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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LOOP AI LABS INC,  
Plaintiff,

v.

ANNA GATTI, et al.,  
Defendants.

Case No. 15-cv-00798-HSG

**ORDER DENYING PLAINTIFF'S  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

Re: Dkt. No. 9 and 28

On March 3, 2015, Plaintiff Loop AI Labs Inc. applied ex parte for the immediate entry of a temporary restraining order (the "Application") against the named Defendants in this case. See Dkt. No. 9. Loop AI alleges that the Defendants participated in a scheme to misappropriate Loop AI's trade secrets and other valuable confidential information and that, absent immediate injunctive relief, Loop AI "will suffer very real harm in the form of unquantifiable los[s] of proprietary information and investment opportunity, which will essentially cause the ultimate demise of the start-up company." Id. at 14.

Loop AI's Application sought an order: (1) freezing the assets of all the U.S. Defendants; (2) directing the U.S. Defendants to repatriate all assets and documents located abroad; (3) enjoining the U.S. Defendants from disposing of any assets or money for any purpose whatsoever (with the narrow exception of a monthly "allowance" for Defendant Gatti's living expenses); (4) directing the U.S. Defendants to disclose to Loop AI the location and value of all assets owned, including personal property over \$2,500; (5) requiring the U.S. Defendants to provide Loop AI their "consent" to access records and documents pertaining to their assets and property located abroad; (6) prohibiting all Defendants from destroying documents; (7) directing expedited discovery, including three depositions, 32 requests for production and nine interrogatories to occur within ten business days; (8) directing Defendant Gatti to "consent" to Loop AI accessing her

United States District Court  
Northern District of California

1 email and social media accounts; (9) prohibiting Defendants from using or sharing Loop AI’s  
2 trade secrets; (10) directing Defendants to cease representing that Defendant Gatti is an employee  
3 of Loop AI; and (11) directing Defendant Gatti to return a laptop computer and any other  
4 documents or property over which Loop AI claims possession, among other forms of relief. See  
5 Dkt. No. 9-5.

6 On March 4, 2015, the Court found that Loop AI had not met the substantial burden  
7 required for issuance of a temporary restraining order without notice to the adverse party. See  
8 Dkt. No. 12 (citing Fed. R. Civ. P. 5(b)(1)(A), which provides that a court may issue a temporary  
9 restraining order without notice to the adverse party only if “specific facts in an affidavit or a  
10 verified complaint clearly show that immediate and irreparable injury, loss, or damage will result  
11 to the movant before the adverse party can be heard in opposition.”). In the same order, the Court  
12 directed Loop AI to serve the Defendants with the documents filed under Docket Numbers 9, 10,  
13 and 11 in this case (the “TRO Papers”), as well as the Court’s March 4, 2015 Order (Dkt. No. 12)  
14 by no later than 5:00 p.m. PST on Thursday, March 5, 2015. See *id.* The Court authorized service  
15 on the Italian Defendants Almaviva S.p.A. and Almare S.r.l. through the Italian Certified  
16 Electronic Mail system known as the “Posta Elettronica Certificate” or “PEC” for the limited  
17 purpose of transmitting the TRO Papers and the Court’s March 4th Order. *Id.* at 1. Defendants  
18 were directed to submit any opposition to Loop AI’s Application by no later than Monday, March  
19 9, 2015. *Id.* at 2. On March 9, 2015, Defendants submitted three oppositions to the Application.  
20 See Dkt. Nos. 23, 24, and 25. Loop AI submitted a reply on March 10, 2015.<sup>1</sup> See Dkt. No. 28.

21 The Court has carefully considered the parties’ briefs, supporting declarations, and  
22 exhibits. The Court finds that this matter is appropriate for disposition without oral argument and  
23 the matter is deemed submitted. See N.D. Civ. L.R. 7–1(b). For the reasons discussed below,  
24 Loop AI’s Application is **DENIED**.

