

STATE OF NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CVS 39534

CTS METROLINA, LLC,  
  
Plaintiff,

v.

DUSTIN BERASTAIN, TIMOTHY  
MOREAU, and INKWELL  
EMERGENCY RESPONSE, LLC,  
  
Defendants.

**ORDER ON MOTION FOR  
TEMPORARY RESTRAINING ORDER**

1. **THIS MATTER** is before the Court on Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction (the “Motion”) filed pursuant to Rule 65 of the North Carolina Rules of Civil Procedure (the “Rule(s)”), (ECF No. 6). This Order addresses only Plaintiff’s request for entry of a temporary restraining order.

2. Plaintiff CTS Metrolina, LLC (“CTS Metrolina”) moves for an order: (1) prohibiting Berastain and Moreau from violating certain noncompetition and nondisclosure covenants; (2) prohibiting Inkwell from employing Berastain and Moreau; and (3) prohibiting all three Defendants from further misappropriation of CTS Metrolina’s trade secrets.

3. Having considered the Motion, the brief filed in support of the Motion, the affidavits filed in support of and in opposition to the Motion, the Verified Complaint and exhibits, and the arguments of counsel at a hearing on the Motion

held 22 December 2023, the Court FINDS and CONCLUDES, solely for the narrow purposes of the Motion,<sup>1</sup> as follows:

## **FINDINGS OF FACT<sup>2</sup>**

### A. Procedural History

4. Plaintiff instituted this action by filing the Verified Complaint on 15 December 2023. (Ver. Compl., ECF No. 3.) The Verified Complaint purports to allege claims for breach of certain restrictive covenant agreements and breach of fiduciary duty / constructive fraud against Defendants Dustin Berastain (“Berastain”) and Timothy Moreau (“Moreau”); as well as tortious interference with contract / prospective economic advantage, and misappropriation of trade secrets against all Defendants. (*See generally*, Ver. Compl.)

5. The case was designated as a complex business case on 18 December 2023 and assigned to the undersigned the same day. (ECF Nos. 1, 2.)

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<sup>1</sup> It is well-settled that neither findings of fact nor conclusions of law made during a temporary injunction proceeding are binding upon the Court at a trial on the merits. *Lohrmann v. Iredell Mem’l Hosp., Inc.*, 174 N.C. App. 63, 75 (2005) (citing *Huggins v. Wake Cnty. Bd. of Educ.*, 272 N.C. 33, 40-41 (1967)).

<sup>2</sup> To the extent any finding of fact is more appropriately characterized as a conclusion of law or vice-versa, it should be reclassified. *N.C. State Bar v. Key*, 189 N.C. App. 80, 88(2008) (“[C]lassification of an item within [an] order is not determinative, and, when necessary, the appellate court can reclassify an item before applying the appropriate standard of review.”)

6. Plaintiff filed the Motion on 19 December 2023, and the Court held a hearing on the Motion on 22 December 2023.<sup>3</sup> (*See* ECF No. 9.) The Motion is now ripe for disposition.

B. Relevant Facts

7. Plaintiff CTS Metrolina, LLC (“CTS Metrolina”) is a Louisiana limited liability company, authorized to do business in North Carolina, that provides emergency property restoration and repair services to owners of commercial and rental properties after emergencies. (Ver. Compl. ¶ 4, 11.) CTS Metrolina provides these services throughout the Southeastern United States. (Ver. Compl. ¶ 11.)

8. CTS Metrolina is an indirect wholly owned subsidiary of Continuum Restoration Holdings, LLC (“Continuum”), also a Louisiana company. (Ver. Compl. ¶ 4.)

9. In March 2022, CTS Metrolina purchased the assets of Metrolina Restoration, LLC (“Restoration”), a North Carolina limited liability company owned and operated by Defendants Berastain and Moreau. (Ver. Compl. ¶ 13.) In the transaction, CTS Metrolina acquired Restoration’s assets, including its intellectual property and trade secrets, accounts, relationships, and employment contracts. (Ver. Compl. ¶ 14.) In exchange, Berastain and Moreau received \$3.6 million and were granted minority, non-voting interests in CTS Metrolina, approximating 12.5% of the non-voting interest for each of them. (Ver. Compl. ¶ 17.) In addition, as part of the deal, Berastain and Moreau were offered positions as Co-Presidents of CTS

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<sup>3</sup> Defendant Inkwel Emergency Response, LLC (“Inkwel”) did not appear and was not represented at the hearing.

