IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

VISALUS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. CV413-028
	)	
AMBER THEN and OCEAN AVENUE LLC,	)	
	)	
Defendants.	)	
	)	

O R D E R

Before the Court is Plaintiff ViSalus, Inc.'s Motion for Temporary Restraining Order and Preliminary Injunction. (Doc. 3.) In the motion, Plaintiff seeks to enjoin Defendants from recruiting and soliciting Plaintiff's distributors, alleging Defendant Then violated several non-compete and non-solicitation agreements. (Id. at 11.) At the Court's request, Plaintiff submitted an amended complaint in which it verified the citizenship of Ocean Avenue, LLC's members. (Doc. 6.) After review, the Court is satisfied by Plaintiff's pleadings establishing diversity jurisdiction in this case.

The Court, in a previous order, has outlined the basic factual background of this case (Doc. 5 at 2-3), which need not be repeated in its entirety here. In this

case, the Court cannot address the merits of Plaintiff's motion for a temporary restraining order because Plaintiff has failed to follow the procedural requirements to obtain one. As mentioned in the Court's prior order (Doc. 5 n.1), for a temporary restraining order to be issued without written or oral notice to the adverse party, Federal Rule of Civil Procedure 65(b)(1) requires that

> (a) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
>
> (b) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

While Plaintiff has filed a verified amended complaint, the record contains no written certification from Plaintiff's counsel of any efforts made to give notice to the adverse party or reasons why such notice should not be required. Accordingly, Plaintiff's request for a Temporary Restraining Order is **DENIED**.[1]

The Court may issue a preliminary injunction only on notice to the adverse party. Fed. R. Civ. P. 65(a)(1). Because Defendants have yet to be served, the Court **DEFERS**

[1] Accordingly, Plaintiff's "Emergency Motion for Hearing on Temporary Restraining Order" (Doc. 4) is **DISMISSED AS MOOT**.

ruling on Plaintiff's request for a preliminary injunction until all Defendants have been served.

SO ORDERED this 20th day of February 2013.

WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA