

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28E-FILED on 8/11/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MORGAN STANLEY DW INC.,

Plaintiff,

v.

JEFFREY COLLISON, and DEBORAH
JURAN,

Defendant.

No. C-06-04827 RMW

TEMPORARY RESTRAINING ORDER

[Re Docket No. 2]

Plaintiff Morgan Stanley DW Inc. ("Morgan Stanley") seeks a temporary restraining order, the primary goal of which is to prevent two recently-departed employees, who now work for a competitor of Morgan Stanley, from soliciting Morgan Stanley clients. The Court has considered the moving papers and defendants' declarations offered in opposition. For the reasons discussed below, the Court will issue a temporary restraining order.

I. BACKGROUND

Defendants Jeffrey Collison ("Collison") and Deborah Juran ("Juran") were employed as brokers by Morgan Stanley and its predecessors (such as Dean Witter & Co.) for over fifteen years each. On August 4, 2006, both resigned their positions with Morgan Stanley and commenced employment with competitor RBC Dain Rauscher Inc. ("Dain Rauscher"). Each defendant's

1 employment contract provided that customer lists would be kept confidential, and that company
 2 records would not be copied by employees or disclosed to third parties except as necessary for
 3 business. Collison's contract further provided that he would "not solicit or attempt to solicit,
 4 directly or indirectly, any of Dean Witter's customers who were served by or whose names became
 5 know to the Employee while in the employ of Dean Witter." Soares Decl., Ex. A ¶ 2.1. Juran's
 6 contract provides that she will not for six months after her employment with Dean Witter ends
 7 "solicit or service any customers who were served by or whose names became known to
 8 Employee during Employment with Dean Witter."¹ *Id.*, Ex. B ¶ 4.

9 Both Collison and Juran sent out what appear to be form letters dated August 4, 2006. *See*
 10 *id.*, Exs. C, D. These letters announced their change of employment, provided information about
 11 their new firm, and requested that the recipient fill out and return enclosed paperwork to transfer
 12 his or her account to Dain Rauscher.

13 On August 10, 2006, Morgan Stanley filed a complaint against Collison and Juran. The
 14 complaint contained causes of action for breach of contract, conversion, trade secret
 15 misappropriation, breach of the duty of loyalty, and unfair competition. Morgan Stanley also
 16 sought a temporary restraining order prohibiting the defendants from further soliciting customers
 17 in violation of their employment contracts, enjoining them from further using Morgan Stanley
 18 records and immediately returning those records, and ordering the parties to engage in expedited
 19 arbitration in accordance with the National Association of Securities Dealers ("NASD") Code of
 20 Arbitration Procedure. Morgan Stanley notified the defendants on Wednesday, August 9, 2006,
 21 that it intended to file a complaint and seek a temporary restraining order, and the defendants have
 22 responded to date with a pair of short declarations.

23 II. DISCUSSION

24 Provisions not to solicit clients after a change in employment are generally enforceable in
 25 California. *John F. Matull & Assocs., Inc. v. Cloutier*, 194 Cal. App. 3d 1049, 1054 (1987).
 26 Customer lists may be protected as trade secrets under California law. *Courtesy Temporary Serv.*,

27
 28 ¹ Morgan Stanley states that it is not seeking to enforce the "service" provision of the paragraph,
 only the "solicit" provision.

1 *Inc. v. Camacho*, 222 Cal. App. 3d 1278, 1287 (1990). In similar circumstances, other district
2 courts in California have granted injunctive relief to a brokerage firm seeking to prevent former
3 employees from using client information for new employers. *See, e.g., Merrill Lynch, Pierce,*
4 *Fenner & Smith Inc. v. Garcia*, 127 F. Supp. 2d 1305 (C.D. Cal. 2000); *Merrill Lynch, Pierce,*
5 *Fenner & Smith Inc. v. Chung*, 2001 WL 283083 (C.D. Cal. 2001).