Metrolina. Both accepted the positions and signed employment agreements with CTS Metrolina. (Ver. Compl. ¶ 15.)

10. Also as a condition of the deal, both Berastain and Moreau were required to agree to the terms of a Confidentiality and Protective Covenant Agreement (the “Restrictive Covenant Agreements”) that includes noncompetition, nonsolicitation, and confidentiality provisions. (Ver. Compl. ¶ 16.)

11. The noncompetition provisions in the Restrictive Covenant Agreements purport to prohibit Berastain and Moreau from (1) engaging in “the Business”<sup>4</sup> “in a capacity that is substantially similar to the capacity in which [he] served [Restoration] within the 12-month period preceding the Closing;”<sup>5</sup> (2) providing services to any Person<sup>6</sup> in the Business “that are the same or substantially similar to” services Berastain or Moreau provided to Restoration during the 12-month period preceding the Closing; or (3) having an active interest in any Person that engages in the Business, unless it is solely as a passive investor of less than five percent (5%) of a publicly traded entity. (Restrictive Covenant Agreement, Section

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<sup>4</sup> “Business” means the business, practices and operations of Seller, as conducted and as proposed to be conducted as of the date of this Agreement and as conducted as of the Closing Date and during the Restricted Period, which includes, without limitation, the provision of disaster recovery, mitigation, and restoration services primarily to owners of damaged or otherwise affected residential and commercial structures in the eastern United States, based out of North Carolina. For the sake of clarity, the “Business” does not include the post-remediation construction activities of Affinity Construction, LLC, which is owned in part by Owner. (Restrictive Covenant Agreement, Section 4(b).)

<sup>5</sup> “Closing” means the Closing of the transactions contemplated by the APA according to its terms. (Restrictive Covenant Agreement, Section 4(c).)

<sup>6</sup> “Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity. (Restrictive Covenant Agreement, Section 4(i).)

3.1(a)-(c.) These restrictions are applicable to a Territory defined to be the greatest of the following severable geographic area(s): (i) the United States; (ii) the states in which either Restoration or CTS Metrolina “conducted, promoted, managed, developed, or engaged in the Business” within the 12-month period prior to the Closing; (iii) the geographic territory(ies) in which Berastain or Moreau had a job responsibility for conducting, promoting, managing, developing or engaging in the Business during the 12-month period prior to the Closing Date; and (d) the area within a 100 mile radius of CTS Metrolina’s business office located at 1806 Lane Street, Kannapolis, North Carolina 28083. (Restrictive Covenant Agreement, Section 4(m); Ver. Compl. ¶ 41.) The “Restricted Period” is five years from the Closing Date, until approximately March 2027. (Restrictive Covenant Agreement, Section 4(k); Ver. Compl. ¶ 41.)

12. As for the nonsolicitation provision, Berastain and Moreau promised that during the same five year Restricted Period, they would not (1) induce a Seller Customer<sup>7</sup> “or any other Person who has a material business relationship with [Restoration]” to “terminate, reduce or otherwise negatively modify its business relationship” with Restoration or CTS Metrolina; (2) solicit any Restoration Customer “to obtain products or services that compete with those offered or sold by [Restoration

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<sup>7</sup> “Seller Customer” means any Person who is a customer of Restoration or CTS Metrolina and with whom Berastein or Moreau or their Affiliates (or any subordinate Person acting within a direct reporting chain of command to them) acting on their behalf had Material Work Contact for the purposes of promoting products or services in the Business any time within the 12-month period preceding the Closing. (Restrictive Covenant Agreement, Section 4(l).)

or CTS Metrolina] in the Business as of Closing from another Person; (3) accept business from any Restoration Customer for products or services that compete with those offered or sold by Restoration or CTS Metrolina in the Business; (4) “[s]olicit, induce, encourage, or endeavor to cause” any Employee<sup>8</sup> of Restoration or CTS Metrolina with whom Berastain or Moreau or his respective Affiliates<sup>9</sup> had Material Work Contact<sup>10</sup> to leave employment with CTS Metrolina or to “negatively alter the level of services he or she provides;” and (5) hire or facilitate the hiring by another Person of any Employee of CTS Metrolina with whom Berastain or Moreau or their respective Affiliates had Material Work Contact, until 180 days after the Employee’s separation from CTS Metrolina, and then only if the hiring did not violate a restrictive covenant between the individual and CTS Metrolina. (Restrictive Covenant Agreement, Section 3.2(a)-(e); Ver. Compl. ¶ 40.)

