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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Traditions Health LLC,
10 Plaintiff,

11 v.

12 Lisa Ann Paulson, et al.,
13 Defendants.
14

No. CV-23-01876-PHX-SMB

ORDER

15 Pending before the Court is Traditions Health LLC's ("Traditions") Motion for
16 Temporary Restraining Order and Preliminary Injunction and Memorandum of Points and
17 Authorities (Doc. 2). Defendant Lisa Paulson ("Paulson") filed a response (Doc. 13),
18 Defendant Thema Management Company, LLC ("Thema") filed a response (Doc. 17), and
19 a hearing was held on September 15, 2023. Supplemental briefing on the issue of
20 Plaintiff's capacity to sue was ordered and that was received on September 19, 2023 (Doc.
21 16). The court has considered all the pleadings, arguments of counsel, and relevant case
22 law and will deny Traditions Motion for the reasons discussed below.

23 **I. BACKGROUND**

24 Traditions is a national company that provides home health and hospice services.
25 (Doc. 2 at 3.) Paulson was previously employed with Traditions as an account executive
26 and had worked for Homestead, an acquisition of the company since 2019. (Doc. 1 at 4–
27 5.) In this position she was exposed to certain company information including client lists,
28 service standards, compensation plans, and business plans. (Doc. 1 at 11.) Before

1 beginning work at Homestead, Paulson was required to sign the “Confidentiality and
2 Restrictive Covenant Agreement (“the Homestead Agreement”). (*Id.* at 5.) The
3 Homestead Agreement’s non-compete specified:

4 During [Paulson’s] employment with [Homestead], and for a period of
5 twelve (12) months after termination of his or her employment with
6 [Homestead], [Paulson] agrees not to, either directly or by assisting others,
7 whether as an employee, agent, contractor, sole proprietor, partner, joint
8 venture, or the like, and in the same or similar capacity that [Paulson]
9 performed services on behalf of [Homestead], compete with [Homestead] by
10 performing Corporation Services. [Paulson’s] undertaking not to compete
11 with [Homestead] under this provision is limited to business activities within
12 those counties within which [Paulson] is working for [Homestead] during the
13 last one hundred eighty (180) days of employment [Paulson’s] employment
14 with [Homestead] (the “Restricted Territory”), which [Paulson] agrees [and]
15 represents a reasonable geographic measure of the area within which he or
16 she shall not compete with [Homestead]

17 (*Id.*) This agreement included a provision that it would be governed under Georgia law.

18 (*Id.*) After Traditions acquired Homestead, Paulson was again required to sign various
19 restrictive covenants, including non-disclosure and non-solicitation covenants (“The
20 Traditions Agreement”). (*Id.* at 6.) The non-disclosure clause outlined, in relevant part,
21 that:

22 During [Paulson’s] employment with [Traditions], [Paulson] understands
23 that [Paulson] will learn and have access to proprietary information, business
24 contacts and other knowledge that would be detrimental to [Traditions] if
25 provided to a competitor. [Paulson] further understands that the methods
26 employed in [Traditions’] business are such as would place him/her in a close
27 business and personal relationship with [Traditions’] clients, suppliers and
28 vendors, and that [Paulson] will become aware of confidential business,
professional and/or proprietary information concerning [Traditions’]
business with its customers. [Paulson] further acknowledges and agrees that
such business relationships and information about customers, as well as
[Traditions’] relationships with its employees, are legitimate business
interests and trade secrets of [Traditions], and that the loss of customers or
employees through misappropriation of such relationships and information
would cause [Traditions] great and irreparable harm. [Paulson] therefore
understands that [Traditions] has a valid interest in providing certain
limitations on [Paulson’s] activities outside the scope of [Paulson’s]
employment in order to protect the competitive interest of [Traditions]

(*Id.* at 6–7.) The non-solicitation covenants outlined that Paulson would not (1) solicit

1 Traditions employees, or (2) solicit certain clients, patients, or referral sources for one year
2 after leaving the company. (*Id.* at 7.) Paulson also signed certain provisions relating to the
3 disclosure of confidential information including that:

4 Notwithstanding any provision herein to the contrary, or any other agreement
5 or arrangement between Employee and the Company. Employee shall at all
6 times be prohibited from disclosing Confidential Information to (i) any
7 person not directly affiliated with the Company (except for persons who, in
8 the normal scope of an indirect affiliation with the Company have access to,
and the authority to access the Confidential information), (ii) any persons or
entities in competition with the Company (collectively, “Prohibited
Persons”).

9 (*Id.* at 9.) The Traditions Agreement did not include a non-compete clause. (*Id.*)

10 In July 2023, Paulson left Traditions and began similar employment at Thema,
11 allegedly while still receiving her final paycheck from Traditions. (*Id.* at 11.) Thema is a
12 competitor of Traditions, also providing services in the home health and hospice industry.
13 (*Id.* at 12.)

14 Now, Traditions brings a breach of contract claim against Paulson, a tortious
15 interference with contract claim against Thema, and claims for trade secret
16 misappropriation against both Paulson and Thema. (*Id.* at 15–16). Alleging irreparable
17 harm, Traditions asks this Court to grant a temporary restraining order restricting Paulson
18 and Thema from (1) soliciting Traditions clients, patients, restricted customers, and referral
19 sources; (2) misappropriating confidential information and trade secrets and; (3) continuing
20 Paulson’s current employment with Thema. (Doc. 2 at 1–2.)

21 **II. LEGAL STANDARD**

22 Under Rule 65 of the Federal Rules of Civil Procedure, a party may seek injunctive
23 relief if it believes it will suffer irreparable harm during the pendency of an action. Fed.
24 R. Civ. P. 65. The analysis for granting a temporary restraining order (“TRO”) is
25 “substantially identical” to that for a preliminary injunction. *Stuhlbarg Int’l Sales Co., Inc.*
26 *v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n. 7 (9th Cir. 2001); *Cochran v. Rollins*,
27 No. CV07-1714-PHX-MH MJRI, 2008 WL 3891578, at *1 (D. Ariz. Aug. 20, 2008). “A
28 preliminary injunction is ‘an extraordinary and drastic remedy, one that should not be

1 granted unless the movant, by a clear showing, carries the burden of persuasion.” *Lopez*
2 *v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S.
3 968, 972 (1997) (emphasis omitted)); *see also Winter v. Natural Res. Def. Council, Inc.*,
4 555 U.S. 7, 24 (2008) (“A preliminary injunction is an extraordinary remedy never awarded
5 as of right.”).

6 A plaintiff seeking a preliminary injunction must show that (1) he is likely to
7 succeed on the merits, (2) he is likely to suffer irreparable harm without an injunction, (3)
8 the balance of equities tip in his favor, and (4) an injunction is in the public interest. *Winter*,
9 555 U.S. at 20. “But if a plaintiff can only show that there are ‘serious questions going to
10 the merits’—a lesser showing than likelihood of success on the merits—then a preliminary
11 injunction may still issue if the ‘balance of hardships tips sharply in the plaintiff’s favor,’
12 and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*,
13 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632
14 F.3d 1127, 1135 (9th Cir. 2011)). Under this “serious questions” variant of the *Winter* test,
15 “[t]he elements . . . must be balanced, so that a stronger showing of one element may offset
16 a weaker showing of another.” *Lopez*, 680 F.3d at 1072.

17 18 **III. DISCUSSION**

19 **A. Likelihood of Success on the Merits**

20 Traditions’ requested TRO stems from their claims for breach of contract, tortious
21 interference with contract, violation of defendant trade secrets act, and violation of Arizona
22 uniform trade secrets act. These claims are based on the non-compete, non-solicitation,
23 and confidentiality agreements. Defendants argue those agreements are not enforceable.

24 Arizona law provides that:

25 A restrictive covenant is reasonable and enforceable when it protects some
26 legitimate interest of the employer beyond the mere interest in protecting
27 itself from competition such as preventing competitive use, for a time, of
28 information or relationships which pertain peculiarly to the employer and
which the employee acquired in the course of the employment.

Bed Mart, Inc. v. Kelley, 45 P.3d 1219, 1221 (Ariz. Ct. App. 2002) (cleaned up). Put

1 differently, “[n]on-compete and non-solicitation restrictions are enforceable if they are ‘no
2 broader than necessary to protect the employer's legitimate business interest.’” *Orca*
3 *Commc’ns Unlimited, LLC v. Noder*, 314 P.3d 89, 95 (Ariz. Ct. App. 2013), *decision aff’d*
4 *and ordered depublished on other ground*, 337 P.3d 545 (2014) (quoting *Hilb, Rogal &*
5 *Hamilton Co. of Arizona v. McKinney*, 946 P.2d 464, 467 (Ariz. Ct. App. 1997)).

6 Thus, “to be enforceable, the covenant must be reasonable with respect to its
7 duration, its geographic scope, and the range of employee's activities affected.” *Unisource*
8 *Worldwide, Inc. v. Swope*, 964 F. Supp. 2d 1050, 1064 (D. Ariz. 2013). Whether a
9 restrictive covenant is reasonable is a question of law. *Valley Med. Specialists v. Farber*,
10 194 Ariz. 363, 366 (1999). “The burden is on the party wishing to enforce the covenant to
11 demonstrate that the restraint is no greater than necessary to protect the employer's
12 legitimate interest, and that such interest is not outweighed by the hardship to the employee
13 and the likely injury to the public.” *Valley Med. Specialists v. Farber*, 982 P.2d 1277, 1286
14 (Ariz. 1999). Moreover, restrictive covenants “are strictly construed against the
15 employer.” *Amex Distrib. Co., Inc. v. Mascari*, 724 P.2d 596, 600 (Ariz. Ct. App. 1986).

16 **i. Non-Compete**

17 **a. Choice of Law**

18 The parties dispute which law applies to the enforceability of the non-compete
19 agreement. Traditions argues that Georgia law applies because of the agreement’s choice
20 of law provision. Paulson argues that Arizona law should apply. “[F]ederal courts sitting
21 in diversity must apply the forum state’s choice-of-law rules to determine the controlling
22 substantive law.” *R & L Ltd. Invs., Inc. v. Cabot Inv. Props., LLC*, 729 F. Supp. 2d 1110,
23 1113 (D. Ariz. 2010). The Court will thus apply Arizona’s choice of law rules to determine
24 the parties’ substantive disputes. Arizona follows the Restatement (Second) of Conflict of
25 Laws § 187 which states:

26 The law of the state chosen by the parties to govern their contractual rights
27 and duties will be applied, even if the particular issue is one which the parties
28 could not have resolved by an explicit provision in their agreement directed
to that issue, unless either

(a) the chosen state has no substantial relationship to the parties or the

1 transaction and there is no other reasonable basis for the parties' choice, or
2 (b) application of the law of the chosen state would be contrary to a
3 fundamental policy of a state which has a materially greater interest than the
4 chosen state in the determination of the particular issue and which, under the
5 rule of § 188, would be the state of the applicable law in the absence of an
6 effective choice of law by the parties.

7 Restatement (Second) of Conflict of Laws § 187(2) (1988)). "When the parties choose the
8 law of a particular state to govern their contractual relationship and the chosen law *has*
9 *some nexus* with the parties or the contract, that law will generally be applied." *Effio v.*
10 *FedEx Ground Package*, No. cv-08-1522-PHX-ROS, 2009 WL 775408, at *1 (D. Ariz.
11 Mar. 20, 2009) (quoting *Nanini v. Nanini*, 802 P.2d 438, 441 (Ariz. Ct. App. 1990))
12 (emphasis added). In this case, Georgia has no interest in this dispute at all. Traditions is
13 a citizen of Delaware, Paulson lives and works in Arizona, and Thema is a citizen of
14 Arizona. (Doc. 1 at 1–2.) Additionally, Georgia's more lenient standard in enforcing
15 restrictive covenants in employment situations is contrary to Arizona public policy which
16 applies a much more restrictive standard. Therefore, the Court finds that Arizona law will
17 govern.

18 **b. Non-Compete**

19 Here, the non-compete provision would prohibit Paulson from working in her
20 current job for a period of twelve months. Paulson argues the non-compete is
21 geographically and temporally overbroad. Geographically, the non-compete would
22 prohibit Paulson from working anywhere in Maricopa County which is 9.224 square miles
23 and includes 4.5 million residents. Paulson is the sole earner for her family as her husband
24 is disabled. She argues that if the geographic restriction were to apply, she would have to
25 relocate and that would be a hardship. Traditions initial arguments relied on Georgia law,
26 so are largely inapplicable here. However, at oral argument, Traditions continued to
27 maintain those arguments and provided no additional arguments, under Arizona law, for
28 why the geographic limitation should be enforced. The Court agrees with Paulson that
given the size and population of Maricopa County, the non-compete is geographically
overbroad. *See Unisource*, 964 F. Supp. 2d at 1066 (finding a non-compete covering

1 Maricopa County unenforceable).

2 Paulson also argues the agreement is temporally overbroad because she only worked
3 for Traditions for fifteen months. Thus, she argues, there is no reason why Traditions
4 would need a full year to replace her. To support the one-year period, Traditions, again,
5 relies on Georgia law dictating that says one year is presumptively reasonable. Ga. Code.
6 Ann. § 13-8-57(b) (“[A] court shall presume to be reasonable in time any restraint two
7 years or less in duration . . .”). However, no such presumption exists under Arizona Law
8 and *the Court* must decide whether the restriction is reasonable. Here, despite having the
9 burden of showing that a restraint is no greater than necessary, Traditions has given no
10 explanation for why one year should be considered reasonable. Given the lack of
11 arguments otherwise, and the likelihood of hardship for Paulson should the restriction be
12 enforced, the Court cannot find that the one year non-compete is reasonable. Therefore,
13 the Court finds that Traditions does not have a likelihood of success on a breach of contract
14 claim related to the non-compete provision.

15 **ii. Non-solicitation/Confidentiality**

16 Before discussing the enforceability of these restrictive covenants, the Court will
17 first address Paulson’s argument that she did not agree to them. After Traditions bought
18 Homestead, all employees were required to accept the non-solicitation and confidentiality
19 provisions to continue their employment with Traditions. Paulson used an online
20 onboarding system, Workday. Through this system, Paulson signed in with her unique
21 login and password, which was under her sole control. After reviewing the documents, she
22 electronically signed them by affirmatively checking the box that says, “I have received
23 the Non-Disclosure, Innovation Agreement, and Non-Solicitation Agreement, understand
24 my obligations under the agreement, and agree to comply with the terms.” Workday
25 provided a comment box for Paulson to write any concerns she had about the agreement,
26 but she left it blank. Paulson provided an affidavit in response to the TRO motion saying
27 that she did not intend to sign the agreement, which makes it unenforceable under Arizona
28 law, specifically Ariz. Rev. Stat. Ann. § 44-7002. The Court disagrees. Under the statute,

1 “Electronic signature” is defined as “an electronic sound, symbol or process that is attached
2 to or logically associated with a record and that is executed or adopted by an individual
3 with the intent to sign the record.” *Id.* Although Paulson’s affidavit says that she refused
4 to sign the agreement, the electronic evidence is clear that she *did* sign it. Signing was an
5 affirmative step on her part; therefore the Court finds that Paulson signed the agreement.

6 Traditions argues that the non-solicitation provision is enforceable because it is less
7 restrictive than a non-compete and the confidentiality agreement is enforceable because it
8 restricts the use of non-public information and customer lists. Although an employer “has
9 a protectable interest in customer relationships when an employee leaves, an employer has
10 no protectable interest in persons or entities as customers when the employer has no
11 business ties to them.” *Orca Unlimited, LLC v. Noder*, 314 P.3d 89, 96 (Ariz. Ct. App.
12 2013), *decision aff’d and ordered depublished in part*, 337 P.3d 545 (Ariz. 2014). In this
13 case, the non-solicitation provision includes not only present customers but “potential
14 customers” with whom the employee either directly or indirectly called on in the last two
15 years of employment. This Court has previously held that similar provisions are
16 unenforceable. *See InfoArmor Inc. v. Ballard*, No. CV-21-01844-PHX-SMB, 2022 WL
17 394735, at *3 (D. Ariz. Jan. 26, 2022) (“[T]his language is too broad—as it encompasses
18 potential customers—and it is simultaneously too vague because it applies to potential
19 customers who were solicited by other . . . employees working in combination with [the
20 named employee].”). The Court therefore finds the non-solicitation of customers provision
21 unenforceable.

22 As to the Confidentiality provisions, other than re-arguing that she did not sign the
23 agreement, Paulson makes no argument as to why they should not be enforced. Given that
24 the Court rejected this argument above, it finds that there may be some likelihood of
25 success in arguing that the Confidentiality provisions are enforceable. However, Traditions
26 has not yet showed any *violation* of these provisions by Paulson and/or Thema. Mere
27 possession of some confidential information does not equal disclosure of the same.
28 Therefore, just because Paulson possessed some confidential information, that does not

1 mean that she disclosed this information or that Thema used it in violation of the
2 confidentiality provisions.

3 The Court finds that Traditions has not shown a likelihood of success on a claim for
4 violation of the non-solicitation and/or Confidentiality provisions,

5 **iii. Tortious Interference with Contract**

6 To establish a tortious interference claim, a claimant must show: (1) a valid contract
7 or business expectancy existed; (2) the interferer had knowledge of such business contracts
8 or expectancy; (3) there was intentional interference causing a breach of the contract or
9 business expectancy; and (4) resultant damages. *Neonatology Assocs. v. Phx. Perinatal*
10 *Assocs. Inc.*, 164 P.3d 691, 693 (Ariz. Ct. App. 2007). This claim relates to Traditions
11 claim that Thema engaged in tortious interference with contract by employing Paulson.
12 However, as discussed above, the Court finds no valid contractual relationship as to the
13 non-compete or non-solicitation agreements. The Court also found above that there is no
14 evidence that any confidential information was used by Paulson or Thema. Therefore,
15 Traditions has not shown a likelihood of success on this claim.

16 **iv. Trade Secrets**

17 It is unlawful to misappropriate trade secrets under both the federal Defend Trade
18 Secrets Act (“DTSA”) and the Arizona Uniform Trade Secrets Act (“AUTSA”). *See* 28
19 U.S.C. § 1832; Ariz. Rev. Stat. Ann. § 44-401. Misappropriation of a trade secret is
20 analyzed similarly under both federal and Arizona law. *See ReBath LLC v. HD Sols. LLC*,
21 No. CV-19-04873-PHX-JJT, 2020 WL 7000071 (D. Ariz. Sept. 18, 2020). To state a
22 colorable claim for misappropriation, Plaintiff must allege that (1) it owns a trade secret,
23 (2) that was misappropriated by Defendants, and (3) this caused damages. *Gordon Grado*
24 *M.D., Inc. v. Phoenix Cancer & Blood Disorder Treatment Inst. PLLC*, 603 F. Supp. 3d
25 799, 809 (D. Ariz. 2022); 18 U.S.C. § 1839(5). Before moving into the rest of the analysis,
26 the claimant must first prove a legally protectable trade secret exists. *Calisi v. Unified Fin.*
27 *Servs., LLC*, 302 P.3d 628, 631 (Ariz. Ct. App. 2013)

28 The DTSA defines “trade secret” as:

1 all forms and types of financial, business, scientific, technical, economic, or
2 engineering information, including patterns, plans, compilations, program
3 devices, formulas, designs, prototypes, methods, techniques, processes,
4 procedures, programs, or codes, whether tangible or intangible, and whether
5 or how stored, compiled, or memorialized physically, electronically,
6 graphically, photographically, or in writing if...the owner thereof has taken
7 reasonable measures to keep such information secret; and... the information
8 derives independent economic value, actual or potential, from not being
generally known to, and not being readily ascertainable through proper
means by, another person who can obtain economic value from the disclosure
or use of the information . . .

9 18 U.S.C. § 1839(3). The AUTSA defines “trade secret” as:

10 [I]nformation, including a formula, pattern, compilation, program, device,
method, technique or process, that both:

11 (a) Derives independent economic value, actual or potential, from not being
generally known to, and not being readily ascertainable by proper means by,
12 other persons who can obtain economic value from its disclosure or use.

13 (b) Is the subject of efforts that are reasonable under the circumstances to
maintain its secrecy.

14 Ariz. Rev. Stat. Ann. § 44-401(4). Once claimant has established a trade secret
15 exists, they must show Defendant has misappropriated that secret. The DTSA
16 defines misappropriation, in part, as the “acquisition of a trade secret of another by
17 a person who knows or has reason to know that the trade secret was acquired by
18 improper means” or “disclosure or use of a trade secret of another without express
19 or implied consent . . .” by a person with some level of duty restricting disclosure.

20 18 U.S.C. § 1839(5). The AUTSA defines misappropriation as either of the
21 following:

22 (a) Acquisition of a trade secret of another by a person who knows or has
reason to know that the trade secret was acquired by improper means.

23 (b) Disclosure or use of a trade secret of another without express or implied
consent by a person who either:

24 (i) Used improper means to acquire knowledge of the trade secret.

25 (ii) At the time of disclosure or use, knew or had reason to know that his
26 knowledge of the trade secret was derived from or through a person who had
utilized improper means to acquire it, was acquired under circumstances
27 giving rise to a duty to maintain its secrecy or limit its use or was derived
from or through a person who owed a duty to the person seeking relief to
28 maintain its secrecy or limit its use.

1 (iii) Before a material change of his position, knew or had reason to know
2 that it was a trade secret and that knowledge of it had been acquired by
3 accident or mistake.

4 Ariz. Rev. Stat. Ann. § 44-401(2)(a), (b)(i)–(iii).

5 Here, Traditions has evidence that Paulson acquired trade secrets when she emailed
6 the information to her personal email before she left work at Traditions. Paulson sent
7 herself patient lists, client lists, Tradition’s marketing guidelines, Tradition’s operating
8 procedure, and a new account list for December through April, which the Court has
9 reviewed in-camera. However, as of the hearing date, Traditions was not able to present
10 information that Paulson had disclosed that information. Instead, they presented evidence
11 that Thema had acquired seven patients that were previously patients with Traditions.
12 Because Traditions was not able identify which, if any, of those patients were on the
13 wrongly acquired list—and the exhibits demonstrating the transfer of the patients have the
14 names redacted—the Court was unable to confirm if any of the trade secret information
15 was used or disclosed. Therefore, the Court finds Traditions has not shown a likelihood of
16 success on the trade secrets claims.

17 **B. Irreparable Harm**

18 Irreparable harm is harm for which there is no adequate remedy at law, such as
19 money damages. *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).
20 “The purpose of a preliminary injunction is not to remedy past harm but to protect plaintiffs
21 from irreparable injury that will surely result without their issuance. Demonstrating
22 irreparable harm is not an easy burden to fulfill.” *DTC Energy Grp., Inc. v. Hirschfeld*,
23 912 F.3d 1263, 1270 (10th Cir. 2018) (internal quotation marks and citation omitted); *see*
24 *also Dalkita, Inc. v. Distilling Craft, LLC*, No. 18-cv-01398-PAB-SKC, 2018 WL 6655628
25 (D. Col. Dec. 19, 2018). Here, Traditions has not shown that it will suffer irreparable harm.
26 Rather, the harm they allege is from the loss of patients and referral sources. These are
27 both damages that can be addressed with an award of money damages.