25 **I. LEGAL STANDARD**

26 A temporary restraining order is intended to preserve the status quo and prevents  
27

28 <sup>1</sup> Loop AI’s request for leave to file a Reply is **GRANTED**.

1 irreparable harm until a hearing can be held on a preliminary injunction application. See *Granny*  
2 *Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 429 (1974).  
3 However, a temporary restraining order is an “extraordinary remedy” that the court should award  
4 only upon a clear showing that the plaintiff is entitled to such relief. See *Winter v. Natural Res.*  
5 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Such an order may be issued only where the moving  
6 party has established: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm  
7 to plaintiff in the absence of preliminary relief; (3) the balance of equities tips in plaintiff’s favor;  
8 and (4) that an injunction is in the public interest. See *id.* at 22.

9 Under *Winter*, a court may only grant preliminary relief upon a showing that irreparable  
10 harm is likely. See *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011).  
11 The mere possibility of irreparable harm is insufficient to support issuance of preliminary relief,  
12 even where the other *Winter* factors weigh heavily in favor of the movant. *Id.* In *Alliance*, the  
13 Ninth Circuit explained that “‘serious questions going to the merits’ and a balance of hardships  
14 that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as  
15 the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in  
16 the public interest.” *Id.* at 1134.

## 17 **II. DISCUSSION**

### 18 **A. Likelihood of Success on the Merits**

19 While the complaint filed in this action asserts fourteen causes of action, see Dkt. No. 1,  
20 Loop AI limits its discussion of the likelihood of success on the merits to two claims: (1) Trade  
21 Secret Misappropriation; and (2) Breach of Contract.

#### 22 **i. Trade Secret Misappropriation**

23 Loop AI alleges that the Defendants misappropriated its confidential and trade secret  
24 information in violation of the Uniform Trade Secret Act (“USTA”). “Under the UTSA, a prima  
25 facie claim for misappropriation of trade secrets requires the plaintiff to demonstrate: (1) the  
26 plaintiff owned a trade secret, (2) the defendant acquired, disclosed, or used the plaintiff’s trade  
27 secret through improper means, and (3) the defendant’s actions damaged the plaintiff.” *CytoDyn*  
28 *of New Mexico, Inc. v. Amerimmune Pharms., Inc.*, 160 Cal. App. 4th 288, 297 (2008) (internal

1 quotations and citation omitted).

2 On the record presented, Loop AI has not demonstrated that it is likely to meet this  
3 standard. While Loop AI asserts that it undertakes reasonable efforts to maintain the secrecy of its  
4 business information, it has not identified what business information was allegedly  
5 misappropriated, or submitted evidence that particular business information taken constitutes a  
6 trade secret under California law. See *MAI Sys. Corp. v. Peak Computer*, 991 F.2d 511, 522 (9th  
7 Cir. 1993) (“[A] plaintiff who seeks relief for misappropriation of trade secrets must identify the  
8 trade secrets and carry the burden of showing that they exist.”); see also Cal. Civ. Code §  
9 3426.1(d) (defining a trade secret to include information that “[d]erives independent economic  
10 value, actual or potential, from not being generally known to the public or to other persons who  
11 can obtain economic value from its disclosure or use; and . . . [i]s the subject of efforts that are  
12 reasonable under the circumstances to maintain its secrecy.”).

13 Instead, Loop AI’s Application is premised on general, very broad assertions unsupported  
14 by specific evidence in the record. See Dkt. No. 9 at 9 (“The Company’s confidential information,  
15 know-how, technology, business methods, strategies, business plans, funding plans, investments  
16 plans, business partnerships and marketing plans, contacts and related materials which the  
17 Company developed and used in connection with its business constitute trade secrets of the  
18 Company.”); *id.* at 11 (“Defendant Gatti illegally forwarded and used substantial amounts of this  
19 information in furtherance of her and the other Defendants’ gain, including by improperly  
20 launching a competing company . . .”). The sole specific allegation of misappropriation  
21 discussed in Loop AI’s brief concerns an email from Defendant Gatti to Gianmauro Calafiore and  
22 Bart Peintner at Loop AI, in which Defendant Gatti requested 700 files to which she said she did  
23 not have access. *Id.*; Dkt No. 9-3 (Exhibit GMC-1). In other words, Loop AI’s evidence that the  
24 Defendants improperly took the company’s trade secrets is an email where Defendant Gatti  
25 complains of not having access to the information Loop AI alleges she took. And, perhaps  
26 tellingly, nowhere do the Application and supporting materials claim that Loop AI actually  
27 granted the access Gatti requested. *Id.* The email thus provides no basis for Loop AI’s assertion  
28 that Defendant Gatti “continues to have possession of the 700 files that she improperly took from