13. The Confidentiality and Nondisclosure section in the Restrictive Covenant Agreements requires that Berastain and Moreau (1) treat all Proprietary

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<sup>8</sup> “Employee” means, as of immediately prior to the Closing, each employee of Seller and, as of the Closing Date (following effectiveness of the Closing), each employee of Purchaser. (Restrictive Covenant Agreement, Section 4(e).)

<sup>9</sup> “Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. (Restrictive Covenant Agreement, Section 4(a).)

<sup>10</sup> “Material Work Contact” means contact in person, by telephone, by videoconference or by email in connection with, or in furtherance of, the Business on behalf of the Seller or Purchaser any time within the 12-month period preceding the Closing. (Restrictive Covenant Agreement, Section 4(g).)

Information as confidential “and to not directly or indirectly through others disclose, publish, communicate, or make available Proprietary Information, or allow it to be disclosed, published communicated or made available, in whole or part, to any entity or person whatsoever;” and (2) not access, use, copy, or remove any Proprietary Information.<sup>11</sup> (Restrictive Covenant Agreement, Section 2(a)-(b).)

14. Berstain and Moreau managed and operated CTS Metrolina on a day-to-day basis, entered into agreements on behalf of CTS Metrolina, managed relationships with subcontractors and vendors, expanded CTS Metrolina’s business, and awarded commissions to CTS Metrolina employees who brought in new accounts. (Ver. Compl. ¶ 31.)

15. In general, CTS Metrolina serves as the general contractor for its projects and works with a specific pool of subcontractors that it coordinates and manages. (Ver. Compl. ¶ 11.) CTS Metrolina uses an IT program commonly used in the industry called “iRestore” to manage these subcontractors. (Ver. Compl. ¶ 12, Chakyra Cherry [“Cherry Aff.”] ¶ 7, ECF No.10.) When CTS Metrolina receives a job from a customer, it posts the project information on iRestore, designates a subcontractor to perform the work for that job, and has iRestore generate a job confirmation email that is sent to the designated subcontractor. (Ver. Compl. ¶ 12.)

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<sup>11</sup> A lengthy definition of Proprietary Information is included at Section 4(j) of the Restrictive Covenant Agreements. Among other things it includes: (1) customer purchasing or ordering histories, specifications and preferences, and pricing; (2) the terms and conditions of suppliers, vendors, consultants, or contractors; (3) the terms of employees; (4) information relating to technology platforms; (5) market plans and the associated business development strategies; (6) research and development information; (7) information provided by any third party on a confidential basis; (8) financial information; (9) trade secrets; and (10) Intellectual Property. (Restrictive Covenant Agreement, Section 4(j).)

16. CTS Metrolina contends that its success depends on its relationships with customers and its trade secret and other confidential business information. (Ver. Compl. ¶¶ 18-19.) CTS Metrolina claims that its trade secrets include detailed information that it maintains on its customers, subcontractors and vendors, as well as information regarding its business operations. (Ver. Compl. ¶ 24.) It maintains that the information has competitive value because, “[f]or example, a person with access to CTS Metrolina’s trade secrets could approach existing or potential customers with full knowledge of exactly how CTS Metrolina would sell its services and serve the customers, allowing that person to undercut CTS Metrolina and obtain the work.” (Ver. Compl. ¶ 26.) For this reason, CTS Metrolina broadly alleges that it restricts access of some of the information to some of its employees, requires “key” employees to sign restrictive covenants, and password protects its customer portal and customer relationship management system. (Ver. Compl. ¶ 27.)

17. About a year after the acquisition, Berastain and Moreau became disgruntled and “disengaged from their work.” (Ver. Compl. ¶ 42.) They filed a lawsuit in Cabarrus County, North Carolina, seeking to invalidate the acquisition. (Ver. Compl. ¶ 44.)

18. On 15 September 2023, Berastain sent an email to CTS Metrolina’s subcontractors and vendors stating that CTS Metrolina “was in a ‘financial crisis’ and ‘unable to meet [CTS Metrolina’s] financial obligations, including honoring [CTS Metrolina’s] net30 agreements.’ ” (Ver. Compl. ¶ 46.) CTS Metrolina contends Berastain’s email “harmed CTS Metrolina’s reputation and its ability to do business



with its subcontractors and vendors, and some subcontractors and vendors severed ties with CTS Metrolina.” (Ver. Compl. ¶ 47.)

