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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Alberto Garcia and Rosa Marin,  
Plaintiffs,  
v.  
Office Keepers LLC, et al.,  
Defendants.

No. CV-17-03032-PHX-DGC

**ORDER**

On February 22, 2018, the Court held an evidentiary hearing on the motion for a preliminary injunction filed by Defendant/Counterclaimant Office Keepers LLC. Doc. 31. After considering the evidence submitted by the parties and the arguments made in writing and at the hearing, the Court will deny the motion.

**I. Legal Standard.**

A “preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original). Such an injunction may be granted if the movant “establish[es] that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

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1     **II.     Analysis.**

2             Office Keepers asks the Court to prohibit Plaintiffs Alberto Garcia and Rosa  
3 Marin from soliciting customers for whom Officer Keepers performed work during the  
4 12 months preceding Plaintiffs’ separation from the company in July 2017, from  
5 soliciting Office Keepers’ independent contractors to work for Plaintiffs’ new company,  
6 and from using confidential information gained during their employment. Office Keepers  
7 asserts that it is likely to succeed on the merits of four claims: (1) misappropriation of  
8 trade secrets, (2) tortious interference with contract and with prospective business  
9 relations, (3) unfair competition, and (4) breach of contract. Doc. 31 at 8-15. Office  
10 Keepers has failed to show that it is likely to succeed on any of these claims.

11             **A.     Misappropriation of Trade Secrets.**

12             Office Keepers alleges that Plaintiffs violated the Arizona Uniform Trade Secrets  
13 Act, A.R.S. § 44-401, et seq. (“AUTSA”). That statute defines a trade secret as  
14 information that “[d]erives independent economic value, actual or potential, *from not*  
15 *being generally known to, and not being readily ascertainable by proper means by,* other  
16 persons who can obtain economic value from its disclosure or use.” § 44-401(4)(a)  
17 (emphasis added). During the hearing, Office Keepers presented evidence that Plaintiffs  
18 have used the identities of Office Keepers’ customers, and contact information related to  
19 those customers, to contact the customers and solicit business for Plaintiffs’ new  
20 company. Office Keepers did not present evidence that Plaintiffs have used any other  
21 confidential information.

22             Office Keepers is not likely to prevail on its claim that the identities and contact  
23 information of its customers constitute trade secrets. Office Keepers’ customers are  
24 companies that contract to provide janitorial services to various businesses or entities.  
25 The customers then subcontract the actual janitorial work to companies like Office  
26 Keepers. Plaintiffs’ counsel aptly characterized these customers as brokers of janitorial  
27 cleaning work.

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1 Two of the five customers identified in Office Keepers' motion testified during the  
2 hearing. Mark Adriansen, the owner of System4, testified that his company is publicly  
3 known as an entity that subcontracts for janitorial services. He testified that he uses  
4 approximately 80 subcontractors like Office Keepers. He advertises his business on the  
5 Internet, has a website, and readily provides contact information. The fact that he is in  
6 the business of subcontracting janitorial work, and his contact information, cannot be said  
7 to be trade secrets within the definition of the AUTSA. That information is generally  
8 known to persons who can obtain economic value from it, and is "readily ascertainable  
9 by proper means." *Id.* An Internet search would identify System4 as a company that  
10 subcontracts out janitorial work.

11 Mike O'Donnell is the owner of City Wide of Phoenix, another of Office Keepers'  
12 customers. O'Donnell testified that he uses approximately 30 subcontractors like Office  
13 Keepers. His company advertises on the Internet, and he invites janitorial companies like  
14 Office Keepers to apply for work. Again, it appears that the position of his company as a  
15 possible supplier of janitorial work is not secret, and that his identity and contact  
16 information are readily ascertainable by proper means.

17 Office Keepers presented evidence regarding other allegedly sensitive information  
18 contained in documents that Plaintiffs did not return when they left Office Keepers'  
19 employment. This included information regarding specific janitorial jobs, the times when  
20 the work was performed, billing information, and building access codes. But Office  
21 Keepers presented no evidence that this information has been used by Plaintiffs. Office  
22 Keepers has not shown that Plaintiffs are misappropriating information properly  
23 categorized as trade secrets under the AUTSA.

24 Office Keepers' motion also cites the Defend Trade Secrets Act, 18 U.S.C. § 1833,  
25 et seq. Doc. 31 at 11. But Office Keepers does not identify the requirements of this  
26 statute, and does not explain how the readily ascertainable information discussed above  
27 could be viewed as a trade secret under it.

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1           **B.     Tortious Interference.**

2           Office Keepers alleges that Plaintiffs have tortiously interfered with contracts and  
3 prospective business with its customers. To demonstrate such interference, a party must  
4 show: “(1) the existence of a valid contractual relationship or business expectancy;  
5 (2) knowledge of the relationship or expectancy on the part of the interferor;  
6 (3) intentional interference inducing or causing a breach or termination of the relationship  
7 or expectancy; and (4) [] damage to the party whose relationship or expectancy has been  
8 disrupted.” *Antwerp Diamond Exch. of Am., Inc. v. Better Bus. Bureau*, 637 P.2d 733,  
9 739-40 (Ariz. 1981); Doc. 31 at 11.