28 **C. Balance of Equities**

“In each case, a court must balance the competing claims of injury and must

1 consider the effect on each party of the granting or withholding of the requested relief.”
2 *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 542 (1987); *see also Stormans, Inc. v.*
3 *Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009) (“In assessing whether the plaintiffs have met
4 this burden, the district court has a ‘duty . . . to balance the interests of all parties and weigh
5 the damage to each.’” (quoting *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*,
6 634 F.2d 1197, 1203 (9th Cir.1980))). Here, Paulson has stated via affidavit that
7 enforcement of the restrictive covenants would cause financial hardship to herself and her
8 family. Alternatively, as Paulson points out, Traditions is a large, multi-state hospice and
9 home health service company that is better positioned to absorb a loss until a trial can be
10 held. The balance of equities weighs against granting the TRO.

11 **D. Public Interest**

12 “In exercising their sound discretion, courts of equity should pay particular regard
13 for the public consequences in employing the extraordinary remedy of injunction.” *Winter*,
14 555 U.S. at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982))
15 (internal quotations omitted). It is true that “[c]ourts have held that the public interest is
16 served by protecting a company's right to proprietary information, business operations, and
17 contractual rights,” and that “enforcing these covenants is consistent with the public policy
18 of protecting a company's interest in its customer base from unfair competition.” *Compass*
19 *Bank v. Hartley*, 430 F. Supp. 2d 973, 983 (D. Ariz. 2006). However, it is also true that
20 “Arizona law does not look kindly upon restrictive covenants.” *Unisource*, 964 F. Supp.
21 2d at 1063. Indeed, in Arizona, “[r]estrictive covenants that tend to prevent an employee
22 from pursuing a similar vocation after termination of employment” are especially
23 disfavored. *GlobalTranz Enters. Inc. v. Murphy*, No. CV-18-04819-PHX-ROS, 2021 WL
24 1163086, at *4 (D. Ariz. 2021) (quoting *Bryceland v. Northey*, 772 P.2d 36, 39 (Ariz. Ct.
25 App. 1989)); *see also Unisource*, 964 F. Supp. 2d at 1063.

26 Furthermore, given that Traditions has not established irreparable harm, the public
27 interest does not favor a TRO. *See Super Chefs, Inc. v. Second Bit Foods, Inc.*, No. 15-
28 CV-00525-SJOFFMx, 2015 WL 12914441, at *5 (C.D. Cal. June 11, 2015) (“[G]iven that

1 Plaintiff has not shown irreparable harm, the Court finds that a preliminary injunction has
2 not been shown to be in the public interest.”); *Sunbelt Rentals, Inc. v. Victor*, No. 13-CV-
3 4240 SBA, 2014 WL 492364, at *11 (N.D. Cal. Feb. 5, 2014) (finding that “the public
4 interest will not be served by entering an injunction to prevent conduct which [the plaintiff]
5 has not shown has or is likely to occur”).

6 This factor, too, weighs against granting the TRO.

7 **IV. CONCLUSION**

8 Accordingly,

9 **IT IS ORDERED denying** Traditions Health LLC’s Motion for Temporary
10 Restraining Order (Doc. 2).

11 **IT IS FURTHER ORDERED** that the parties discuss scheduling and whether the
12 hearing on the preliminary injunction should be combined with a trial on the merits. The
13 parties shall submit an agreed upon scheduling proposal or, if no agreement is reached, a
14 joint statement that includes each parties’ proposal by no later than **October 6, 2023**.

15 Dated this 27th day of September, 2023.

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19 Honorable Susan M. Brnovich
20 United States District Judge
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