1 the Company for the Defendants’ use.” Dkt. No. 9 at 11. In fact, it suggests the opposite. At this  
2 stage, Loop AI has not demonstrated that (1) Defendant Gatti retains those 700 files; (2)  
3 Defendant Gatti shared those files with any of the other Defendants; or that (3) the unspecified  
4 contents of those files likely qualify as trade secrets under California law. Conclusory allegations  
5 alone are not sufficient to demonstrate a likelihood of success on the merits. See, e.g., Sunbelt  
6 Rentals, Inc. v. Victor, 2014 WL 492364, at \*6 (N.D. Cal. Feb. 5, 2014).

7 The evidence offered by Loop AI in support of its trade secret allegations contrasts sharply  
8 with the type of detailed and specific showing courts have found sufficient to support the issuance  
9 of a temporary restraining order under Rule 65. For example, Shutterfly, Inc. v. Foreverarts, Inc.,  
10 2012 WL 2911887 (N.D. Cal. Jul. 13, 2012), cited by Loop AI in support of its Application,  
11 substantially undercuts its argument. In that case, Shutterfly moved ex parte to enjoin a former  
12 employee from destroying electronic logs, metadata, code, and other electronic documents related  
13 to Shutterfly. Id. at \*1. In support of its application, Shutterfly provided the Court with “Source  
14 Control Logs” demonstrating that the defendant had accessed its systems and downloaded  
15 Shutterfly’s “back end code” from an offsite location. Id. Shutterfly then identified specific  
16 examples of duplicate code between the defendant’s website and Shutterfly.com and directed the  
17 Court to corporate filings and website comments that suggested that the defendant intended to  
18 create a substantially similar photo publishing product. Id. at \*2. The Court weighed this  
19 evidence and granted Shutterfly’s requested relief, which was far less onerous than the  
20 extraordinary list of actions Loop AI asks the Court to take in this case. Loop AI has made no  
21 remotely comparable showing here.

22 Accordingly, while future discovery in this action may support Loop AI’s claims, the  
23 evidence presented to this Court in conjunction with the request for a temporary restraining order  
24 does not demonstrate that Loop AI is likely to prevail against any Defendant under USTA.

25 **ii. Breach of Contract**

26 Loop AI argues that it is likely to prevail on its breach of contract claim against Defendant  
27 Gatti because she (1) allegedly disclosed confidential and trade secret information without  
28 authorization; and (2) engaged in other businesses without Loop AI’s express written consent.

1 Dkt. No. 9 at 12-13.

2 Loop AI's first argument fails for the same reasons as its trade secret misappropriation  
3 claim under USTA. At this stage, for the reasons explained above, Loop AI has not shown that it  
4 is likely to succeed on its claim that any of the Defendants misappropriated or used any trade  
5 secrets owned by Loop AI. It follows that Loop AI also has not shown a likelihood of success on  
6 its breach of contract claim premised on Defendant Gatti's alleged misappropriation.

7 Loop AI's second theory fares better. While Defendant Gatti challenges the manner in  
8 which her employment agreement was presented to her and asserts that she informed Loop AI of  
9 her other business commitments, she does not appear to contest that her employment contract  
10 requires Loop AI's written consent and that she never received such consent prior to engaging in  
11 other business activities. See Dkt. 23 at 9.