19. As a result of Berastain’s email, CTS Metrolina terminated Berastain for cause on 10 October 2023. (Ver. Compl. ¶ 49.) Moreau and Ryan Brandon, another employee of CTS Metrolina, resigned. (Ver. Compl. ¶¶ 50-51.)

20. Following their departure, CTS Metrolina requested that Berastain and Moreau allow it to image the laptops they had used while working for CTS Metrolina to ensure removal of any proprietary information on their computers. (Ver. Compl. ¶ 53.) Moreau complied with this request, but Berastain said that his laptop was broken and “that he threw the laptop in the trash when he was on vacation in New Jersey, and it was no longer available.” (Ver. Compl. ¶¶ 54-55.)

21. CTS Metrolina has heard that Berastain and Moreau are now affiliated with Inkwell Emergency Response, LLC (“Inkwell”), a Wyoming company that also provides emergency restoration services. (Ver. Compl. ¶¶ 56-57.) However, neither Berastain nor Moreau is employed by Inkwell. (Cherry Aff. ¶¶ 14-15.)

22. Rytech Restoration (“Rytech”) is one of CTS Metrolina’s subcontractors. (Ver. Compl. ¶ 58.) On 1 December 2023, Rytech forwarded a job confirmation it received from iRestore to CTS Metrolina. (Ver. Compl. ¶ 60.) The email indicated that the job was for American Homes 4 Rent (“AH4R”). (Ver. Compl. ¶ 61.) AH4R is one of CTS Metrolina’s largest clients. (Ver. Compl. ¶ 59.) The job was created by former CTS Metrolina employee Ryan Brandon. (Ver. Compl. ¶ 61.)

23. CTS Metrolina investigated the email and was told by iRestore personnel that Berastain and Moreau are “involved” with Inkwell. (Ver. Compl. ¶ 64.) In addition, an officer of CTS Metrolina’s parent company met with a representative of one of CTS Metrolina’s largest customers, who told her that Berastain had contacted him to say “we’re back up and running.” (Aff. of Erin Pinter ¶¶ 2, 4, ECF No. 7.1.)

24. CTS Metrolina further alleges that it is inevitable that Berastain and Moreau will violate their legal obligations not to disclose its trade secrets and other confidential information. (Ver. Compl. ¶ 68.)

25. Chakyra Cherry (“Cherry”) was an employee of Restoration from 2020 until March 2022. (Cherry Aff. ¶ 6.) Following CTS Metrolina’s acquisition of Restoration, Cherry was employed by CTS Metrolina as its Director of Operations until October 2023. (Cherry Aff. ¶ 9.) In November 2023, Cherry was employed as the Director of Operations for Inkwell. (Cherry Aff. ¶ 11.) Cherry contends that Inkwell currently has three employees: herself, Ryan Brandon, and Aleciya Rucker. (Cherry Aff. ¶ 13.) While all three are former employees of CTS Metrolina, they are not parties to the Restrictive Covenant Agreements. (Cherry Aff. ¶¶ 13, 30.)

26. With respect to the job for AH4R, Cherry contends that she personally procured the job for Inkwell through her “personal connections, relationships, and experiences cultivated during [her] time in the restoration industry.” (Cherry Aff. ¶ 20.) The job was located in Schertz, Texas, a suburb of San Antonio.

(Cherry Aff. ¶ 24.) There is no evidence regarding whether CTS Metrolina has ever operated in or around San Antonio.

27. At the hearing, CTS Metrolina based its request for relief on its claims for breach of contract and misappropriation of trade secrets.<sup>12</sup>

### CONCLUSIONS OF LAW

28. The Court has jurisdiction over the parties and subject matter of this action.

#### A. Temporary Restraining Orders

29. The purpose of a temporary restraining order (“TRO”) “is to preserve the status quo until the motion for a preliminary injunction can, after notice, be brought on for hearing and decision.” *Lambe v. Smith*, 11 N.C. App. 580, 582 (1971). The decision to grant or deny injunctive relief rests in the discretion of the court. *Id.* at 583.

