UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PLINTRON TECHNOLOGIES USA LLC, Plaintiff, v. JOSEPH PHILLIPS, RICHARD PELLY, THOMAS MATHEW, GREG MCKERVEY, and DESIREE MICHELLE GRAY, Defendants.	CASE NO. C24-93 ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER

This matter comes before the Court on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction. (Dkt. No. 11.) Having reviewed Defendants Responses (Dkt. Nos. 20, 25), and having held oral argument on February 6, 2024, the Court DENIES the Motion for a Temporary Restraining Order.

BACKGROUND

This case arises out of Defendants employment with Plaintiff Plintron Technologies USA LLC ("Plintron"). Defendants are all former employees of Plintron who resigned or were terminated in the last four months. (Complaint ¶¶ 13-17.) Plintron alleges Defendants breached their contract and fiduciary duties, committed fraud and misappropriated trade secrets. (Id. at ¶¶ 137-222.)

Plintron USA is an offshoot of Plintron Global, a telecommunications company based in India. (Response at 1.) Plintron Global expanded into the United States in 2012. (Compl. ¶ 31.) When it did, it hired Phillips to serve as Chief Executive Office, manage US operations, onboard new MVNOs and manage Plintron's commercial relationships and contract with T-Mobile. (Id. at ¶¶ 31-32.) Phillips in turn hired Defendant Richard Pelly to act as Chief Operating Officer and Defendant Thomas Mathew to serve as Executive Vice President. (Id. at ¶ 2.) Phillips also hired Defendant Greg McKervey as Plintron's Senior Director of IT Operations and Defendant Desiree Michelle Gray as an administrative assistant. (Id.)

Defendants all left or were terminated by Plintron in October and early November 2023. (Compl. ¶¶ 13-17.) Plintron brings the following ten causes of action against Defendants: (1) Misappropriation of Trade Secrets ("DTSA") (Federal); (2) Misappropriation of Trade Secrets (State); (3) Breach of Contract against Phillips; (4) Breach of Fiduciary Duties; (5) Unfair Competition; (6) Tortious Interference with Contract against Phillips, Pelly, and Mathew; (7) Tortious Interference with Business Relationships or Expectancy against Phillips, Pelly and Mathew; (8) Fraud; (9) Defamation against Phillips, Pelly, and Mathew; and (10) Conversion.

Plintron now moves for a Temporary Restraining Order ("TRO") on its DTSA claims, its contract claim against Phillips, and its conversion claim. Plintron alleges that Defendants Pelly,

Mathew, and Phillips failed to return their Plintron computers and that all Defendants failed to return documents and material containing trade secrets that belong to Plintron. (Mot. at 4.) The main allegation has to do with Phillips and the return of his computer. Phillips refused to return his Plintron computer because it contains sensitive personal information. (Mot. at 5.) Instead, Phillips deposited the computer with a third party pending the duration of this aspect of the litigation. (Id.) At the time of oral argument all Defendants except Phillips had returned the materials requested. (See Response by Greg, Mathew, McKervey, Pelly (Dkt. No. 25).) Counsel indicated they could cooperate to have a neutral remove any personal data from Phillips' computer. Plintron alleges all the Defendants had access to Plintron's trade secrets through the course of their employment and a TRO is required to preserve the status quo and prevent any actual or threatened misappropriation. (Id. at 7 -9.)

ANAYLSIS

A. Legal Standard

A temporary restraining order is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Winter v. Nat. Res. Def. Council, 555 U.S. 7, 22 (2008). The purpose of a preliminary injunction is to preserve the status quo and the rights of the parties until a final judgment on the merits can be rendered. U.S. Philips Corp. v. KBC Bank N.V., 590 F.3d 1091, 1094 (9th Cir. 2010).

TROs are governed by the same standard applicable to preliminary injunctions. Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., Inc., 240 F.3d 832, 839 n. 7 (2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). To obtain a TRO, Plintron must show it is (1) likely to succeed on the merits, (2) likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor,

and (4) an injunction is in the public interest. Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009). The purpose of a TRO is to preserve the status quo and prevent irreparable harm until a hearing can take place on the propriety of a preliminary injunction. Reno Air Racing Assoc., Inc v. McCord, 452 F.3d 1126, 1131 (9th Cir. 2006).

B. Balancing the Winter Factors

1. Likelihood of Success

Likelihood of success on the merits is the "threshold inquiry" and "the most important factor" in determining whether interim, injunctive relief is warranted. Envtl. Prot. Info. Ctr. V. Carlson, 968 F.3d 985, 990 (9th Cir. 2020). If the moving party fails to show a likelihood of success on the merits, the court "need not consider the remaining three [elements]." Garcia v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015) (internal citation omitted).

a. Breach of Contract

Plintron brings a breach of contract claim only against Phillips. Though the complaint contains numerous allegations of breach, the pertinent allegation for the purposes of Plintron's motion is Plintron's allegation that Phillips breached his contract by not returning Plintron property. (Mot. at 10.) The Court is not persuaded of Plintron's success on the merits for this aspect of its breach of contract claim.

In order to prevail on a breach of contract claim, a party must establish that (1) a duty imposed by the contract (2) was breached, with (3) damages proximately caused by the breach. Nw. Indep. Forst Mfrs. V. Dep't of Labor & Indus., 78 Wn. App. 707, 712 (1995).

Plintron alleges Phillips breached the "Return Upon Termination" clause of his employment contract, which required Phillips to return "all of [Plintron USA]'s property, including but not limited to intellectual property, trade secrets, information, customer lists, operation manuals, Executive handbook, records and accounts, materials subject to copyright,

trademark, or patent protection, customer and Employer information, credit cards, business documents, reports, automobiles, keys, passes, and security devices." (Mot. at 10.) (alteration in original). Plintron alleges that after Phillips left Plintron, Phillips refused to return the domain name, email system, the "Paychex" payroll system, and the computer he used. (Mot. at 10.) Plintron acknowledges that since the filing of its complaint, Philips returned all but the computer. (Id.) Plintron claims that Phillips' continued withholding of the computer and potential use of trade secrets is preventing Plintron from fully maintaining business operations.

Plintron's arguments are unpersuasive. Though Plintron can demonstrate it has met the first two elements of the breach of contract claim, its argument as to damages is conclusory. Plintron not only fails to explain how Phillips' retention of the computer and his potential use of trade secrets has hindered its business operations, but it provides no evidence for this argument. And Plintron does not claim any part of its operations have ceased or left it unable to do business because of Phillips' failure to return the computer. Because of this failure, Plintron cannot meets its burden to demonstrate success on the merits of this claim.

b. Defend Against Trade Secrets Claim

Plintron brings both federal and state trade secret claims, and is unlikely to succeed on both of them.

The elements of a DTSA and UTSA claim are substantially similar. Compare 18 U.S.C. § 1839(5), with RCW 19.108.010(2). A plaintiff asserting a DTSA or UTSA claim must establish (1) that it possessed a trade secret; (2) that defendant misappropriated the trade secret; and (3) the "misappropriation caused or threatened damage to the plaintiff." InteliClear, LLC v. ETC Glob. Holdings, Inc., 978 F.3d 653-657-58 (9th Cir. 2020). Under the DTSA and UTSA a trade secret is information that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons . . .;

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