STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 22 CVS 13559
CPI SECURITY SYSTEMS, INC., Plaintiff, v. KYLE CHAPMAN, ROBERT W. BOWLIN, and LONE WOLF INDUSTRIES, LTD. d/b/a QUANTUM SECURITY AND INNOVATIONS, Defendants.	**ORDER ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AS TO DEFENDANT KYLE CHAPMAN**

1. In this trade-secret case, CPI Security Systems, Inc. has moved for a preliminary injunction against its former employee, Kyle Chapman. For the following reasons, the Court **GRANTS** the motion.

2. CPI provides home security systems in new and existing construction. It hired Chapman more than a decade ago and eventually promoted him to General Manager, New Construction Division. In the summer of 2022, Chapman decided to leave CPI and join its competitor, Quantum Security and Innovations. He accepted the job with Quantum on 22 July, gave notice of his resignation to CPI on 1 August, and left CPI for good on 16 August.

3. This lawsuit followed on 19 August. After an internal investigation revealed suspicious activity by Chapman in the weeks before his departure, CPI sued him for misappropriation of trade secrets, breach of a confidentiality clause in his employment agreement, breach of fiduciary duty, and related misconduct. The parties agreed to a consent temporary restraining order and to expedited discovery

in advance of a hearing on CPI's motion for preliminary injunction. (*See* ECF Nos. 35, 36.)

4. Much of the evidence is undisputed. On the day Chapman gave notice of his resignation to CPI (1 August), he also met with Robert Bowlin, Quantum's CEO. During that meeting, Bowlin gave Chapman a new iPhone that was bought and paid for by Quantum. (*See* Dep. Chapman 36:4–17, ECF No. 61.)

5. The next day (2 August), Chapman downloaded various CPI and personal files to a USB drive. Included was a file "reflecting tens of thousands of transactions that shows more than five . . . years of CPI's historical business with its home builder customers, specifically, their purchasing history by geographic location, and confidential CPI pricing data." (1st Aff. Stuart ¶ 7, ECF No. 9; *see also* 1st Aff. Walton ¶ 9, ECF No. 67.) Chapman also sent several CPI files to his personal e-mail account, including a "Builder Pricing Bids" spreadsheet containing "all pricing offered by product to CPI's new home builder customers" as well as "information on equipment cost, labor, overhead, commission, total cost and price." Before sending this file to himself, Chapman renamed it so that it would appear to be an expense report rather than a confidential CPI document. (3d Aff. Stuart ¶¶ 4–10, ECF No. 31; *see also* Dep. Chapman 13:19–14:15.) Afterward, Chapman searched the internet for "how to erase emails from the search bar in outlook" and deleted hundreds of files from his work computer. (2d Aff. Stuart ¶¶ 17–18, ECF No. 18; *see also* Dep. Chapman 258:12–17.)

6. A day later (3 August), Bowlin sent a text message to Chapman—who was still employed by CPI—asking him to review a bid that Quantum had prepared for a

prospective customer called Mattamy Homes. Chapman told Bowlin to send the bid to his personal e-mail address. Bowlin did so, and Chapman reviewed it and responded by text message with favorable feedback. (*See* Decl. Henriques Ex. 8 at QSI 0291, ECF No. 81.8.) Coincidentally, Chapman had downloaded CPI's bid for Mattamy Homes to his USB drive just twenty-four hours earlier. (*See* 2d Aff. Stuart ¶ 6; Dep. Chapman 238:17–239:22.)

7. Chapman began working for Quantum immediately after leaving CPI. In addition to the iPhone that Bowlin gave him weeks earlier, Chapman received a company truck, e-mail account, and laptop. On his third day at Quantum (19 August), Chapman e-mailed to Bowlin the "Builder Pricing Bids" spreadsheet. He also sent Bowlin a confidential cost matrix, which is a spreadsheet full of information that CPI used to generate its bid prices. (*See* Decl. Henriques Ex. 4 at QSI 205, ECF No. 81.4; Decl. Henriques Ex. 6 at QSI 207, ECF No. 81.6; Dep. Chapman 43:5–46:2.)

8. After this lawsuit began, Chapman destroyed evidence of his actions. Chapman admitted in his deposition that he deleted all text messages that he had sent to or received from Bowlin because he was worried that they would be used against him in this litigation. (*See* Dep. Chapman 261:3–262:17.) In addition, a forensic examination of Chapman's personal e-mail account showed that he deleted the e-mails that he had sent to himself on 2 August and that he had sent to Bowlin on 19 August. A forensic examination of Chapman's iPhone revealed Google searches such as "can forensics see deleted text messages" and "what happens if you take

electronic documents from work and youre [sic] not supposed to." (1st Aff. Walton ¶¶ 10, 14.)

