human resources, payroll and talent management solutions principally in the United States and Canada.
2. 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.
3. 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).
4. 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.'
5. 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.

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

7. 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.

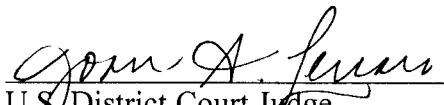
8. After termination of his employment by Plaintiff, Defendant accepted a position as a salesman with one of Plaintiff's direct competitors. If Defendant were to disclose the information he misappropriated from Plaintiff to his current employer, it would gain an immediate competitive advantage over Plaintiff,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

The Court finds Plaintiff has established a substantial likelihood of success on the merits based on Plaintiff's Complaint, the Motion, and the supporting declarations. The Court also finds that Plaintiff has clearly demonstrated that immediate and irreparable injury, loss, or damage will result to Plaintiff absent entry of this Order. Plaintiff alleges 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. Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Unopposed Motion for a Preliminary Injunction is **GRANTED**;
2. 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;
3. 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.
 - (c) The Restrained Parties shall not contact, solicit, or transact business with any active or prospective USG client whose contact information is ascertainable in any Document containing USG Confidential Information;
4. The Restrained Parties are hereby **DIRECTED** to immediately return to Plaintiff any and all Documents in their possession, custody, or control containing USG Confidential Information;
 5. Plaintiff shall continue to secure this preliminary injunction with the existing \$100,000 surety bond, which Plaintiff has already posted (D.E. 12);
 6. This preliminary injunction shall remain in effect pending an adjudication of the merits of this action, or further Order of this Court;
 7. Plaintiff's Motion to Expedite Discovery (D.E. 6) and Defendant's Request to File Supplemental Response (D.E. 9) are **DENIED AS MOOT**.

DONE AND ORDERED in Chambers at Miami, Florida, this 16 day of February, 2011.



U.S. District Court Judge
Southern District of Florida