United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BLUELINE SOFTWARE SERVICES, INC.,

Plaintiff,

v.

SYSTEMS AMERICA, INC., et al.,

Defendants.

Case No. 17-cv-01960-EMC

ORDER DENYING DEFENDANT MUKUNDA'S MOTION TO DISMISS

Docket No. 13

I. INTRODUCTION/BACKGROUND

According to the complaint, Plaintiff Blueline Software Services, Inc. ("Blueline") had a contract with Defendant Systems America, Inc. ("Systems America") whereby Systems America paid Blueline a fee for providing the services of its employee (Defendant and Movant Anil Kumar Mukunda) to Systems America's client, Infosys Ltd ("Infosys"). Docket No. 1 (Complaint) at ¶ 25; Ex. A to Complaint (Staffing Services Agreement). Mukunda knew of this contract between Systems America and Blueline and solicited and encouraged Systems America to violate its Services Agreement by hiring Mukunda directly and allowing him to continue providing services directly through Systems America to the client. Docket No. 1 at ¶¶ 3, 29, 46. On or about September 15, 2016, Mukunda resigned from Blueline. *Id.* at ¶ 26. After resigning from Blueline, Mukunda continued to provide services at Infosys through Systems America. *Id.* at ¶ 27. Plaintiff alleges that Mukunda intended to (and did) induce Systems America to breach its contract with Blueline and avoid paying Blueline its fee based on Mukunda's services to Infosys, Ltd. *Id.* at ¶¶ 29, 46.

Plaintiff brought a single count of tortious interference with contract against Defendant Mukunda. *Id.* at ¶¶ 45-47. Specifically, Blueline contends that Mukunda's resigning from

Blueline and continuing to work for Infosys through Systems America interfered with Section 5.0 of the Services Agreement, which provides:

> Notwithstanding anything contained herein, company [Systems America] agrees that during the terms of this contract and for 2 years thereafter, it shall not directly or indirectly solicit and/or hire on its payroll the designated contractor or any of the contractor's consultants [Mukunda] that have been introduced to the company or have worked on the company issued SOW.

Id. at ¶ 23.

Pending before the Court is Defendant's Mukunda's motion to dismiss Plaintiff's verified complaint under Fed. R. Civ. P. 12(b)(6). Docket No. 13. Mukunda moved "on the grounds that (1) Mukunda is being sued because he left employment with plaintiff . . . (Blueline) and accepted employment with defendant . . . (Systems America); and (2) Mukunda had a legal right to accept employment with Systems America pursuant to California Business & Professions Code § 16600." Docket No. 13 at 2. The Court **DENIES** the motion.

II. DISCUSSION

A. Legal Standard

Fed. R. Civ. P. 12(b)(6) provides: "Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (6) failure to state a claim upon which relief can be granted." A motion to dismiss based on Rule 12(b)(6) challenges the legal sufficiency of the claims alleged. *See Parks Sch. of Bus. v. Symington,* 51 F.3d 1480, 1484 (9th Cir.1995). In considering such a motion, a court must take all allegations of material fact as true and construe them in the light most favorable to the nonmoving party, although "conclusory allegations of law and unwarranted inferences are insufficient to avoid a Rule 12(b)(6) dismissal." *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). While "a complaint need not contain detailed factual allegations . . . it must plead 'enough facts to state a claim to relief that is plausible on its face.'" *Id.* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009); *see also Bell Atl. Corp. v. Twombly*,

550 U.S. 544, 556, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than sheer possibility that a defendant acted unlawfully." *Id.*

B. Discussion

"The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." *Pacific Gas & Electric Co. v. Bear Stearns & Co.*, 50 Cal.3d 1118, 1126 (1990) (internal citations omitted).

Mukunda's motion focuses on the validity of the contractual restriction at issue. In order to prevail on this motion to dismiss, Mukunda must establish that Section 5.0 of the Services Agreement, the basis of Plaintiff's legal claim, is invalid under Business & Professions Code Section 16600. Section 16600 provides: "Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." The Court, for the reasons stated below, denies the motion. Docket No. 13 at 3-5.

In order to prevail, Mukunda must establish Section 5.0 is void. The Court cannot, at this stage, make such a finding.