9. Still, CPI has been able to discover some of what Chapman deleted. For example, Bowlin has produced his text messages with Chapman. These messages show that Chapman, while still employed by CPI, was recruiting CPI employees on Quantum's behalf, received a $10,000 payment from Quantum, and reviewed Quantum's bid for Mattamy Homes. (*See* Decl. Henriques Ex. 8 at QSI 0280–81, 0291.) The text messages also contradict testimony that Chapman gave in affidavits and during his deposition—including testimony that he did not know why Bowlin sent him the Mattamy Homes bid and that he did not respond to that inquiry. (*Compare* Decl. Henriques Ex. 8 at QSI 0291, *with* Dep. Chapman 27:15–25.)

10. CPI now seeks a preliminary injunction to prevent Chapman from disclosing its confidential information, working for Quantum or otherwise competing against CPI, soliciting CPI's customers, receiving financial support for his defense from Bowlin and Quantum, and communicating with Bowlin and Quantum except through counsel. (*See* ECF No. 58 at 3–4.) The motion for preliminary injunction has been fully briefed. The Court held a hearing on 22 September 2022.[1]

11. A preliminary injunction is an "extraordinary measure taken by a court to preserve the status quo of the parties during litigation." *Ridge Cmty. Invs., Inc. v.*

[1] CPI has added Bowlin and Quantum as defendants and also seeks a preliminary injunction against them. (ECF No. 55.) CPI, Bowlin, and Quantum have agreed to a consent temporary restraining order that, among other things, bars Quantum from employing Chapman or paying for his defense. (ECF No. 74.) A hearing on CPI's motion for preliminary injunction against Bowlin and Quantum is scheduled for 11 October 2022.

Berry, 293 N.C. 688, 701 (1977). The plaintiff bears the burden to establish the right to a preliminary injunction and is entitled to relief only (1) if the plaintiff is able to show a likelihood of success on the merits of his case and (2) if the plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of the plaintiff's rights during the course of litigation. *See A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983). Additionally, the Court must weigh the potential harm a plaintiff would suffer if no injunction were entered against the potential harm to the defendant should one be entered. *See Williams v. Greene*, 36 N.C. App. 80, 86 (1978).

12. CPI relies chiefly on its claims for misappropriation of trade secrets and for breach of the confidentiality clause in Chapman's employment agreement. Undisputed and unrebutted evidence shows that Chapman acquired CPI's "Builder Pricing Bids" spreadsheet, cost matrix, and related documents without its consent and then disclosed some of these documents to Bowlin and Quantum. CPI contends that this evidence establishes a likelihood of success on the merits and a likelihood of competitive harm.

13. There is no need to linger on CPI's likelihood of success because it is uncontested. Chapman does not dispute that the information he took is confidential, valuable, and worthy of protection as a trade secret. *See Red Valve, Inc. v. Titan Valve, Inc.*, 2018 NCBC LEXIS 41, at *26 (N.C. Super. Ct. Apr. 17, 2018) (observing that customer lists, pricing formulas, and bidding formulas are often considered trade secrets). He does not dispute the validity of the confidentiality clause in his

employment agreement or its scope, which forbids him from using and disclosing CPI's customer lists, pricing lists, and other financial and customer-related information. (*See* V. Am. Compl. Ex. A § 7 ECF No. 55.1.) And he does not dispute that he knew or should have known of CPI's trade secrets and that he "acquired, disclosed, or used [the trade secrets] without the express or implied consent or authority of" CPI. N.C.G.S. § 66-155 (defining prima facie case of misappropriation of trade secrets). As a result, the Court concludes that CPI is likely to succeed on the merits of its claims for misappropriation of trade secrets and breach of contract.

14. The likelihood of irreparable harm is just as clear. Our appellate courts have stressed that "misappropriation of a trade secret is an injury of such continuous and frequent recurrence that no reasonable redress can be had in a court of law." *Barr-Mullin, Inc. v. Browning*, 108 N.C. App. 590, 597 (1993) (quotation marks omitted). This Court, too, has observed that misappropriation of a trade secret typically supports a presumption of irreparable harm and that "[a] preliminary injunction is especially warranted where misappropriation threatens to deprive a business of its competitive advantage." *Red Valve*, 2018 NCBC LEXIS 41, at *37. Chapman admits that he took CPI's confidential information with the intent to compete against it and that he actually disclosed that information to a competitor. This is precisely the sort of competitive harm that the law "aims to prevent through the issuance of a preliminary injunction." *Biesse Am., Inc. v. Dominici*, 2019 NCBC LEXIS 50, at *20 (N.C. Super. Ct. Aug. 19, 2019) (quoting *TSG Finishing, LLC v. Bollinger*, 238 N.C. App. 586, 595 (2014)).

15. Chapman argues that CPI will not suffer any harm because he has now returned or deleted the confidential information that he took. Nonsense. This is not a case of inadvertent disclosure. Chapman's decision to take and disclose CPI's trade secrets was premeditated. By his own admission, he intended to use the information to compete against CPI and tried to cover his tracks by renaming a file to look like something other than what it was. (*See* Dep. Chapman 13:9–15:14.) He also searched the internet for ways to keep CPI from finding out what he had done. (*See* 2d Aff. Stuart ¶¶ 17–18.) Chapman deserves no absolution for returning information under compulsion of court order or for deleting e-mails, files, and other information to conceal his actions. A preliminary injunction is necessary to prevent irreparable harm to CPI and "to protect its rights during the course of this litigation." *Biesse Am.*, 2019 NCBC LEXIS 50, at *21.

16. All that remains is to determine the scope of the injunction. CPI seeks not only to limit the use and disclosure of its information but also to broadly enjoin competition against it, solicitation of its customers, and communication and coordination among Chapman, Quantum, and Bowlin. Chapman contends that no law supports an injunction against competition, solicitation, and communication as a remedy for misappropriation of trade secrets.

17. Certainly, CPI is entitled to an injunction barring Chapman from using and disclosing its trade secrets. This is standard relief for trade-secret owners victimized by misappropriation. *See, e.g.*, *Barr-Mullin*, 108 N.C. App. at 598. And it is supported by the balance of the harms. CPI is likely to face irreparable harm absent an

injunction; Chapman will suffer no harm at all from an injunction against the use and disclosure of information he was never authorized to have in the first place. *See Biesse Am.*, 2019 NCBC LEXIS 50, at *21.

18. CPI's other requests merit closer scrutiny. There is no doubt that the Court has discretion to fashion injunctive relief based on the facts and circumstances of a case. For example, "broad injunctive relief is available where there has been some showing of bad faith or underhanded dealings on the part of the party to be enjoined, or where the party plainly lacks comparable skills so that misappropriation can be inferred." *Barker Indus. v. Gould*, 146 N.C. App. 561, 565 (2001). But, of course, "[a] preliminary injunction must be tailored to the irreparable harm faced by the plaintiff." *InVue Sec. Prods., Inc. v. Stein*, 2017 NCBC LEXIS 115, at *24–25 (N.C. Super. Ct. Dec. 18, 2017).

19. With these principles in mind, the Court concludes that a limited injunction against solicitation of CPI's customers is appropriate. First, this relief is tailored to the harm suffered by CPI. Trade-secret cases are often built on circumstantial evidence and concerns about threatened misappropriation. Here, there is direct, undisputed evidence of actual misappropriation of a customer target list, bid and pricing information, and customer purchasing history and needs. There is a significant and heightened risk that Chapman and his future employer—whether Quantum or another competitor—will use this stolen information to get a competitive head start.[2]

[2] It bears repeating that Chapman began competing against CPI while still employed by the company. He solicited CPI employees to join him at Quantum and reviewed and approved

20. Second, this relief is also necessary to address the ample evidence of "bad faith" and "underhanded dealing." *Barker*, 146 N.C. App. at 565. Before the lawsuit began, Chapman tried to conceal his actions by renaming one confidential file, deleting others, and searching for methods to hide his computer activity. After the lawsuit began, Chapman destroyed evidence by deleting e-mails and text messages out of fear that the communications would be used against him. He has also given inconsistent and apparently false testimony. And there is worrisome evidence, following a forensic examination of various devices, that he has failed to disclose backup files and online accounts that may contain relevant information. (*See, e.g.*, 1st Aff. Walton ¶¶ 11, 12; 2d Aff. Walton ¶ 12, ECF No. 82.)