6 A district court has discretion to grant or deny a request for preliminary injunctive relief.
7 *Earth Island Inst. v. U.S. Forest Service*, 442 F.3d 1147, 1156 (9th Cir. 2006). Under the traditional
8 test for granting preliminary injunctive relief, the applicant must demonstrate: "(1) a likelihood of
9 success on the merits; (2) a significant threat of irreparable injury; (3) that the balance of hardships
10 favors the applicant; and (4) whether any public interest favors granting an injunction." *Raich v.*
11 *Ashcroft*, 352 F.3d 1222, 1227 (9th Cir. 2003). Alternatively, "[t]he moving party must show either
12 (1) a combination of probable success on the merits and the possibility of irreparable injury, or (2)
13 that serious questions are raised and the balance of hardships tips sharply in favor of the moving
14 party." *Stuhlberg Intern. Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839-40 (9th
15 Cir. 2001). The two parts of this alternative test "represent extremes of a single continuum, rather
16 than two separate tests." *Clear Channel Outdoor Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th
17 Cir. 2003) (internal citation and quotation marks omitted).

18 The limited facts before the Court indicate that Morgan Stanley is likely to prevail on its
19 claims for breach of contract and trade secret misappropriation. Each defendant has sent at least
20 one letter to a Morgan Stanley client that appears to violate the non-solicitation clause of each
21 defendant's contract with Morgan Stanley. Morgan Stanley's client lists are likely to be found
22 protectable as trade secrets under California law and to have been misappropriated by the
23 defendants.² California courts have found that the solicitation of clients by a former employee can
24 constitute irreparable harm. *See, e.g., Am. Credit Indem. Co. v. Sacks*, 213 Cal. App. 3d 622, 637
25 (1989). Though Collison and Juran complain about the treatment they received from Richard
26 Soares, their former supervisor at Morgan Stanley, this mistreatment does not justify the

27 _____
28 ² That certain clients may also friends or social acquaintances of the defendants does not appear to
alter the analysis.

1 defendants soliciting Morgan Stanley's clients on the facts before the Court. A temporary
2 restraining order of short duration would not preclude the defendants from working in their chosen
3 field, it merely would restrict them from soliciting certain clients for a short period of time. The
4 balance of hardships thus tips in favor of Morgan Stanley. Finally, a temporary restraining order
5 will promote the public interest in the protection of trade secrets and enforcement of contracts.

6 **III. ORDER**

7 Good cause therefor appearing, IT IS HEREBY ORDERED that Morgan Stanley's request
8 for a temporary restraining order is GRANTED as follows:

- 9 1. This temporary restraining order shall become effective immediately upon the
10 posting of a \$1,000 undertaking by Morgan Stanley.
- 11 2. Collison and Juran (and those acting in concert with them) shall not engage in any
12 new solicitations of clients they serviced while employed by Morgan Stanley.
- 13 3. The parties shall appear before the assigned judge, the Honorable Ronald M.
14 Whyte, at 9 a.m. on Friday, August 18, 2006, for a hearing on a preliminary
15 injunction. Morgan Stanley's application for a temporary restraining order shall be
16 treated as its application for a preliminary injunction. Any opposition should be
17 filed by Tuesday, August 15, 2006. Any reply is due by Wednesday, August 16,
18 2006.
- 19 4. Collison and Juran shall preserve all documents (paper, electronic, or otherwise)
20 containing information regarding Morgan Stanley clients.
- 21 5. Pending further order of the Court, the parties may engage in expedited discovery
22 as follows: Each side may depose two individuals for two hours each on five days'
23 notice. Narrowly-tailored requests for production of documents shall be responded
24 to within five days.

25
26 DATED: 8-11-06 /s/ electronic signature authorized
27 JEREMY FOGEL
28 United States District Judge

1 **Notice of this document has been electronically sent to:**

2 **Counsel for Plaintiffs:**

3 Steven W. Brennan swbrennan@swbf.net
4 Patrick J. Folan pjfolan@swbf.net

5 **Counsel for Defendants:**

6 David H.S. Commins david@commins.com
7 Kenneth C. Webster

8 Counsel are responsible for distributing copies of this document to co-counsel that have not
9 registered for e-filing under the court's CM/ECF program.

10
11 **Dated:** 8/11/06

/s/ JH
Chambers of Judge Whyte

United States District Court
For the Northern District of California

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28