First, it is not at all clear that Section 5.0 is invalid under Section 16600. In *Loral Corp. v. Moyes*, 174 Cal. App. 3d 268, 219 Cal. Rptr. 836 (Ct. App. 1985), the California Court of Appeal found a noninterference agreement, analogous to Section 5.0, to be valid despite Section 16600. In *Loral Corp.*, a corporation sued its former executive officer for breach of a noninterference agreement that restrains defendant from disrupting, damaging, impairing, or interfering with plaintiff's business by "raiding" its employees. *Id.* at 279. The court reasoned that the agreement only slightly affects the plaintiff's employees because they are not hampered from seeking employment with defendant's new employer; nor does the agreement prevent the plaintiff's employee from contacting the contracting defendant. The only option employees lost was the

option of being contacted by the defendant first. *Id.* at 279-80. The court further reasoned that "[t]he restriction presumably was sought by plaintiffs in order to maintain a stable work force and enable the employer to remain in business." *Id.* at 280. Thus, since the court found that the noninterference agreement "has the apparent impact of limiting Moyes' business practices in a small way in order to promote Conic's business, it did not find the noninterference agreement to be void on its face under Section 16600. *Id.*

In concluding so, the Court of Appeal endorsed the reasoning of two cases from Georgia which upheld noninterference provisions, finding they are not void as an unlawful restraint of trade. *Id.* at 278-79. In *Lane Co. v. Taylor*, 174 Ga. App. 356, 330 S.E.2d 112 (1985), an employer sued its former employee for, among other things, violating an agreement which prohibited her for one year post-termination from hiring employees or otherwise causing them to work for another employer. *Id.* at 356-57. The court observed that in *Orkin Exterminating Co. v. Martin Co.*, 240 Ga. 662, 666, 242 S.E.2d 135 (1978), the Georgia Supreme Court announced: "Overly-restrictive covenants in employment contracts . . . which place a restraint upon the free movement of employees in the marketplace as opportunity, experience and competition permits is contrary to this court's view of fair competition." *Lane Co.*, 174 Ga. App. at 360. Since the limited restriction on "pirating" of employees was circumscribed by a one-year limitation and it restricts the actions of only the defendant former employee, the Court found that the covenant was not too broad in scope and was a valid measure to protect legitimate business interests. *Id.* In *Harrison v. Sarah Conventry, Inc.*, 228 Ga. 169, 184 S.E.2d 448 (1971), also cited in *Loral Corp.*, an employer sued its former employees for violating the agreement which provided that, during employment and for two years post-termination, they would not disclose the identity of the employees nor attempt to induce them to leave the plaintiff company. *Id.* at 169-70. The court upheld the agreement, distinguishing cases involving noncompetition agreements without territorial limitations. *Id.* at 170-71. The court found that the agreement did not impose an unlawful restraint of trade because the defendants were free to work for a competitor so long as they did not interfere with their former employer's contractual relationships with the defendants or divulge the names of former coworkers. *Id.* at 171.

Loral Corp.'s citation to and endorsement of the Georgia cases are instructive. Although Section 5.0 is broader in scope than the restrictive covenant in *Loral Corp.* in that Section 5.0 bars Systems America from not only soliciting Plaintiff's employees (as in *Loral Corp.*) but also from *hiring* them, the Georgia cases upheld broader restrictions which did ban hiring of the plaintiff's employees at least for a certain time period or within certain territorial limits. Here, Section 5.0 forbids Systems America from soliciting and/or hiring contractors or contractor's consultants (like Mukunda) that during the terms of the contract and for two years thereafter. Docket No. 1 at ¶ 23. The restraint in trade effectuated by Section 5.0 seems modest when compared to the importance of restricting pirating of employees given the nature of Blueline's business – providing personnel services to its customers. Threats to deplete its prime resource – personnel – strike at the core of its ability to compete. For purposes of a Rule 12(b)(6) motion, the Court cannot find as a matter of law Section 5.0 to be invalid.[1]

To be sure, the case at bar is unusual because Blueline has brought suit against not only the business, but against the employee himself. The chilling effect on competition may be more severe when cases are filed against those being hired, in addition to those that do the hiring, and an argument can be made that such a suit strikes at the heart of Section 16600.

Nonetheless, regardless of whether a suit against a former employee is permissible in the face of Section 16600, Plaintiff has made clear it is not suing Mukunda simply for working for Systems America. Rather, it is suing Mukunda because he actively solicited and encouraged Systems America to violate its Services Agreement in direct competition with Blueline and in violation of Section 5.0. Docket No. 1 at ¶¶ 3, 29, 46. It is on this basis that Plaintiff grounds its narrowly defined claim against Mukunda.

For the foregoing reasons, the Court **DENIES** Defendant Mukunda's motion to dismiss. It does so without prejudice to the parties' development of the facts that might better inform the legal

[1] Further, it is noteworthy that a claim of interference with contract (as alleged herein) is easier to establish than a claim for interference with prospective economic advantage. *See Reeves v. Hanlon*, 33 Cal. 4th 1140, 1152, 95 P.3d 513, 519-20 (2004) (observing that "while many of the elements of the two torts are similar, a plaintiff seeking to recover for interference with prospective economic advantage must also plead and prove that the defendant engaged in an independently wrongful act in disrupting the relationship").

analysis pertaining to the application of Section 16600, including further analysis of what would constitute sufficient encouragement by Mukunda so as to lose the protection, if any, of Section 16600.

This order disposes of Docket No. 13.

IT IS SO ORDERED.

Dated: July 14, 2017

EDWARD M. CHEN
United States District Judge

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