12 Accordingly, at this early stage of the litigation, the Court believes that there is at least  
13 some likelihood of Loop AI prevailing on a breach of contract claim against Defendant Gatti.  
14 However, Loop AI has not shown that it is likely to prevail on any cause of action asserted against  
15 the other Defendants.

16 **B. Likelihood of Irreparable Harm**

17 "A plaintiff who seeks preliminary injunctive relief must show 'that irreparable injury is  
18 likely in the absence of an injunction.'" *M.R. v. Dreyfus*, 697 F.3d 706, 728 (9th Cir. 2012)  
19 (quoting *Winter*, 555 U.S. at 22); *Alliance*, 632 F.3d 1127, 1131 (9th Cir. 2011) ("plaintiffs must  
20 establish that irreparable harm is likely, not just possible, in order to obtain a preliminary  
21 injunction."). "Speculative injury does not constitute irreparable injury." *Goldie's Bookstore*  
22 *v. Super. Ct.*, 739 F.2d 466, 472 (9th Cir. 1984).

23 Loop AI argues that it will suffer irreparable harm absent injunctive relief because: (1)  
24 Defendant's continued use of Loop AI's trade secrets will "essentially cause the ultimate demise  
25 of the start-up company;" (2) Defendant Gatti has demonstrated that she will not observe her  
26 obligations to preserve evidence; and (3) absent an asset freeze, the Defendants will transfer their  
27 assets outside the Court's jurisdiction in an effort to frustrate Loop AI's potential recovery in this  
28 case. See Dkt. No. 9 at 14-15. These contentions are not supported by the record.

1 First, Loop AI’s contention that it will suffer irreparable harm from “Defendants’  
2 continued use of the Company’s confidential information and trade secrets,” *id.* at 14, is  
3 unsupported. Setting aside the lack of a sufficient showing that Defendants misappropriated any  
4 identified confidential or trade secret information, Loop AI has provided no specific evidence that  
5 any of the information allegedly taken is so sensitive that the company’s continued existence  
6 would be threatened if the Court does not grant the requested injunction. Instead, Loop AI’s  
7 Application suggests the opposite. According to Loop AI, Defendant Gatti “has already been  
8 working full time for the Almoviva Defendants and others for more than 1 year . . . .” Dkt. No. 9  
9 at 11 (emphasis removed). Loop AI offers no explanation to square (1) its representation that the  
10 company will perish absent immediate injunctive relief with (2) the fact that the company has  
11 survived Defendant Gatti’s alleged misconduct for more than a year. And while discovery  
12 obviously will be needed to develop the facts, all Defendants flatly deny under penalty of perjury  
13 that they have taken or used Loop AI’s confidential information or trade secrets. See Dkt. Nos.  
14 23-1 at ¶ 9; 24-1 at ¶ 25; 25-1 at ¶¶ 31-32. The Almovave Defendants represent that they have  
15 already searched their files for such information without finding any, and state that if they do find  
16 any they will destroy it or return it to Plaintiff.<sup>2</sup> See Dkt. No. 25-1 at ¶¶ 31-32.

17 Second, Loop AI’s argument that Defendant Gatti is likely to destroy relevant evidence is  
18 equally unsupported. For example, Loop AI accuses Defendant Gatti of “initiating an attack on  
19 her former corporate account” and deleting information from her calendar, even though she no  
20 longer had the password to access Loop AI’s systems. See Dkt. No. 9 at 3. Loop AI’s sole  
21 “evidence” of this serious allegation appears to be Mr. Calafiore’s speculation that “Gatti could  
22 have been the only person interested in accessing and deleting the information that the Company  
23 was analyzing in connection with this investigation.” See Dkt. No. 9-3 at ¶ 17. Mr. Calafiore’s  
24 suspicions are not a proper ground for injunctive relief. All of the Defendants are represented by  
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26 <sup>2</sup> While the Court appreciates that the Defendants have taken proactive steps to locate potentially  
27 relevant documents, the Court reminds all parties that they have a duty to preserve potentially  
28 relevant evidence. In no circumstances should a party “destroy” documents or information in any  
way related to the subject matter of this litigation, even if that information could constitute a trade  
secret of Loop AI.