30. Immediate injunctive relief “will be issued only (1) if a plaintiff is able to show [a] *likelihood* of success on the merits of his case and (2) if a 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 a plaintiff’s rights during the course of litigation.” *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983) (emphasis in original).

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<sup>12</sup> Plaintiff included in its motion a request that the Court enter an order “to prohibit Defendants from future tortious interference with CTS Metrolina’s contracts and prospective economic advantage,” but it did not argue for this relief during the hearing.

31. As to the first question, “likelihood of success” means a “reasonable likelihood[.]” *Id.* at 404. As to the second question, the inquiry is not limited to irreparable injury. “The injunction will issue if, in the opinion of the Court, issuance is necessary for the protection of plaintiff’s rights during the course of litigation.” *Id.* at 405 (cleaned up).

32. When assessing these factors, the trial judge “should engage in a balancing process, weighing the potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability.” *Williams v. Greene*, 36 N.C. App. 80, 86 (1978).

33. The Court must base its decision regarding whether to grant a TRO upon the evidence presented before it. *Register v. Griffin*, 6 N.C. App. 572, 575 (1969). The burden is on the moving party to establish its right to a TRO, and the remedy “should not be lightly granted.” *Old Battleground Props. v. Cent. Carolina Surgical Eye Assocs., P.A.*, 2015 NCBC LEXIS 19, at \*\*18 (N.C. Super. Ct. Feb. 25, 2015).

#### B. Restrictive Covenants in the Context of Sale of Business

34. A covenant that arises from the sale of a business (where it is apparent that the purchaser has a legitimate interest in protecting the assets just purchased) is subject to a different level of scrutiny than the typical employment covenant (where the business interest to be protected may not be as readily apparent). *See e.g., Keith v. Day*, 81 N.C. App. 185, 193 (1986) (“We recognize the distinction between covenants

not to compete in connection with the sale of a business and covenants not to compete in connection with a contract of employment. The latter are more closely scrutinized than the former.”); *Azko Nobel Coatings, Inc. v. Rogers*, 2011 NCBC LEXIS 42, at \*\*30 (N.C. Super. Ct. Nov. 3, 2011) (“Non-compete covenants which accompany a sale of business generally are afforded more latitude than covenants ancillary to employment contracts.”).

35. The assets of a business include its trade secrets or other proprietary and confidential information, as well as its other intangibles, such as goodwill with customers, suppliers, and other third parties. When these assets are sold, the buyer has a legitimate interest in protecting its purchase and may do so through restrictive covenants. *See, e.g., Jewel Box Stores Corp. v. Morrow*, 272 N.C. 659, 663 (1968) (“The modern rule permitting the sale of good will recognizes that one who, by his skill and industry, builds up a business, acquires a property right in the good will of his patrons and that this property is not marketable unless the owner is at liberty to sell his right of competition to the full extent of the field from which he derives his profit and for a reasonable length of time[.]” (internal quotation marks and citation omitted)).

36. However, even in the context of the sale of a business, whether a noncompete is enforceable turns on whether the restraint on trade is no more restrictive than necessary to protect the legitimate business interests implicated. *See e.g., Carlson Env't Consultants, PC v. Slayton*, 2017 U.S. Dist. LEXIS 154191, at \*20-

26 (W.D.N.C. Sept. 1, 2017) (analyzing noncompete signed in consideration of employment that also arose from the sale of a business).

37. Our Supreme Court has stated that it “will enforce a covenant not to compete made in connection with the sale of a business ‘(1) if it is reasonably necessary to protect the legitimate interest of the purchaser; (2) if it is reasonable with respect to both time and territory; and (3) if it does not interfere with the interest of the public.’ ” *Beverage Sys. of the Carolinas, LLC v. Associated Beverage Repair, LLC*, 368 N.C. 693, 698 (2016) (quoting *Jewel Box Stores Corp.*, 272 N.C. at 662-663).

38. Ultimately, “[t]he reasonableness of a restraining covenant is a matter of law for the court to decide.” *Jewel Box Stores Corp.*, 272 N.C. at 663.

#### C. Misappropriation of Trade Secrets

39. To state a claim for misappropriation of trade secrets, CTS Metrolina must “identify a trade secret with sufficient particularity so as to enable [the] defendant[s] to delineate that which [they are] accused of misappropriating and a court to determine whether misappropriation has or is threatened to occur.” *Washburn v. Yadkin Valley Bank & Trust Co.*, 190 N.C. App. 315, 326 (2008) (quoting *Analog Devices, Inc. v. Michalski*, 157 N.C. App. 462, 468 (2003)). General, sweeping, and conclusory allegations are inadequate. *See Krawiec v. Manly*, 370 N.C. 602, 610 (2018).

