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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ACTION MOTIVATION, INC., a California corporation,

Plaintiff,

v.

CHAD AMMON, an individual;

Defendant.

Case No. C 05 3614 MHP

~~[PROPOSED]~~ ORDER GRANTING *EX PARTE* APPLICATION OF PLAINTIFF ACTION MOTIVATION, INC. FOR A TEMPORARY RESTRAINING ORDER AND AN ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

FINDINGS

1
2 Plaintiff Action Motivation, Inc. ("AMI"), having moved *ex parte* for a temporary
3 restraining order and order to show cause for a preliminary injunction pursuant to Federal Rule
4 of Civil Procedure 65; the Computer Fraud and Abuse Act (18 U.S.C. § 1030, *et seq.*); and the
5 Uniform Trade Secrets Act (Cal. Civ. Code, § 3426, *et seq.*), for the reason that Defendant Chad
6 Ammon has misappropriated AMI's confidential trade secrets, and the Court having reviewed
7 the Complaint, memorandum of points and authorities, declarations and exhibits submitted
8 therewith, the Court finds that there is good cause appearing to issue a temporary restraining
9 order and findings as follows:

10 1. The Court requested the Parties agree to an order preserving the status quo until a
11 hearing on the preliminary injunction can be held. The parties agreed on the language in the
12 section of the order entitled "Temporary Restraining Order" without defendant or adverse party
13 waiving its rights to damages should it be determined that the Temporary Restraining Order was
14 improvidently granted.

15 2. Since the Temporary Restraining Order was entered pursuant to agreement of the
16 parties, the Court did not have to reach the foundational evidentiary issues raised in Plaintiff's
17 motion and therefore no findings in this respect are made.

18 **I. ORDER TO SHOW CAUSE**

19 **THEREFORE, IT IS HEREBY ORDERED** that on October 4, 2005, in Courtroom 15
20 of the above-captioned Court located at 450 Golden Gate Ave, San Francisco, California,
21 Defendant is **ORDERED TO SHOW CAUSE** why a preliminary injunction should not be issued
22 against him, and his representatives, attorneys, agents, officers, directors, employees, partners,
23 servants, or anyone else acting on his behalf or for his benefit, pending the resolution of this
24 action, as follows:

25 A. That Defendant be enjoined from using, disclosing, or reproducing any
26 confidential, proprietary or trade secret information Defendant obtained or misappropriated from
27 AMI, including, but not limited to, client names and contacts, supplier and vendor information,
28

1 rates and product pricing, strategic business plans and presentations, sales programs and
2 marketing proposals and plans;

3 B. That Defendant be enjoined and ordered to return to AMI all originals and all
4 copies of all files, data, and/or information removed, downloaded, or e-mailed from AMI's
5 computers or computer network, including, but not limited to, all information copied or
6 downloaded by Carrie Flemer, Lisa Morelli and Scott Hord;

7 C. That Defendant be enjoined, for a period of one year from entry of judgment,
8 from conducting business with any and all clients of AMI with which he conducted business or
9 attempted to conduct business during the time preceding his departure from AMI; and

10 D. That Defendant be ordered to turn over all information regarding all accounts he
11 worked on or enhanced while working at AMI, including but not limited to information
12 pertaining to Cisco and Genentech.

13 **II. TEMPORARY RESTRAINING ORDER**

14 **IT IS FURTHER ORDERED THAT** pending the hearing on the Order to Show Cause
15 set forth above, Defendant and his representatives, attorneys, agents, officers, directors,
16 employees, partners, servants, or anyone else acting on his behalf or for his benefit are
17 **HEREBY TEMPORARILY RESTRAINED** as follows:

18 A. That Defendant is enjoined from using, disclosing, or reproducing any
19 confidential, proprietary or trade secret information Defendant obtained or misappropriated from
20 AMI, including, but not limited to, client names and contacts, supplier and vendor information,
21 rates and product pricing, strategic business plans and presentations, sales programs and
22 marketing proposals and plans;

23 B. That Defendant is enjoined and ordered to return to AMI all originals and all
24 copies of all files, data, and/or information removed, downloaded, or e-mailed from AMI's
25 computers or computer network, including, but not limited to, all information copied or
26 downloaded by Carrie Flemer, Lisa Morelli and Scott Hord;

27 C. That Defendant is ordered to make himself available to AMI and its counsel for
28 deposition no later than September 16, 2005 and be prepared to provide the following: all files,

1 data, and/or information removed, downloaded, or e-mailed from AMI's computers or computer
2 network, including, but not limited to, all information copied or downloaded by Carrier Flemer,
3 Lisa Morelli and Scott Hord;

4 D. That AMI, Defendant and interested party, WebRegPro, are ordered to select an
5 independent third party to inspect and image all computers belonging to, under the control of,
6 accessible to, or operated by Defendant, including those owned and operated by WebRegPro, to
7 verify the use, disclosure, printing, copying, and return of AMI information. The independent
8 consultant will file a report to the Court of his/her findings and supply the parties with a copy.
9 AMI will retain the independent third party, subject to the costs being shifted to Defendant upon
10 further order of the Court. Defendant and WebRegPro are further ordered not to delete or
11 otherwise remove files from the computers subject to inspection;

12 E. That Defendant is enjoined until further order of the Court, from conducting
13 business with any and all clients of AMI, other than Event Strategy Group, with which he
14 conducted business or attempted to conduct business while employed by AMI in August 2005;
15 and

16 F. That Defendant is ordered to turn over all information regarding all accounts he
17 worked on or enhanced while working at AMI in the August 2005 time period, including but not
18 limited to, information pertaining to Cisco and Genentech.

19 **IT IS FURTHER ORDERED THAT** the Temporary Restraining Order set forth in
20 Section II of this Order shall remain in effect until the date for hearing on the Order to Show
21 Cause set forth above, or such further dates as set by the Court.

22 **IT IS FURTHER ORDERED THAT** AMI shall be required to post a corporate surety
23 bond by 4:00 pm on September 12, 2005 in the amount of \$10,000.

24 **IT IS FURTHER ORDERED THAT** AMI's supplemental papers, if any, in support of
25 the Application for an Order to Show Cause re Preliminary Injunction and Temporary
26 Restraining Order and Order Expediting Discovery filed by AMI against Defendant, shall be
27 filed with the Clerk of this Court and served via fax or by personal service upon the attorneys for
28 Defendant and WebRegPro before 4:00 pm on September 23, 2005. Defendant's and

1 WebRegPro's papers, if any, in opposition to AMI's Application shall be filed with the Clerk of
2 this Court and served via fax or personally upon the attorneys for AMI before 4:00 p.m. on
3 September 30, 2005. There will be no reply papers submitted.

4 **IT IS FURTHER ORDERED THAT** AMI may commence discovery immediately in
5 this matter, as follows: (1) An independent consultant agreed upon by all parties is permitted,
6 immediately after service of this Order, to inspect and copy all personal computers belonging to,
7 under the control of, or operated by Defendant, and all computers maintained at WebRegPro;
8 accordingly, Defendant and WebRegPro must produce or otherwise make available, within three
9 (3) court days from selection of the consultant, all personal computers belonging to, under the
10 control of, or operated by Defendant at WebRegPro; (2) AMI may, immediately after service of
11 this Order, notice the depositions of Defendant, upon five (5) court days' notice, and may notice
12 the deposition of any non-party, including but not limited to Defendant's current supervisor at
13 WebRegPro and the IT manager at WebRegPro, pursuant to Federal Rule of Civil Procedure 45;
14 and (3) AMI may, immediately after service of this Order, propound written discovery upon
15 Defendant and any non-party requesting written responses and the production of documents
16 within five (5) court days after service of the request.

17 **IT IS FURTHER ORDERED THAT** Defendant and WebRegPro are hereby given
18 *in person or by counsel or otherwise appropriately* notice that failure to attend the hearing scheduled herein shall result in immediate issuance of the
19 *request* requested preliminary injunction to take effect immediately upon expiration or dissolution of the
20 Temporary Restraining Order set forth in Section II of this Order, and shall otherwise extend for
21 the pendency of this litigation relief upon the same terms and conditions as comprise the
22 Temporary Restraining Order. Defendant and WebRegPro are hereby given further notice that,
23 upon service (via fax or personal) of this Order on counsel for WebRegPro, they shall be deemed
24 to have actual notice of the issuance and terms of such preliminary injunction and any act by
25 them in violation of any of the terms thereof may be considered and prosecuted as contempt of
26 this Court.

27 DATED: 9/14/05


DISTRICT COURT JUDGE