10           Office Keepers has not shown that it is likely to prevail on the third element of this  
11 claim. Evidence presented at the hearing showed that Plaintiffs have indeed contacted  
12 companies that provide work to Office Keepers – Mr. Garcia made contact with a number  
13 of Office Keepers’ customers after he terminated his employment and started his own  
14 business. But Office Keepers presented no evidence that these contacts induced or  
15 caused a breach of a contractual relationship between Office Keepers and its customers,  
16 or loss of a valid business expectancy. The evidence demonstrated that Office Keepers’  
17 customers use many different companies to perform their janitorial work, and that  
18 Plaintiffs have obtained some of that work. The evidence did not show that Plaintiffs  
19 received work that was taken from Office Keepers – that Plaintiffs caused a customer to  
20 breach a contract or a business expectancy with Office Keepers.

21           To be sure, Office Keepers believes that Plaintiffs caused LandCorp Management  
22 Services to withdraw work from Office Keepers. Marci Hernandez, an owner of Office  
23 Keepers, testified that an employee of LandCorp informed Office Keepers that LandCorp  
24 was taking away all of Office Keepers’ accounts because someone from Office Keepers’  
25 office suggested to LandCorp that Office Keepers was paying its independent contractors  
26 incorrectly. Mrs. Hernandez suspects that this individual was Mr. Garcia, but provided  
27 no direct evidence of that fact. And she acknowledged that LandCorp’s stated reason for  
28 terminating the accounts was that LandCorp’s contract prohibits Office Keepers from

1 using independent contractors – the very kinds of janitorial workers that Office Keepers  
2 uses. Although Mrs. Hernandez testified that she genuinely believes Mr. Garcia was  
3 behind LandCorp’s termination of Office Keepers’ work, she was unable to present direct  
4 evidence of that fact. And she acknowledged on cross-examination that she knows of no  
5 LandCorp account previously serviced by Office Keepers that is now serviced by  
6 Plaintiffs.

7 Office Keepers also presented evidence that Plaintiffs are currently providing  
8 janitorial services at Benchmark School, an account that Office Keepers previously  
9 serviced through a subcontract with City Wide of Phoenix. But City Wide’s facility  
10 services manager, Rafael Moreno, testified that he decided to give the Benchmark work  
11 to Plaintiffs – they did not solicit it from him.

12 Given this evidence, Office Keepers has not shown that it is likely to succeed in  
13 proving that Plaintiffs induced or caused a breach of contract or termination of a  
14 legitimate business expectancy.

15 **C. Unfair Competition.**

16 In support of this claim, Plaintiffs rely on *Fairway Constructor’s Inc. v. Ahern*,  
17 970 P.2d 954, 956 (Ariz. Ct. App. 1998). Doc. 31 at 13. That case held that the general  
18 purpose of the doctrine of unfair competition “is to prevent business conduct that is  
19 ‘contrary to honest practice in industrial or commercial matters.’” *Fairway*, 970 P.2d  
20 at 956 (citation omitted). Office Keepers argues that Plaintiffs are “attempting to take a  
21 shortcut [in] growing [their] janitorial services business by stealing the contracted labor  
22 and customers that Office Keepers has invested substantial time and effort to develop.”  
23 Doc. 31 at 14. “Stealing” is the key word in the sentence, and it was not borne out by the  
24 evidence.

25 The evidence demonstrated that Office Keepers does not have an exclusive  
26 contract with any of its customers. The customers can, and do, give work to many  
27 providers of janitorial services. Given this evidence, the Court cannot conclude that  
28 Plaintiffs engaged in dishonest practices when they solicited work from these customers.

1 Obtaining work from these customers would not require a dishonest act or that any of the  
2 customers stop using Office Keepers.<sup>1</sup>

3 Similarly, evidence at the hearing demonstrated that Office Keepers does not use  
4 employees to perform janitorial services; it uses independent contractors. One of these  
5 contractors, Erica Hernandez, testified that she cleans a number of offices for Office  
6 Keepers, but that she also cleans offices for Plaintiffs' new company. She testified that  
7 Carlos Hernandez, one of Office Keepers' owners, told her that he has no objection to her  
8 working for others. And Office Keepers acknowledged during the hearing that it uses  
9 many of its independent contractors only on a part-time basis. Thus, Plaintiffs' soliciting  
10 of independent contractors to perform work for Plaintiffs' company would not  
11 necessarily mean that the independent contractors must stop working for Office Keepers  
12 or even reduce the hours they devote to Office Keepers. The Court cannot conclude that  
13 such solicitation necessarily requires dishonest business practices.

14 Office Keepers did present evidence that Mr. Garcia told Ms. Hernandez that he  
15 would make checks payable to her boyfriend so that Office Keepers would not know she  
16 was working for him. This appears to be a dishonest business practice, but the Court  
17 cannot conclude that such dishonesty is necessary in order for Plaintiffs to procure work  
18 from independent contractors who happen to also be working for Office Keepers. Thus,  
19 the Court cannot conclude that Office Keepers is likely to prevail on its claim that the  
20 *solicitation* of its independent contractors constitutes an unfair business practice.

21 **D. Breach of Contract.**

22 Plaintiffs' contracts with Office Keepers provided that Plaintiffs would not, for a  
23 period of 12 months after the termination of their employment, "solicit, or attempt to  
24 solicit, business or patronage from any Customer for whom Office Keepers has  
25 performed Services during the twelve (12) months prior to the termination of this  
26 agreement[.]" Doc. 31 at 3. The contracts also prohibited Plaintiffs, during the same 12-

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28 <sup>1</sup> Office Keepers does allege that Plaintiffs breached restrictive covenants in their  
contracts with Office Keepers. That claim is addressed next.

1 month period, from soliciting “any employees or other independent contractors or agents  
2 of Office Keepers to work for any person or entity which performs the Services.” *Id.*  
3 Office Keepers argues that Plaintiffs are breaching these restrictive covenants by  
4 soliciting its customers and independent contractors.

5 “The validity of a restrictive covenant is determined by its reasonableness.” *Phx.*  
6 *Orthopaedic Surgeons, Ltd. v. Peairs*, 790 P.2d 752, 758 (Ariz. Ct. App. 1989),  
7 *disapproved of on other grounds by Valley Med. Specialists v. Farber*, 982 P.2d 1277  
8 (Ariz. 1999). A restrictive covenant is reasonable and therefore enforceable by injunction  
9 where (1) the restraint does not exceed that necessary to protect the employer’s legitimate  
10 interest, (2) the restraint would not cause undue hardship to the employee, and (3) the  
11 restraint would not cause harm to the public interest. *See id.* at 757. “In the commercial  
12 context, it is clear that employers have a legitimate interest in retaining their customer  
13 base.” *Valley Med. Specialists*, 982 P.2d at 1284.

14 Office Keepers has not shown that it is likely to succeed on its claim that the  
15 restrictive covenants are necessary to protect its legitimate interest in retaining its  
16 customer base. As noted above, Plaintiffs are soliciting future business from entities that  
17 subcontract janitorial services to a wide number of companies like Office Keepers.  
18 Soliciting such business does not necessarily interfere with Office Keepers’ relationship  
19 with these customers, and the Court therefore cannot conclude that the restrictive  
20 covenants are necessary to protect Office Keepers’ legitimate interest. *Phx. Orthopaedic*  
21 *Surgeons*, 790 P.2d at 757. As noted above, Office Keepers does assert that Plaintiffs  
22 persuaded LandCorp to terminate its relationship with Office Keepers, but Office  
23 Keepers was unable to present any clear evidence of this fact.

24 The same is true of the covenant that prohibits solicitation of Office Keepers’  
25 independent contractors. Because they are independent contractors who can work for  
26 more than one company, soliciting them does not necessarily mean that they will abandon  
27 or even reduce their work for Office Keepers, and Office Keepers therefore has not  
28 shown that it has a legitimate interest in prohibiting their solicitation.

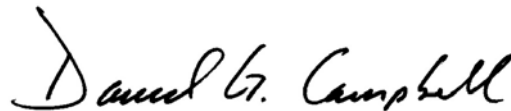
1 For these reasons, Office Keepers has not shown that it is likely to prevail on its  
2 claim that the restrictive covenants protect legitimate interests and are enforceable.

3 **III. Conclusion.**

4 Because Office Keepers has not shown that it is likely to prevail on any of the four  
5 claims addressed in its motion, the Court concludes that Office Keepers has not shown  
6 that it is entitled to the extraordinary remedy of a preliminary injunction. The Court need  
7 not address the other requirements for such an injunction.<sup>2</sup>

8 **IT IS ORDERED** that Office Keepers' motion for a preliminary injunction  
9 (Doc. 31) is **denied**. The temporary restraining order previously entered by the Court  
10 (Doc. 42) is dissolved.

11 Dated this 26th day of February, 2018.

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16 David G. Campbell  
17 United States District Judge  
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26 <sup>2</sup> Under Ninth Circuit law, a party can also obtain a preliminary injunction by  
27 raising serious questions and showing that the balance of hardships tips sharply in its  
28 favor. *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013).  
Office Keepers has not argued that it is entitled to relief under this standard, but even if it  
did, the Court would deny relief. Given the facts set forth above, the Court cannot  
conclude that the balance of hardships tips sharply in Office Keepers' favor.