

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 NAC FOUNDATION, LLC, )  
4 )  
5 Plaintiff, ) Case No.: 2:16-cv-01039-GMN-VCF  
6 vs. )  
7 ) **ORDER**  
8 COREY JODOIN, )  
9 )  
10 Defendant. )  
11 )  
12 )  
13 )

14 Pending before the Court is the Motion for Preliminary Injunction (ECF No. 6)  
15 filed by Plaintiff NAC Foundation, LLC (“NAC”) against Defendant Corey Jodoin  
16 (“Defendant”). Defendant filed a Response (ECF No. 11), and NAC filed an Ex Parte  
17 Motion for Limited Discovery (ECF No. 12).

18 **I. BACKGROUND**

19 This is a civil action against Defendant Corey Jodoin for breach of a Purchase  
20 Agreement between the parties, for breach of a Mutual Non-disclosure Agreement  
21 (“NDA”) between the parties, for breach of the covenant of good faith and fair dealing  
22 implied in both contracts, for defamation, and for intentional interference with  
23 contractual relations and perspective economic advantage. (See Compl., ECF No. 1).

24 For the purposes of the instant Motion, NAC alleges that Defendant has  
25 “contacted customers of NAC, contractors, and others, by use of Confidential  
Information of NAC, for purposes of disparaging and defaming NAC and its  
management, and of intentionally interfering with the contracts and prospective business  
advantage of NAC.” (Mot. Prelim. Inj. 5:24–27, ECF No. 6). Further, NAC alleges that  
Defendant used Confidential Information to contact and convince a customer to attend a  
conference hosted by NAC “for the specific purpose of interfering with existing and

1 prospective [customers] and investors by publically declaring that [NAC's Product] was a  
2 'scam.'" (Id. 3:20–27).

## 3 **II. LEGAL STANDARD**

4 Rule 65 of the Federal Rules of Civil Procedure provides that a “court may issue a  
5 preliminary injunction only on notice to the adverse party.” Fed. R. Civ. P. 65(a)(1). A  
6 Court may issue a preliminary injunction only if a plaintiff establishes: (1) likelihood of  
7 success on the merits; (2) likelihood of irreparable harm in the absence of preliminary  
8 relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the  
9 public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

10 “Injunctive relief [is] an extraordinary remedy that may only be awarded upon a clear  
11 showing that the plaintiff is entitled to such relief.” Id. at 22. Finally, “[i]n deciding a  
12 motion for a preliminary injunction, the district court ‘is not bound to decide doubtful and  
13 difficult questions of law or disputed questions of fact.’” *Int’l Molders’ & Allied*  
14 *Workers’ Local Union No. 164 v. Nelson*, 799 F.2d 547, 551 (9th Cir. 1986) (quoting  
15 *Dymo Indus., Inc. v. Tapeprinter, Inc.*, 326 F.2d 141, 143 (9th Cir. 1964)).

## 16 **III. DISCUSSION**

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

18 The Winter test states that in order to show the necessity of injunctive relief, the  
19 plaintiff must first prove a likelihood of success on the merits. 555 U.S. at 20. A claim  
20 for breach of contract must allege (1) the existence of a valid contract; (2) that the  
21 plaintiff performed or was excused from performance; (3) that the defendant breached the  
22 terms of the contract; and (4) that the plaintiff was damaged as a result of the breach. See  
23 Restatement (Second) of Contracts § 203 (2007); *Calloway v. City of Reno*, 993 P.2d  
24 1259, 1263 (Nev. 2000) (“A breach of contract may be said to be a material failure of  
25 performance of a duty arising under or imposed by agreement”).

1 Here, NAC alleges that the parties entered into an NDA on November 3, 2015.  
2 (Compl. ¶ 25). The NDA defines Confidential Information as “any information,  
3 including, without limitation, business technical, financial and marketing information,  
4 that is in written, oral or any other form, that a party designates as being confidential or  
5 that, under the circumstances surrounding disclosure, should be clear that it is  
6 confidential.” (NDA ¶ 1, Ex. 1-A to Mot. Prelim. Inj., ECF No. 6-1). Further, the NDA  
7 defines the Purpose as the parties “work[ing] together in connection with a possible  
8 business relationship.” (Id. at 1). Moreover, the NDA provides that a “Receiving Party  
9 shall retain in confidence any Confidential Information received from the Disclosing  
10 Party. Except with the prior written consent of the Disclosing Party, the Receiving Party  
11 will not (i) disclose such Confidential Information to any other person or (ii) use such  
12 Confidential Information for any purpose other than the Purpose.” (Id. ¶ 2).

13 NAC further alleges that, since November 2015, Defendant has contacted its  
14 customers, contractors, and others, by use of Confidential Information of NAC “for  
15 purposes of disparaging and defaming NAC and its management, and intentionally  
16 interfering with the contracts and prospective business advantage of NAC.” (Compl. ¶ 26;  
17 Andrade Decl. ¶ 13, ECF No. 6-1). Defendant does not dispute these allegations.

18 Accordingly, the Court finds that Plaintiff has proven a likelihood of success on  
19 the merits as to its breach of contract claim related to the NDA.

20 **B. Likelihood of Irreparable Harm in the Absence of Preliminary Relief**

21 To succeed on the second prong of the Winter test, the plaintiff must “demonstrate  
22 that irreparable injury is likely in the absence of an injunction.” 555 U.S. at 22. In the  
23 Ninth Circuit, “[t]hose seeking injunctive relief must proffer evidence sufficient to  
24 establish a likelihood of irreparable harm.” *Herb Reed Enters., LLC v. Florida Entm’t*  
25 *Mgmt., Inc.*, 736 F.3d 1239, 1251 (9th Cir. 2013). A presumption that irreparable harm is

1 likely is not sufficient to justify the granting of a preliminary injunction. See *id.* at 1242.

2 Irreparable harm cannot be “economic injury alone . . . because such injury can be  
3 remedied by a damage award.” *Rent-A-Center, Inc. v. Canyon Tele. & Appliance Rental,*  
4 *Inc.*, 944 F.2d 597, 603 (9th Cir. 1991). However, the Ninth Circuit has recognized that  
5 “[e]vidence of threatened loss of prospective customers or goodwill certainly supports a  
6 finding of the possibility of irreparable harm.” *Stuhlbarg Int’l Sales Co., Inc. v. John D.*  
7 *Brush & Co., Inc.*, 240 F.3d 832, 841 (9th Cir. 2001).

8 Based upon the declaration of Marcus Andrade, the manager of NAC, Defendant  
9 has “contacted customers of NAC, contractors, and others, by use of Confidential  
10 Information of NAC, for purposes of disparaging and defaming NAC and its  
11 management, and of intentionally interfering with the contracts and prospective business  
12 advantage of NAC.” (Andrade Decl. ¶ 13). Moreover, despite a cease and desist demand  
13 and the commencement of this action, Defendant has continued to do so. (*Id.* ¶ 15; Cease  
14 and Desist Demand Letter, Ex. 1-B to Mot. Prelim. Inj., ECF No. 6-1). On the other  
15 hand, Defendant argues that NAC “does nothing more than raise a speculative possibility  
16 that [Defendant] might harm NAC if he discloses the confidential information.” (Resp.  
17 4:9–11, ECF No. 11). However, the Court finds that such action by Defendant  
18 demonstrates that irreparable harm is likely in the absence of an injunction.

### 19 **C. The Balance of Equities**

20 As explained above, absent an injunction, Plaintiff is likely to suffer irreparable  
21 harm. Moreover, the Court cannot find, and Defendant does not argue, that he will suffer  
22 any harm as a result of an injunction. Accordingly, the Court finds that the balance of the  
23 equities tips in favor of granting an injunction.

### 24 **D. Public Interest**

25 Before granting an injunction the Court must determine that an injunction is in the

1 public’s interest. Winter, 555 U.S. at 24. An injunction in this instance protects the  
2 public’s interest in the integrity and enforceability of contracts. Therefore, the Court  
3 finds that the public’s interest favors an injunction in this instance.