40. Further, Plaintiff must allege that the trade secret information at issue was subject to reasonable efforts to maintain its secrecy. *BIOMILQ, Inc. v. Guiliano*, 2023 NCBC LEXIS 24, at \*\*20 (N.C. Super. Ct. Feb. 10, 2023) (citing N.C.G.S. § 66-

152(3)(b)). “Plaintiffs must allege the reasonable efforts taken . . . [because t]he mere assertion that [trade secrets] were kept confidential is not enough to withstand a [Rule] 12(b)(6) motion to dismiss.” *McKee v. James*, 2013 NCBC LEXIS 33, at \*\*37-38 (N.C. Super. Ct. July 24, 2013) (citation omitted).

41. CTS Metrolina must also allege sufficient facts to support its contention that there has been misappropriation. *See Am. Air Filter Co. v. Price*, 2017 NCBC LEXIS 9, at \*22-23 (N.C. Super. Ct. Feb. 3, 2017) (“access to, and therefore an ‘opportunity to acquire,’ an employer’s trade secrets, without more, is not sufficient to establish a prima facie case of misappropriation”); *Daniel Grp., Inc. v. Am. Sales & Mktg.*, 2016 NCBC LEXIS 112, at \*27-28 (N.C. Super. Ct. Dec. 15, 2016) (dismissing claim when plaintiff did not allege how defendants misappropriated its trade secrets).

#### D. Analysis

42. Plaintiff has presented evidence sufficient to establish a reasonable likelihood that it will succeed on its claim that the restrictive covenants at issue are enforceable and that Berastain and Moreau have violated one or more of them. The covenants arose from the sale of a business and are therefore reviewed with respect to time, territory and scope more liberally than would be true in the ordinary employment context. Further, the evidence is that CTS Metrolina purchased the assets of Restoration and intended for the Restrictive Covenant Agreements to protect its investment. However, Berastain and Moreau ended employment with CTS Metrolina on 10 October 2023. Inkwell, a competitor in the commercial property restoration business, was formed shortly thereafter on 26 October 2023, and it

registered to do business in North Carolina on 8 November 2023. One of Inkwell's employees, Cherry, herself a former CTS Metrolina employee, testified that at least by 1 December 2023, she had solicited, and Inkwell had received business from AH4R, one of CTS Metrolina's largest customers. Inkwell assigned the job to one of CTS Metrolina's subcontractors.

43. The evidence suggests that Cherry did not act on her own. CTS Metrolina alleges in the Verified Complaint that iRestore personnel informed CTS Metrolina that Berastain and Moreau are "involved" with Inkwell. A representative of AH4R informed an officer of CTS Metrolina's parent company that Berastain had contacted him to say that they [Berastain and Moreau] were "back up and running."<sup>13</sup> Cherry's affidavit only disavows Berastain and Moreau's involvement as employees or executives of Inkwell. Strangely, Berastain and Moreau themselves are silent.

44. The Court concludes that the evidence presented makes it reasonably likely that Plaintiff will succeed on the merits of its claim for breach of one or more of the restrictive covenants, that Plaintiff would suffer irreparable harm to its customer relationships or from disclosure of its confidential, proprietary information

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<sup>13</sup> Recognizing the emergency nature of the relief, federal courts have permitted the consideration of hearsay in injunction proceedings. *See Am. Angus Ass'n v. Sysco Corp.*, 829 F. Supp. 807, 816 (W.D.N.C. 1992) ("Affidavits and other hearsay materials are often received in preliminary injunction proceedings. The dispositive question is not their classification as hearsay but whether, weighing all the attendant factors, including the need for expedition, this type of evidence was appropriate given the character and objectives of the injunctive proceeding."); *Dynamic Aviation Grp. Inc. v. Dynamic Int'l Airways, LLC*, 2016 U.S. Dist. LEXIS 204983 (W.D. Va. 2016) (collecting cases holding that hearsay evidence may be considered in a preliminary injunction proceeding and observing that seven federal Circuit Courts have permitted this practice). Our Supreme Court has recognized that decisions under the federal rules are pertinent for "enlightenment and guidance" in developing the philosophy of the North Carolina rules. *Sutton v. Duke*, 277 N.C. 94, 101 (1970).



if temporary relief is not afforded it, that the equities weigh in Plaintiff's favor, and therefore that temporary injunctive relief is warranted, as detailed below.

