

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

HP TUNERS, LLC,

Plaintiff,

v.

KENNETH CANNATA,

Defendant.

Case No. 3:18-cv-00527-LRH-WGC

ORDER

Before the Court are competing motions for partial summary judgment. The first was filed by Plaintiff HP Tuners, LLC (“HPT”) on June 30, 2021. ECF No. 119. The second was filed by Defendant Kenneth Cannata (“Cannata”) also on June 30, 2021. ECF No. 124 (128-s).¹ The parties responded and replied to each motion. In addition, HPT filed a motion to strike (ECF No. 142) aspects of Cannata’s motion for partial summary judgment. Cannata filed a response (ECF No. 147), to which HPT replied (ECF No. 148). For the reasons articulated in this Order, the Court now grants in part and denies in part the parties’ motions.

I. BACKGROUND

HPT is a Nevada limited liability company founded by Keith Prociuk (“Prociuk”), Chris Piastri (“Piastri”), and Cannata on December 31, 2003, with its principal place of business in

¹ Cannata filed portions of his briefing and attached exhibits under seal. Due to the nature of the sealed material, the Court grants the parties’ requests to seal much of the information contained within the briefing (ECF Nos. 111, 127, 145, 152). While the Court would prefer to keep all the sealed information confidential, some of it is necessary to resolve the pending motions. The Court will therefore include some information unredacted in this Order where appropriate. The Court recognizes that the parties have privacy interests in the confidential information, but the public has a greater interest in the reasoning behind the Court’s Order today. The Court will refer to the sealed pleadings

1 Buffalo Grove, Illinois. ECF No. 1 at 4. On or about March 25, 2004, HPT adopted a written
2 operating agreement (the “Operating Agreement”), which was signed by all three founding
3 members. Based on the Operating Agreement, each member had one-third ownership interest in
4 HPT signed on March 25, 2004. *Id.* The Operating Agreement further stated that it is governed by
5 Nevada law. ECF No. 1-1 at 2. Additionally, in March 2008, Cannata, Prociuk, and Piastri entered
6 into a Buy Sell Agreement (the “Buy Sell Agreement”) that provided, among other things, ways
7 to calculate the purchase price of a member’s interest in HPT as well as actions that required
8 unanimous member approval. ECF No. 1-2.

9 As far as its business, HPT describes itself as a “niche” company that provides “cost
10 effective automotive tuning and data acquisition solutions” for both private car enthusiasts and
11 professional shops. *Id.* HPT designs and manufactures computer hardware and software for tuning
12 and calibrating engines and transmissions in automobiles, trucks, ATVs, snowmobiles, and other
13 vehicles. *Id.* A “core function” of the business is to sell interfaces, such as the Multi Point Vehicle
14 Inspection (“MPVI”)², which connect to the onboard computer of a vehicle and allow for
15 individuals to use the HPT software and tune their vehicle. *Id.* HPT also sells “credits,” which HPT
16 describes as the license mechanism that customers use to tune their vehicles. *Id.* The sale and
17 distribution of credits via “application keys,” is a fundamental component of HPT’s business. *Id.*
18 at 9. The application keys are generated by the “key generator,” which HPT describes as, “the
19 single most valuable piece of intellectual property that [it] possesses.” *Id.* HPT safeguards its
20 confidential and proprietary information through the usage of computer passwords, hard drive
21 encryption, firewalls, and rules preventing company employees from copying or transferring any
22 of the information. *Id.* at 6.

23 In 2014, Cannata became aware of an individual named Kevin Sykes-Bonnett (“Sykes-
24 Bonnett”), who is a principal of Syked ECU Tuning, LLC (“Syked”)—a competitor of HPT. ECF
25 No. 128-s at 6. Sykes-Bonnett had information, including software and code relating to Chrysler,
26 Jeep, and Dodge vehicles that were not supported by HPT’s software at the time. *Id.* In early 2015,

27
28 ² The MPVI is a comprehensive assessment of, among other things, tire wear, remaining engine oil life, brakes, wires,

1 Cannata reached out to Sykes-Bonnett to discuss purchasing this information from Sykes-Bonnett
2 to be used by HPT in expanding its supported vehicle lineup. *Id.* Cannata delivered a \$5,000 check
3 to Sykes-Bonnett in March 2015 and received a copy of the technical information that HPT sought.
4 *Id.* at 7.

5 By 2015, disagreements had arisen between Cannata and the other members of HPT.
6 During a July 2015 management meeting, Prociuk and Piastri requested that Cannata agree to
7 amend the Buy Sell Agreement to increase the threshold for transactions requiring unanimous
8 member approval from \$100,000 to \$200,000 and to exempt transactions relating to hiring and
9 compensating employees from such threshold. ECF No. 128-s at 7–8. Around July 20, 2015, each
10 member signed an amendment to the Buy Sell Agreement to that effect. *Id.* In Cannata’s mind,
11 this was part of a unilateral plot to terminate him without cause. *Id.* In January 2016, Prociuk and
12 Piastri adopted a written consent as members of HPT through which Cannata’s role in the
13 management and control of HPT significantly decreased. *Id.*

14 Afterwards, in or around February 2016, Prociuk and Piastri initiated discussions with
15 Cannata about buying him out of his membership interest in HPT. ECF No. 112 at 25, 31, 108.
16 After months of negotiations, Prociuk and Piastri agreed to purchase Cannata’s stake in the
17 company on October 20, 2016. ECF No. 1-2; ECF No. 112 at 191–205, 213–219. Pursuant to the
18 Membership Interest Purchase Agreement (the “Purchase Agreement”), HPT paid Cannata \$6.8
19 million for his stake in the company, and in return, Cannata agreed to several restrictive covenants.
20 ECF No. 1-2. These covenants included returning all of HPT’s proprietary and confidential
21 information to HPT and destroying any related information he had in his possession, a prohibition
22 on disclosing any confidential information to any third parties, and a non-compete clause. *Id.* at
23 11–13.

24 While negotiating his exit from HPT, on March 11, 2016, Cannata entered into a non-
25 disclosure agreement (the “NDA”) with Syked. ECF No. 1 at 7; ECF No. 125 at 9. After entering
26 into the NDA, Cannata emailed Syked certain source code files related to HPT’s VCM Suite,
27 including, among other things, an administrative version of VCM Suite 2.23, and a USB thumb

28 files that included some of HPT’s source code. ECF No. 128-s at 10. Subsequent to the sale of

1 Cannata's interest in HPT, Cannata's wife obtained an ownership interest in Syked in January
2 2017. ECF No. 112 at 237, 241-42, 266, 284, 317-19, 334-36, 381-82.

3 HPT first learned of Cannata's alleged misconduct in August 2018 and filed this lawsuit
4 thereafter, alleging several causes of actions: (1) breach of fiduciary duty; (2) fraud; (3) violation
5 of the Computer Fraud and Abuse Act (18 U.S.C. §1030); (4) violation of the Defend Trade Secrets
6 Act ("DTSA") (18 U.S.C. §1836); (5) violation of the Copyright Act (17 U.S.C. §1201(A)(1)(A));
7 (6) a violation of the Nevada Uniform Trade Secrets Act; (7) a violation of the Illinois Trade
8 Secrets Act; (8) unfair competition under the Nevada Deceptive Trade Practices Act; (9) unfair
9 competition under the Illinois Consumer Fraud and Deceptive Business Practices Act; (10)
10 common law breach of contract; (11) tortious interference with prospective contractual or
11 economic relations, and (12) conversion. According to HPT, if it had learned or been advised that
12 Cannata had shared HPT's confidential and proprietary information, Cannata would have been
13 terminated for cause pursuant to the Buy Sell Agreement and not have paid Cannata more than his
14 one-third interest in the book value of HPT. ECF No. 120 at 5. HPT, relying on the report of its
15 expert, John R. Bone ("Bone"), presents to the Court its calculations for damages for Cannata's
16 alleged misconduct. ECF No. 130-s at 80-167.

