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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 BakeMark USA LLC,
10 Plaintiff,

11 v.

12 Carolyn Pastis, et al.,
13 Defendants.
14

No. CV-23-02674-PHX-SMB

ORDER

15 This request for a Preliminary Injunction follows the Court’s prior hearing and entry
16 of a Temporary Restraining Order (“TRO”). (Doc. 20.) Plaintiff submitted a
17 Memorandum of Points and Authorities in Support of Plaintiff’s Motion for Preliminary
18 Injunction. (Doc. 32.) On February 15, 2024, the Court held a Preliminary Injunction
19 hearing. The Court has now considered the pleadings, testimony, exhibits from the hearing,
20 relevant case law, and arguments of counsel and will grant the Preliminary Injunction.

21 **I. BACKGROUND**

22 Plaintiff is a national company that manufactures and sells a variety of baking
23 products, ingredients, and supplies. (Doc. 1 at 2.) Defendant was previously employed as
24 a Senior Buyer at Plaintiff’s Tempe facility. (*Id.*) In this position, she was made privy to
25 some of Plaintiff’s customers, customer base, and other confidential company information.
26 (*Id.* at 4, 10.) Before beginning her job, Defendant was required to sign an employment
27 agreement (“the Agreement”). (*Id.* at 4, 34–38.)

28 The Agreement contained several confidentiality provisions and a return of

1 materials provision. (*Id.* at 34–38.) The Agreement prohibits the disclosure of
2 “confidential information” which is defined as “trade secrets (as defined by applicable law)
3 or other confidential and proprietary information relating to the Company’s customers,
4 manufacturing, products, services, pricing and sales, research, business, practices [or]
5 procedures . . . that Employee becomes privy to by virtue of employment with
6 [BakeMark].” (*Id.* at 4, 35.) This definition includes “(ii) information about [BakeMark’s]
7 internal methods of operation and manufacturing . . .” and “(iii) information about the
8 companies . . . practices and strategies . . . [BakeMark’s] suppliers . . . ; and non-published
9 financial information relating to [BakeMark’s] income, budgeting, cost structures,
10 expenses, profits, and general financial standing.” (*Id.*)

11 In May 2022, Defendant sent a report to BakeMark management detailing several
12 allegations about the operations of the Tempe branch and her co-workers. (*Id.* at 5.) In
13 this report, Defendant alleged that (1) Plaintiff was keeping goods in storage beyond their
14 expiration dates and selling them to customers, and (2) that Plaintiff was selling products
15 that showed signs of pests on the exterior of the packaging. (*Id.* at 5–6.) In response,
16 Plaintiff requested an inspection by the Maricopa County Environmental Service
17 Department’s Health Division. (*Id.* at 6.) After the inspection, Maricopa County issued
18 Plaintiff an “A” rating in response to the claims. (*Id.*) Plaintiff shared the results with
19 Defendant and explained to her the falsity of those allegations with information and
20 relevant standards. (*Id.*)

21 Defendant subsequently made similar claims, prompting another health inspection
22 at Plaintiff’s request. (*Id.* at 7.) Plaintiff also conducted its own internal investigation.
23 (*Id.*) Neither Maricopa County’s investigation nor Plaintiff’s internal investigation turned
24 up any evidence of Defendant’s claims, and Plaintiff received another “A” rating from
25 Maricopa County. (*Id.*) In February 2023, Defendant published her first accusations
26 detailing “illegal” company activity to her LinkedIn profile. (*Id.* at 8.) In this first post,
27 she accused Plaintiff of “cook[ing] the books” and “forg[ing] legal documents” and
28 accompanied her accusation with “#legal #fraud #forgery Federal Bureau of Investigations

1 (FBI) Clearlake Capital Group.” (*Id.*) On February 14, 2023, Plaintiff demanded that
2 Defendant remove the post, which after three days she agreed to do. (*Id.*)

3 On July 17, 2023, Defendant resigned from her position. (*Id.* at 9.) However, on
4 November 30, 2023, Defendant began posting more allegations on LinkedIn. (*Id.*) She
5 first posted that Plaintiff sells “infested” product and claimed that the photos she posted
6 along with her allegations “[didn’t] even scratch the surface of the documentation [she]
7 [has]!” (*Id.*) Later that same day, Defendant posted an alleged recounting of her
8 interactions with Plaintiff and Clearlake Capital Group (“Clearlake”), one of Plaintiff’s
9 investors. (*Id.*) In the post, she repeated her allegations and stated again that Plaintiff was
10 shipping “insect-infested truckloads.” (*Id.*) Defendant posted one final time that day, this
11 time alleging that Plaintiff “mishandle[s] and misrepresent[s] inventory to a pathological
12 degree,” and “routinely commit[s] rampant inventory and accounting fraud.” (*Id.* at 9–10.)
13 This final post also repeated the claim that Plaintiff ships “infested inventory,” resulting in
14 “multiple truckloads” of returns and that Plaintiff refuses to throw away “expired”
15 inventory. (*Id.*)

16 On December 14, 2023, Defendant published a post on Facebook, tagging Krispy
17 Kreme Doughnuts and Clearlake. (*Id.* at 10.) In this post, Defendant published images
18 claiming to show Plaintiff’s allegedly infested products. (*Id.*) In a separate post on the
19 same day, Defendant claimed that Plaintiff “illegally” refused to “track fumigation” of
20 product apparently sold to Krispy Kreme and posted images of internal communications
21 she had with her former fellow employees. (*Id.* at 11.)

22 Plaintiff contends that at all times, Defendant was aware through her knowledge
23 gained as a Senior Buyer and through the shared investigation results that her accusations
24 were false. (*Id.*) Plaintiff therefore sought a TRO to enjoin Defendant from continuing to
25 broadcast these allegations.

26 On January 12, 2023, the Court held a TRO hearing, for which Defendant failed to
27 appear. After the hearing, the Court issued a TRO, enjoining Defendant from various
28 activities—including keeping her offending social media posts active or posting any

1 additional BakeMark information. (Doc. 20 at 8–9.)

2 After entry of the TRO, Defendant did not immediately remove the social media
3 posts. On February 14, 2024, Plaintiff filed an Ex Parte Motion for an Order to Show
4 Cause Why Defendant Should Not Be Held in Civil Contempt. (Doc. 31.) In this Motion
5 and at the Preliminary Injunction Hearing, Plaintiff alleged that Defendant had not removed
6 any social media posts in violation of the TRO. In response, the Court set a contempt
7 hearing for February 23, 2024. However, on February 15, 2024, the Court received notice
8 that Defendant had removed the offending social media posts. (Doc. 35.) In response, the
9 Court vacated the contempt hearing. (Doc. 36.)

10 **II. LEGAL STANDARD**

11 Under Rule 65 of the Federal Rules of Civil Procedure, a party may seek injunctive
12 relief if it believes it will suffer irreparable harm during the pendency of an action. The
13 analysis for granting a TRO is “substantially identical” to that for a preliminary injunction.
14 *Stuhlberg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th
15 Cir. 2001); *Cochran v. Rollins*, No. CV 07-1714-PHX-MHM (JRI), 2008 WL 3891578, at
16 *1 (D. Ariz. Aug. 20, 2008). “A preliminary injunction is ‘an extraordinary and drastic
17 remedy, one that should not be granted unless the movant, by a clear showing, carries the
18 burden of persuasion.’” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting
19 *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis omitted)); *see also Winter v.*
20 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (“A preliminary injunction is an
21 extraordinary remedy never awarded as of right.”).

22 A plaintiff seeking a preliminary injunction must show that (1) he is likely to
23 succeed on the merits, (2) he is likely to suffer irreparable harm without an injunction, (3)
24 the balance of equities tips in his favor, and (4) an injunction is in the public interest.
25 *Winter*, 555 U.S. at 20. “But if a plaintiff can only show that there are ‘serious questions
26 going to the merits’—a lesser showing than likelihood of success on the merits—then a
27 preliminary injunction may still issue if the ‘balance of hardships tips sharply in the
28 plaintiff’s favor,’ and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc. v.*

1 *Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild*
2 *Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)). Under this “serious questions”
3 variant of the *Winter* test, “[t]he elements . . . must be balanced, so that a stronger showing
4 of one element may offset a weaker showing of another.” *Lopez*, 680 F.3d at 1072.

5 **III. DISCUSSION**

6 There was very little discussion at the hearing regarding Plaintiffs’ likelihood of
7 success on the merits of the claims. Defendant also did not directly address the merits of
8 the claim. Rather, Defendant presented arguments and exhibits primarily focused on her
9 argument that she will succeed on the merits. The Court has considered the admitted
10 exhibits and Plaintiff’s written objections to Defendant’s exhibits 17 and 18. (Doc. 37.)
11 The Court will analyze the claims as alleged.

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

13 *i. Defamation Per Se*

14 Under Arizona law, there are three elements of a defamation claim: “(1) defendant
15 made a false defamatory statement about plaintiff, (2) defendant published the statement
16 to a third party, and (3) defendant knew the statement was false, acted in reckless disregard
17 of whether the statement was true or false, or negligently failed to ascertain the truth or
18 falsity of the statement.” *Farrell v. Hitchin’ Post Trailer Ranch*, No. 1 CA-CV 11-0011,
19 2011 WL 6057930, at *2 (Ariz. Ct. App. Dec. 6, 2011) (citing *Peagler v. Phoenix*
20 *Newspapers, Inc.*, 560 P.2d 1216, 1222 (Ariz. 1977)). “To be defamatory, a publication
21 must be false and must bring the defamed person into disrepute, contempt, or ridicule, or
22 must impeach plaintiff’s honesty, integrity, virtue, or reputation.” *Godbehere v. Phoenix*
23 *Newspapers, Inc.*, 783 P.2d 781, 787 (Ariz. 1989). “Under Arizona law, a statement is
24 defamatory per se when the defamatory character of the statement is apparent on its face;
25 that is, when the words used are ‘of such a nature that the court can presume as a matter of
26 law that the communication will tend to degrade or disgrace the party defamed.’”
27 *McKnight v. McKnight*, No. CV-20-01956-PHX-DWL, 2021 WL 4133970, at *4 (D. Ariz.
28 Sept. 10, 2021) (quoting *McClinton v. Rice*, 265 P.2d 425, 429–30 (Ariz. 1953)).

1 Plaintiff has presented evidence that Defendant’s claims regarding contaminated
2 product were investigated internally as well as by third parties. Through these
3 investigations, Defendant’s allegations were deemed meritless. The results of the
4 investigations were shared with Defendant; therefore she knew her complaints were
5 unfounded. During cross-examination, Plaintiff stated that she does not accept the results
6 of these investigations. However, not accepting the results as true does not change the
7 results. And despite these results, Defendant published those same allegations on social
8 media. Defendant also admitted that some of her posts accused Plaintiff of committing
9 accounting fraud. She made these accusations even though she admits, and exhibit 13
10 shows, that she is not an accountant. This exhibit also shows that she has no training or
11 experience with pest control. These accusations likely constitute defamation per se. *See*
12 *Hawks v. Seery*, No. CV-21-00092-PHX-DGC, 2023 WL 5206135, at *8–9 (D. Ariz. Aug.
13 14, 2023). The Court finds Plaintiff has shown a likelihood of success on the merits of the
14 defamation claim.

15 *ii. Breach of Contract*

16 Under Arizona law, a claim for breach of contract has three elements: (1) the
17 existence of a contract between the plaintiff and defendant; (2) a breach of the contract by
18 defendant; and (3) resulting damage to the plaintiff. *Frank Lloyd Wright Found. v. Kroeter*,
19 697 F. Supp. 2d 1118, 1125 (D. Ariz. 2010).

20 Here, Plaintiff alleges Defendant breached her employment agreement, specifically,
21 the confidentiality provision, when she posted confidential information on social media.
22 The confidentiality provision of her employment reads as follows: “Employee shall hold
23 Confidential Information . . . in the strictest confidence and shall not, without the prior
24 written authorization of an authorized Company officer, or as required by law, disclose
25 Confidential Information in any manner to any person, or use Confidential Information in
26 any way, other than in the furtherance of Employee’s duties during his/her employment
27 with the Company.” (Doc. 1 at 34.) “Confidential Information” is defined, in part, to
28 include “trade secrets . . . or other confidential and proprietary information relating to the

1 Company's customers, manufacturing, products, services, pricing and sales, research,
2 business practices, procedures or Baking Products not generally known by or available to
3 the public that Employee becomes privy to by virtue of employment with the Company."
4 (*Id.* at 35.)

5 As discussed above, Defendant posted confidential information about customers,
6 internal communications, internal policies, and company operations. That alone likely
7 constitutes breach. Although that content has been removed from social media, Defendant
8 could still repost that information, or post new information, during the pendency of this
9 litigation. Defendant presented screenshots of various internal company emails and
10 spreadsheets at the hearing. (*See Ex. 17; 18.*) However, Plaintiff objected to these exhibits
11 and presented information that the exhibits constitute incomplete information. These
12 exhibits also do not address Defendant's specific allegations. Therefore, the Court will not
13 consider these exhibits. The Court finds there is a likelihood of success on the breach of
14 contract claim.

15 **B. Irreparable Harm**

16 Irreparable harm is harm for which there is no adequate remedy at law, such as
17 money damages. *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).
18 "The purpose of a preliminary injunction is not to remedy past harm but to protect plaintiffs
19 from irreparable injury that will surely result without their issuance. Demonstrating
20 irreparable harm is not an easy burden to fulfill." *DTC Energy Grp., Inc. v. Hirschfeld*,
21 912 F.3d 1263, 1270 (10th Cir. 2018) (internal quotation marks and citation omitted); *see*
22 *also Dalkita, Inc. v. Distilling Craft, LLC*, 356 F. Supp. 3d 1125, 1131 (D. Colo. 2018).
23 However, "[e]vidence of threatened loss of prospective customers or goodwill certainly
24 supports a finding of the possibility of irreparable harm." *Stuhlberg Int'l Sales Co.*, 240
25 F.3d at 841.

26 Here, Defendant published false information that is clearly likely to harm the
27 goodwill of a company providing food supplies. She also admitted to keeping and
28 publishing confidential information about Plaintiff's customers that is likely to harm its

1 business relationships. The exhibits show that she has more of this information in her
2 possession. (See Ex.17; 18.) Moreover, these posts cause irreparable harm, and any further
3 similar posts will have the same result. A preliminary injunction is necessary to prevent
4 Plaintiff from suffering any further irreparable harm. In sum, the Court finds there is a
5 likelihood of irreparable harm if a preliminary injunction is not issued.

6 **C. Balance of Equities**

7 “In each case, a court must balance the competing claims of injury and must
8 consider the effect on each party of the granting or withholding of the requested relief.”
9 *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 542 (1987); see also *Stormans, Inc. v.*
10 *Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009) (“In assessing whether the plaintiffs have met
11 this burden, the district court has a ‘duty . . . to balance the interests of all parties and weigh
12 the damage to each.’” (quoting *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*,
13 634 F.2d 1197, 1203 (9th Cir.1980))). No harm will befall Defendant if the preliminary
14 injunction continues to preclude her from posting false, disproven and confidential
15 information. At the hearing, Defendant mentioned her ongoing National Labor Relations
16 Board (“NLRB”) action against Plaintiff. This preliminary injunction will not impact that
17 action. Moreover, Plaintiff concedes that Defendant’s agreement with BakeMark permits
18 her to utilize confidential information in connection with her NLRB proceedings. (Doc.
19 32 at 20.) But with the risk that Defendant shares more information on social media,
20 Plaintiff will continue to endure harm to its goodwill and reputation. The balance of
21 equities weigh in favor of granting the preliminary injunction.

22 **D. Public Interest**

23 “In exercising their sound discretion, courts of equity should pay particular regard
24 for the public consequences in employing the extraordinary remedy of injunction.” *Winter*,
25 555 U.S. at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)).
26 “Courts have held that the public interest is served by protecting a company’s right to
27 proprietary information, business operations, and contractual rights.” *Compass Bank v.*
28 *Hartley*, 430 F. Supp. 2d 973, 983 (D. Ariz. 2006). The possibility of Defendant posting

1 further false statements on social media while this litigation is pending is a continuing
2 threat to Plaintiff's rights. Moreover, the injunction is also narrowly tailored as it only
3 prevents demonstrably false statements and disclosure of confidential information. Public
4 policy weighs in favor of issuing the preliminary injunction.

5 **IV. CONCLUSION**

6 For the reasons discussed above,

7 **IT IS HEREBY ORDERED** that for the pendency of this case:

8 1. Defendant, her agents, servants, employees, attorneys, and all those persons in
9 active concert or participation with them are enjoined and restrained from:

- 10 a. Publishing any and all BakeMark information about its customers,
11 customer contracts, investors or any other confidential business
12 information;
- 13 b. Allowing to remain published on social media any materials making
14 statements, accusations, allegations, or implications that BakeMark sells
15 contaminated or adulterated food (the "Defamatory Words") published
16 before the issuance of this order;
- 17 c. Re-publishing or publishing anew the Defamatory Words;
- 18 d. Contacting any individual, business, enterprise or other such entity that
19 Defendant knows or suspects is affiliated with or has a relationship with
20 BakeMark, commercial or otherwise, in order to attempt to abrogate,
21 cancel, terminate, or otherwise alter its relationship with BakeMark, to
22 BakeMark's detriment, except in connection with legitimate commercial
23 activity, such as, but not limited to, attempting to make sales to that
24 customer on the behalf of a competitor to BakeMark, as may be permitted
25 by any applicable agreements between Defendant and BakeMark; and,
- 26 e. Conspiring with, aiding, assisting or abetting any other person or business
27 entity in engaging in or performing any of the activities referred to in
28 subparagraphs (a) through (b) above.

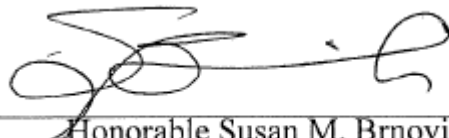
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2. Consistent with paragraph (1) above, Defendant is ordered to remove from display, to the extent possible, any of her publications containing the Defamatory Words, including on all internet web pages.

IT IS FURTHER ORDERED that Defendant shall continue to preserve all originals and copies of hard copy and electronic evidence, including but not limited to all disks, personal data assistants, hard drives, virtual hard drives, online storage and other electronic storage devices in his possession, custody, or control to which she had or has access and on which relevant information may currently or have previously existed.

IT IS FURTHER ORDERED that Plaintiff shall serve this Order on Defendant as soon as practicable.

Dated this 27th day of February, 2024.



Honorable Susan M. Brnovich
United States District Judge