45. On the other hand, the Court does not conclude that Plaintiff has shown that it is reasonably likely to succeed on the merits of its misappropriation of trade secrets claim. CTS Metrolina identifies its alleged trade secrets in broad, sweeping terms.<sup>14</sup> It does not specify the particular measures taken to maintain the secrecy of the particular trade secrets it claims have been misappropriated, and it makes only general statements about its security measures.<sup>15</sup> Merely alleging that Berastain and Moreau, as Co-Presidents of CTS Metrolina, had access to the company's trade secrets and now work for a competitor is not sufficient to allege that misappropriation has occurred. *See Washburn*, 190 N.C. App. at 327 (concluding that similar

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<sup>14</sup> CTS Metrolina alleges that its trade secrets include: "a. Lists of customers, along with detailed information about each such as contact information, preferences and requirements for the work performed for them, terms of the contracts with these customers, pricing and discounts offered to these customers, and other information that enables CTS Metrolina to provide the right services at the right prices to these customers. b. Lists of subcontractors and vendors, along with detailed information about each such as contact information, preferences and requirements for them to perform services for CTS Metrolina's customers, terms of the contracts with the subcontractors and vendors, pricing and discounts, and other information that enables CTS Metrolina to engage its subcontractors and vendors under the right conditions in order to serve its customers. c. Business operation information, which includes how CTS Metrolina sells and markets its services to its customers, how it staffs jobs to serve customers effectively and efficiently, its operational structure, business opportunities it intends to pursue, and similar information." (Ver. Compl. ¶ 25.)

<sup>15</sup> CTS Metrolina alleges broadly that it "takes measures to protect its trade secrets[.]" including by restricting access to CTS Metrolina employees, requiring key employees to execute restrictive covenant agreements, and password protecting customer portals where CTS Metrolina receives work and its customer relationship management system. (Ver. Compl. ¶ 27.)

allegations were too general and conclusory to state a claim for misappropriation of trade secrets).

46. Further, the record currently before the Court lists many types of information that may or may not be trade secrets, but it does not sufficiently identify the specific trade secret(s) Defendants are accused of misappropriating. The fact that Cherry received a job from AH4R is just as easily attributed to her own relationship with that customer as it is to the use of any information CTS Metrolina considered to be a trade secret. Furthermore, in North Carolina, customer contact information in the memory of a departing employee is typically not a trade secret. *See, e.g., Kadis v. Britt*, 224 N.C. 154, 162 (1944) (“By the majority view, the knowledge of a deliveryman, or other personal solicitor, of the names and addresses of his employer's customers, gained during the performance of his duties, is not a trade secret, partly because the information would be readily discoverable, and partly because of the court's reluctance to deprive the employee of his subjective knowledge acquired in the course of employment.”); *Asheboro Paper & Packaging, Inc. v. Dickinson*, 599 F. Supp. 2d 664, 677 (M.D.N.C. 2009) (“Under North Carolina law, customer information maintained in the memory of a departing employee is not a trade secret.”); *Bldg. Ctr., Inc. v. Carter Lumber of the North, Inc.*, 2017 NCBC LEXIS 85, \*20-21 (N.C. Super. Ct. Sept. 21, 2017).<sup>16</sup> The Court concludes that the record currently before it is

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<sup>16</sup> To the extent Cherry has failed to return computer equipment as argued by counsel, absent an allegation in the Complaint and supporting evidence, the Court is not positioned to grant the requested mandatory injunctive relief.

insufficient to support entry of a temporary restraining order against any defendant for misappropriation of trade secrets.<sup>17</sup>

47. Nevertheless, both Berastain and Moreau covenanted not to disclose CTS Metrolina's confidential Proprietary Information. Plaintiff's evidence is that Berastain has refused to allow his computer to be imaged to reassure CTS Metrolina that he did not take Proprietary Information with him when he left, both he and Moreau are somehow affiliated with a new competitor, Inkwell, and now one of Plaintiff's largest customers has been successfully solicited, all in short order. The Court concludes, therefore, that a sufficient basis exists to award CTS Metrolina temporary injunctive relief to protect its Proprietary Information.

48. **WHEREFORE**, based upon the **FOREGOING FINDINGS** and **CONCLUSIONS**, the Court, in its discretion, hereby **ORDERS** that Plaintiff's Motion for TRO is **GRANTED in part**, as provided below.

1. For the duration of this Order, Defendants Dustin Berastain, Timothy Moreau, and their respective agents, servants, employees, and attorneys, and those

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<sup>17</sup>CTS Metrolina invites the Court to recognize the doctrine of inevitable disclosure because Berastain and Moreau appear to be affiliated with a competitor, but the Court declines to do so on these facts. The appellate courts of this State have not adopted the inevitable disclosure doctrine. *See, e.g., Southeast Anesthesiology Consultants v. Charlotte-Mecklenburg Hosp. Auth.*, 2018 NCBC LEXIS 137, at \*57-59 (N.C. Super. Ct. June 22, 2018) (observing that a federal district court's prediction that North Carolina would adopt and apply the inevitable disclosure doctrine "ha[d] still not come to fruition" nearly twenty-two years later (citing *Merck & Co. v. Lyon*, 941 F. Supp. 1443, 1459 (M.D.N.C. 1996))). *See also Travenol Labs, Inc. v. Turner*, 30 N.C. App. 686, 693 (1976) (declining to award injunctive relief on the basis of inevitable disclosure and observing that "North Carolina courts have never enjoined an employee from working for a competitor merely to prevent disclosure of confidential information.").

persons in active concert or participation with them, are enjoined from disclosing or using information regarding Plaintiff's customers, subcontractors, and vendors that reveals:

- a. Pricing provided to CTS Metrolina's customers;
- b. Discounts provided to CTS Metrolina's customers;
- c. CTS Metrolina's customers' preferences regarding the manner in which CTS Metrolina provides services to those customers;
- d. CTS Metrolina's customers' requirements of CTS Metrolina when performing work for them;
- e. Contractual terms that are offered to CTS Metrolina's customers;
- f. Prices for goods or services that CTS Metrolina acquires from its subcontractors and / or vendors;
- g. Discounts on the goods or services that CTS Metrolina acquires from its subcontractors and / or vendors;
- h. Contractual terms of the agreements that CTS Metrolina enters into with its subcontractors or vendors.

2. Defendants Dustin Berastain, Timothy Moreau and their respective agents, servants, employees, and attorneys, and those persons in active concert or participation with them shall immediately discontinue use of the iRestore job listings that were created, maintained, or otherwise assisted by Berastain or Moreau's use of Plaintiff's proprietary information. In carrying out the provisions of this paragraph,

Defendants shall take all reasonably necessary steps to preserve information regarding how the discontinued job listings were established and operated, such that information relating to this case is not deleted.

3. In any state in the United States in which either Restoration or CTS Metrolina, within the twelve month period preceding the closing date of the asset purchase agreement between Restoration and CTS Metrolina, engaged in the commercial property restoration business, Defendants Dustin Berastain and Timothy Moreau and their respective agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are enjoined from (i) engaging in, (ii) assisting any other entity or person (including any person working on or behalf of Inkwell Emergency Response, LLC) to engage in, or (iii) providing or performing services for, any person or entity in the commercial property restoration business, to the extent Berastain or Moreau would be acting in a capacity that is substantially similar to the capacity Berastain or Moreau served Restoration within the 12-month period preceding the closing date of the asset purchase agreement between Restoration and CTS Metrolina.

4. Except as herein stated, the Motion for TRO is **DENIED**.

5. Pursuant to the provisions of Rule 65(c), and as a condition of this Order, Plaintiff shall post security in the amount of \$1,000.00 in the form of cash, check, surety bond, or other undertaking satisfactory to the Mecklenburg County Clerk of Superior Court no later than 29 December 2023.

6. The terms and conditions of this Order shall be in force and effect immediately, and unless extended pursuant to the provisions of Rule 65, the TRO will expire at 8:00 AM on 3 January 2024. Absent a showing of undue prejudice, *should Plaintiff so move*, the Court anticipates exercising its discretion under Rule 65(b) to extend the TRO for a second ten-day period by separate order.

**IT IS SO ORDERED**, this 24th day of December 2023, at 8:00 AM.

/s/ Julianna Theall Earp

Julianna Theall Earp  
Special Superior Court Judge  
for Complex Business Cases