17 **II. LEGAL STANDARD**

18 Summary judgment is appropriate only when the pleadings, depositions, answers to
19 interrogatories, affidavits or declarations, stipulations, admissions, and other materials in the
20 record show that "there is no genuine dispute as to any material fact and the movant is entitled to
21 judgment as a matter of law." FED. R. CIV. P. 56(a). In assessing a motion for summary judgment,
22 the evidence, together with all inferences that can reasonably be drawn therefrom, must be read in
23 the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith*
24 *Radio Corp.*, 475 U.S. 574, 587 (1986); *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d
25 1148, 1154 (9th Cir. 2001).

26 The moving party bears the initial burden of informing the court of the basis for its motion,
27 along with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v.*

28 *City of Los Angeles*, 477 U.S. 217, 222 (1986). On those issues for which it bears the burden of proof, the

1 moving party must make a showing that is “sufficient for the court to hold that no reasonable trier
2 of fact could find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259
3 (6th Cir. 1986) (quoting W. Schwarzer, *Summary Judgment Under the Federal Rules: Defining*
4 *Genuine Issues of Material Fact*, 99 F.R.D. 465, 487-88 (1984)); *see also Idema v. Dreamworks,*
5 *Inc.*, 162 F.Supp.2d 1129, 1141 (C.D. Cal. 2001).

6 To successfully rebut a motion for summary judgment, the nonmoving party must point to
7 facts supported by the record which demonstrate a genuine issue of material fact. *Reese v. Jefferson*
8 *Sch. Dist. No. 14J*, 208 F.3d 736, 738 (9th Cir. 2000). A “material fact” is a fact “that might affect
9 the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
10 248 (1986). Where reasonable minds could differ on the material facts at issue, summary judgment
11 is not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute regarding a material
12 fact is considered genuine “if the evidence is such that a reasonable jury could return a verdict for
13 the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. “The mere existence of a scintilla of
14 evidence in support of the [party’s] position [is] insufficient” to establish a genuine dispute; “there
15 must be evidence on which the jury could reasonably find for the [party].” *Id.* at 252.³

16 III. DISCUSSION

17 A. HPT’s motion to strike paragraphs of Cannata’s “Statement of Relevant 18 Facts/Procedural Background” contained within his motion for partial summary 19 judgment is granted in part and denied in part.

20 Before reaching the merits of the parties’ motions for summary judgment, the Court will
21 first address HPT’s motion to strike paragraphs contained within Cannata’s motion for partial
22 summary judgment. In its motion, HPT asks the Court to exclude multiple paragraphs of Cannata’s

23 ³ The parties spend great lengths disputing the applicable legal standard for Cannata’s motion for partial summary
24 judgment because he does not bear the burden of persuasion at trial. *Compare* ECF No. 143 at 6 (“...Cannata’s Motion
25 falls considerably short of his requisite burden of demonstrating ‘the absence of any issue of material fact’ warranting
26 summary disposition in his favor.”) *with* ECF No. 150 at 7 (“Cannata’s Motion met his burden by pointing out the
27 lack of evidence to support the necessary elements of HPT’s claims, including duty, damages, and intent among
28 other.”). Despite HPT’s arguments to the contrary, Cannata has identified the correct legal standard and the Court will
29 conduct its analysis accordingly. *See Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000)
30 (“A moving party without the ultimate burden of persuasion at trial ... has both the initial burden of production and
the ultimate burden of persuasion on a motion for summary judgment. ... In order to carry its burden of production,
the moving party must produce either evidence negating an essential element of the nonmoving party’s claim or
evidence to show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.