4 **E. Rule 65(d)(1) of the Federal Rules of Civil Procedure**

5 Rule 65(d)(1) of the Federal Rules of Civil Procedure provides as follows:

6 (d) Contents and Scope of Every Injunction and Restraining  
7 Order.

8 (1) Contents. Every order granting an injunction and  
9 every restraining order must:

10 (A) state the reasons why it issued;

11 (B) state its terms specifically; and

12 (C) describe in reasonable detail—and not by  
13 referring to the complaint or other document—  
14 the act or acts restrained or required.

15 Defendant argues that Plaintiff’s requested injunction does not satisfy the requirements of  
16 Rule 65(d)(1) because it fails to describe the acts to be restrained with adequate  
17 specificity. (Resp. 2:24–3:5). The Court disagrees.

18 Plaintiff requests that Defendant be enjoined from “disclosing Confidential  
19 Information or from using it for any purpose, including but not limited to the purpose of  
20 disparaging or defaming NAC, its principal and affiliates, or interfering with NAC’s, its  
21 principal’s or affiliates’ contractual and/or prospective economic relationships.” (Mot.  
22 Prelim. Inj. 14:16–20). Moreover, Plaintiff requests that Defendant be enjoined from  
23 “falsely holding themselves out as employees or agents of NAC.” (Id. 14:21–22).  
24 Furthermore, Plaintiff requests that Defendant be enjoined from “any and all contact with  
25 NAC customers, inventors, contractors, or any third party whose information was

1 obtained via NAC Confidential Information.” (Id. 15:1–3). The Court finds that  
2 Plaintiff’s requested injunction describes in reasonable detail the acts restrained such that  
3 it complies with Rule 65’s requirements.

4 **IV. CONCLUSION**

5 Because Plaintiff NAC has met its burden demonstrating the Winter factors, the  
6 Court hereby grants NAC’s Motion for Preliminary Injunction.

7 **IT IS HEREBY ORDERED** that Plaintiff NAC’s Motion for Preliminary  
8 Injunction (ECF No. 6) is **GRANTED**, as follows:

9 1. Defendant Corey Jodoin, and anyone acting in concert with Defendant, shall be  
10 restrained from disclosing Confidential Information or from using it for any purpose,  
11 including but not limited to the purpose of disparaging or defaming NAC, its principal  
12 and affiliates, or interfering with NAC’s, its principal’s or affiliates’ contractual and/or  
13 prospective economic relationships; and

14 2. Defendant Corey Jodoin, and anyone acting in concert with Defendant, shall be  
15 restrained from falsely holding themselves out as employees or agents of NAC; and

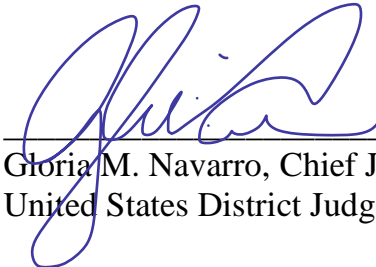
16 3. Defendant Corey Jodoin, and anyone acting in concert with Defendant, shall be  
17 restrained from any and all contact with NAC customers, investors, contractors, or any  
18 other third party whose information was obtained via NAC Confidential Information.

19 For the purposes of this order, “Confidential Information” shall mean any  
20 information, including, without limitation, business technical, financial and marketing  
21 information, that is in written, oral or any other form, that a party designates as being  
22 confidential or that, under the circumstances surrounding disclosure, should be clear that  
23 it is confidential.

24 This Order shall remain in place pending a full determination of Plaintiff’s causes  
25 of action on the merits or upon further order of this Court.

1           **IT IS FURTHER ORDERED** that the Ex Parte Motion for Limited Discovery  
2 (ECF No. 12) is **DENIED as moot**.

3           DATED this   26   day of July, 2016.

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8           Gloria M. Navarro, Chief Judge  
9           United States District Judge  
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