21. Thus, to prevent unfair competition and to account for Chapman's lack of candor, the Court will enjoin him from soliciting certain customers and prospective customers of CPI. Again, the balance of the harms favors CPI. Without this relief, CPI will face ongoing irreparable harm. But the relief will not unduly burden Chapman. Restricting Chapman from soliciting a subset of CPI's customers merely prevents him from competing unfairly and enjoying the fruits of his misappropriation. Chapman is free to work in the field and is free to respond to customer inquiries, so long as those inquiries are voluntary and not a result of solicitation. In addition, the Court will tailor the relief so that the restriction on solicitation does not last

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Quantum's bid to Mattamy Homes. Chapman contends now that CPI had no realistic chance at doing business for Mattamy Homes, but even if that is true, his predeparture solicitation of a customer targeted by CPI tends to support the need for broad injunctive relief.

indefinitely and so that it does not extend to customers with whom Chapman had no contact during his employment with CPI.[3]

22. A broad injunction against all competition, however, would go too far. Courts have long hesitated to enjoin competition by a former employee "merely to prevent disclosure of confidential information." *Travenol Labs., Inc. v. Turner*, 30 N.C. App. 686, 693 (1976). An order along these lines would likely shield CPI from fair competition and would significantly increase the burden on Chapman by limiting his employment options.

23. Likewise, the Court declines to enjoin Chapman from communicating with Bowlin and Quantum. Injunctions against speech are considered prior restraints and are presumptively unconstitutional. CPI offers no reason to conclude otherwise here. *See, e.g.*, *Ford v. Jurgens*, 2020 NCBC LEXIS 60, at *3–4 (N.C. Super. Ct. May 6, 2020).

24. In addition to its broader requests for an injunction against competition and customer solicitation, CPI also asks the Court to enjoin Chapman from working for and receiving litigation funding from Quantum. It is unnecessary to address these

[3] This conclusion is broadly supported by persuasive authority. *See, e.g.*, *N. Atl. Instruments, Inc. v. Haber*, 188 F.3d 38, 46 (2d Cir. 1999) (favorably describing injunction against solicitation of customers who had been served by defendants during employment with plaintiff); *Catalog Mktg. Servs., Ltd. v. Savitch*, 1989 U.S. App. LEXIS 22172, at *11 (4th Cir. Apr. 24, 1989) ("While it is proper to enjoin NSS from soliciting the 37 catalogers of CMS, it is unnecessary to prevent NSS from working with these catalogers should they voluntarily and without solicitation contact NSS."); *Pyro Spectaculars N., Inc. v. Souza*, 861 F. Supp. 2d 1079, 1096 (E.D. Cal. 2012) (imposing "narrow, time-limited non-solicitation restriction"); *Richmond Techs., Inc. v. Aumtech Bus. Sols.*, 2011 U.S. Dist. LEXIS 71269, at *59–73 (N.D. Cal. July 1, 2011) (enjoining solicitation because it was "necessary to protect [plaintiff's] trade secrets"); *Velo-Bind, Inc. v. Scheck*, 485 F. Supp. 102, 109 (S.D.N.Y. 1979) (rejecting argument that defendant could not "be enjoined from soliciting plaintiff's customers in the absence of a valid non-competitive covenant").

matters at this moment. Quantum has agreed, as part of a consent temporary restraining order, that it will not employ Chapman or fund his defense pending resolution of CPI's motion for preliminary injunction against it. (*See* ECF No. 74.) In other words, CPI has already received the relief it seeks in the short term. The Court will decide whether to extend these restrictions in connection with the hearing on CPI's motion against Bowlin and Quantum.

25. For the reasons given above, the Court **GRANTS** CPI's motion for preliminary injunction. In its discretion, the Court **ORDERS** that:

a. The consent temporary restraining order entered on 25 August 2022 is **DISSOLVED**;

b. Chapman is **ENJOINED** during the pendency of this action from using or disclosing CPI's confidential information (including the files, documents, and categories of information listed in the Verified First Amended Complaint), and any derivations thereof;

c. To the extent he has not done so already, as required by the temporary restraining order, Chapman shall return to CPI, within 48 hours of this order, any of CPI's confidential information in his possession, custody, or control. Chapman shall certify that he has returned this information and no longer retains possession of it on or before 30 September 2022.

d. Chapman is further **ENJOINED** from soliciting any customer listed in the "Builder Pricing Bids" spreadsheet that he had direct contact with during his employment with CPI in the past two years, (*see* Pl.'s Ex. L,

ECF No. 63), as well as any prospective customer of CPI that Chapman identified in his "Top Prospects" file while employed by CPI, (*see* Pl.'s Ex. M, ECF No. 64). This nonsolicitation restriction shall tentatively expire six months from the date of entry of the injunction, though without prejudice to CPI's right to seek an extension following additional discovery.

e. In its discretion, the Court determines that the existing bond of $10,000 is adequate to protect Chapman's interests. No further bond is required.

SO ORDERED, this the 26th day of September 2022.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases