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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VERLIANT ENERGY, INC., et al.,
Plaintiffs,
v.
CHRISTOPHER JOHN BARRY,
Defendant.

Case No. 14-cv-02443-JST

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER; DENYING MOTION FOR EXPEDITED DISCOVERY WITHOUT PREJUDICE; SETTING HEARING FOR JUNE 11

Re: ECF No. 11

Plaintiffs Verliant Energy, Inc. and Verliant Sciences, LLC (collectively, "Plaintiffs") have moved for a temporary restraining order barring their former employee and Defendant Christopher John Barry ("Defendant") from conducting various commercial activities, and ordering him to return intellectual and other property Plaintiffs claims to own. See Proposed Order at ECF No. 11-3. Plaintiffs allege that they are California citizens and that Defendant is a British citizen, see Complaint ¶¶ 3-5, ECF No. 1, giving this court jurisdiction pursuant to 28 U.S.C. § 1332(a). Plaintiffs' complaint also brings causes of action under federal law, giving this court jurisdiction pursuant to 28 U.S.C. § 1331.

The same legal standard applies to a motion for a temporary restraining order and a motion for a preliminary injunction. See Stuhlberg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839, n. 7 (9th Cir. 2001). A plaintiff seeking either remedy "must establish 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." Am. Trucking Associations, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting Winter v. Nat. Resources Defense Council, 555 U.S. 7, 20 (2008)). Injunctive relief is

1 “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
2 entitled to such relief.” Winter, 555 U.S. at 22.

3 To grant preliminary injunctive relief, a court must find that “a certain threshold showing
4 is made on each factor.” Leiva-Perez v. Holder, 640 F.3d 962, 966 (9th Cir. 2011). Provided that
5 this has occurred, in balancing the four factors, “‘serious questions going to the merits’ and a
6 balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary
7 injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and
8 that the injunction is in the public interest.” Alliance for the Wild Rockies v. Cottrell, 632 F.3d
9 1127, 1135 (9th Cir. 2011).

10 In addition, a movant seeking the issuance of an *ex parte* TRO must satisfy Rule 65(b) of
11 the Federal Rules of Civil Procedure, which requires a showing “that immediate and irreparable
12 injury, loss, or damage will result to the movant before the adverse party can be heard in
13 opposition” and certification of “efforts made to give notice and the reasons why it should not be
14 required.” Fed. R. Civ. Pro. 65(b)(1).

15 From the evidence before the Court at this time, Plaintiffs have demonstrated the
16 probability of success on the merits of their breach of contract and misappropriation of trade secret
17 claims. See Declaration of Andrew Chiu ¶¶ 5, 8-16, 32, 35-40. At the very least, there are serious
18 questions going to the merits of both claims.

19 Plaintiffs have also provided evidence that they will suffer the possibly irreversible loss of
20 trade secrets and proprietary intellectual property, and the loss of significant business goodwill.
21 Id. ¶ 47. As many courts have recognized, this type of harm is typically considered irreparable.
22 See Stuhlberg, 240 F.3d at 841; W. Directories, Inc. v. Golden Guide Directories, Inc., No. 09-cv-
23 1625-CW, 2009 WL 1625945, at *6 (N.D. Cal. June 8, 2009). For this reason, the balance of
24 equities tips sharply in Plaintiffs’ favor. Plaintiffs’ claimed irreparable harm significantly
25 outweighs any harm to Defendant of being restrained from taking the actions described in the
26 temporary restraining order during the short time this order will remain in effect. For similar
27 reasons, an injunction is in the public interest.

28 However, the purpose of an emergency temporary restraining order is to preserve the *status*

1 *quo* while a request for fuller injunctive relief is under consideration. Several of Plaintiffs’
2 requests for injunctive relief require Defendant to take affirmative actions, such as to send to
3 Plaintiffs certain documents and data currently within his control. Therefore, the court will not
4 grant Plaintiffs’ proposed order at this time to the extent it seeks those affirmative acts. The Court
5 also will not issue an order against unnamed persons and entities who are not parties to the
6 lawsuit. The court enters a version of Plaintiffs’ proposed order with the modifications displayed
7 as Exhibit A to this order. The deletion of this language is without prejudice to Plaintiffs’ later
8 demonstration that their proposed scope of order is both appropriate and enforceable.

9 The temporary restraining order will remain in effect only until this matter may be heard
10 and Defendant has had an opportunity to respond. The Court hereby SETS this matter for hearing
11 on Wednesday, June 11, 2014, at 9 a.m., 450 Golden Gate Avenue, Courtroom 9, 19th Floor, San
12 Francisco, California. At that hearing, the court will consider whether to extend or dissolve the
13 temporary restraining order and whether to issue an order to show cause why a preliminary
14 injunction should not issue. Plaintiffs’ counsel is ORDERED to immediately provide notice of
15 this order to Defendant and to file a declaration with the court within forty-eight hours of this
16 order, describing the efforts he has made to provide such notice. Defendant, may, but is not
17 required to, file any written response to Plaintiffs’ motion by 12:00 p.m. on June 10, 2014.

18 In Plaintiffs’ motion (but not in any sworn declaration), counsel states that “VERLIANT is
19 providing notice of the instant application to BARRY’s identified counsel by email, telephone and
20 mail.” Motion, at 5 (ECF No. 11). The Court understands Plaintiffs to mean that they provided
21 notice at or very shortly after the time that the motion was filed yesterday at 6:18 P.M. In his
22 declaration, Plaintiffs’ counsel must also describe exactly what efforts he made to provide notice
23 of the motion to Defendant and exactly when those actions were taken.

24 The Court also will not grant Plaintiffs’ request for expedited discovery or the issuance of
25 a protective order. Instead, Plaintiffs and Defendants’ counsel are ordered to immediately meet
26 and confer regarding (1) appropriate, limited, expedited discovery and (2) the contents of an
27 appropriate protective order.

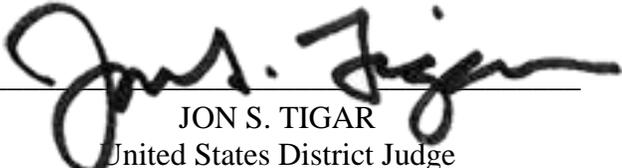
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Pursuant to Rule 23(c), Plaintiffs shall post a bond of \$25,000 within three court days of this order.

IT IS SO ORDERED.

Dated: June 6, 2014



JON S. TIGAR
United States District Judge