1 counsel admitted to practice before this Court and are expected to advise their clients of their duty  
2 to preserve potentially relevant evidence and the serious consequences for failing to do so.<sup>3</sup>

3 Third, Loop AI has adduced no evidence that any Defendant is hiding or dissipating assets.  
4 Loop AI has provided the Court with evidence that Defendant Gatti (who appears to have spent  
5 many years living in Europe) has bank accounts in both the United States and Europe, and that she  
6 has spoken to or met with a handful of bankers over the last several months. Dkt. No. 9 at 6; Dkt.  
7 No. 10 at ¶¶ 4-12. There is no evidence that these activities were designed to secrete assets to  
8 frustrate any eventual recovery in this action. See *Maui Land & Pineapple Co. v. Hamada*, 2000  
9 WL 1093085, at \*2 (N.D. Cal. Aug. 2, 2000) (denying application for a temporary restraining  
10 order prohibiting dissipation of defendant’s business where the “plaintiff makes no cognizable  
11 allegations of dissipation.”). Nor has Loop AI provided evidence concerning the financial  
12 activities of any of the other Defendants that could plausibly support such a finding. Freezing the  
13 Defendants’ assets under these circumstances is unjustified.

14 In sum, Loop AI has provided insufficient evidence to demonstrate that irreparable harm is  
15 likely. For this reason alone, Loop AI’s Application must be denied. See *Alliance*, 632 F.3d at  
16 1131.

17 **C. Balance of Equities**

18 Before injunctive relief may be imposed, the movant must demonstrate that the balance of  
19 equities tips in its favor. *Winter*, 55 U.S. at 20. Here, the extraordinary injunctive relief requested  
20 by Loop AI would impose a substantial burden on the Defendants, both in terms of the legal costs  
21 of compliance and the ability to operate their businesses and pay for their personal expenses.  
22 While Loop AI challenges the evidence presented to support the Defendants’ claims of hardship,  
23 see Dkt. No. 28-1 at 3, there can be no reasonable argument that precluding an individual or  
24 company from using any of its assets presents a tremendous burden, even if that limitation is  
25 imposed for only a brief period. When weighed against the evidentiary showing offered by Loop  
26 AI to support the extraordinary preliminary relief sought in its Application, there is no question

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28 <sup>3</sup> The Almax Defendants have represented to the Court that they have already taken measures  
to preserve and locate potentially relevant documents. See Dkt. No. 25 at 20.



1 that the balance of equities favors denial.

2 **D. Consideration of the Public Interest**


3 “In exercising their sound discretion, courts of equity should pay particular regard for the  
4 public consequences in employing the extraordinary remedy of injunction.” Winter, 555 U.S. at  
5 24 (quoting Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982)). In this case, Loop AI’s  
6 proposed relief would have significant consequences on individuals other than the Defendants.  
7 For example, an asset freeze would necessarily affect the non-party employees of the Defendants  
8 as well as their families and dependents. Because Loop AI has fallen well short of the required  
9 showing, the final Winter factor weighs against granting injunctive relief.

10 **III. CONCLUSION**

11 Although Loop AI has demonstrated some likelihood of success on the merits of its breach  
12 of contract claim against Defendant Gatti, all of the other factors weigh heavily against granting  
13 any of the extraordinarily broad preliminary relief requested, whether that relief is couched as a  
14 temporary restraining order or a preliminary injunction. Accordingly, Loop AI has failed to  
15 satisfy the standard required for the issuance of any form of preliminary injunctive relief. The  
16 Application is **DENIED**.

17 **IT IS SO ORDERED.**

18 Dated: March 12, 2015

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20 HAYWOOD S. GILLIAM, JR.  
21 United States District Judge  
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