

1 THE HONORABLE RICHARD A. JONES

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7 IN THE UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 GETTY IMAGES, INC., a Delaware  
10 Corporation,

Case No. 2:16-cv-1892

11 Plaintiff,

ORDER

12 vs.

13 ROXANNE MOTAMEDI, an individual,

14 Defendant.

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16 The Court held a hearing on this matter on January 12, 2017. The Court heard  
17 testimony from Defendant Roxanne Motamedi. Upon review of the briefs and after hearing  
18 arguments and testimony from the parties, the Court converts part of the previously issued  
19 temporary restraining order (TRO) into a preliminary injunction, as outlined below. Dkt. #  
20 20.

21 In order to obtain preliminary relief, a party “must establish that [it] is likely to  
22 succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of  
23 preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is  
24 in the public interest.” *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046,  
25 1052 (9th Cir. 2009) (quoting *Winter v. Natural Resources Defense Council, Inc.*, 555  
26 U.S. 7, 20 (2008)). “In addition, a ‘preliminary injunction is appropriate when a plaintiff  
27 demonstrates that serious questions going to the merits were raised and the balance of  
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1 hardships tips sharply in the plaintiff's favor,' provided the plaintiff also demonstrates  
2 that irreparable harm is likely and that the injunction is in the public interest." *Andrews*  
3 *v. Countrywide Bank, NA*, 95 F. Supp. 3d 1298, 1300 (W.D. Wash. 2015) (quoting  
4 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)).

5 The Court previously found that these criteria were met, and new facts and argument  
6 since verify that this was the correct assessment. First, there is clear evidence submitted to  
7 the Court pursuant to the parties' expedited discovery and summarized in Getty's briefs that  
8 demonstrate Ms. Motamedi accessed and utilized information solely derived during her  
9 employment with Getty. Second, if the Court does not convert the TRO into a preliminary  
10 injunction, then Ms. Motamedi may continue to access Getty's confidential information  
11 causing harm to Getty that will not be relieved through monetary damages. Third, Ms.  
12 Motamedi is able to work in a new position in her industry. Her only restriction is to refrain  
13 from utilizing the information described in this Order. Accordingly, the balance of equities  
14 tips in Getty's favor. Finally, it is in the public interest for courts to protect confidential  
15 information and trade secrets under the circumstances presented in cases such as this one.

16 The purpose of the January 12, 2017 hearing, in part, was to allow Ms. Motamedi the  
17 opportunity to present evidence in support of her defenses and to argue that the balance of  
18 equities tipped in her favor. Indeed, Ms. Motamedi argued that the balance of hardships  
19 tipped in her favor because she is effectively barred from pursuing work in her field. This is  
20 not the case. Washington law supports the idea that client lists—whether in tangible form  
21 or memorized—are protected trade secrets. The Washington Supreme Court specifically  
22 found that

23 As a general rule, an employee who has not signed an  
24 agreement not to compete is free, upon leaving employment, to  
25 engage in competitive employment. In so doing, the former  
26 employee may freely use general knowledge, skills, and  
27 experience acquired under his or her former employer.

1           However, the former employee, even in the absence of an  
2           enforceable covenant not to compete, remains under a duty not  
3           to use or disclose, to the detriment of the former employer,  
4           trade secrets acquired in the course of previous employment.  
5           Where the former employee seeks to use the trade secrets of the  
6           former employer in order to obtain a competitive advantage,  
7           then competitive activity can be enjoined or result in an award  
8           of damages

9           *Ed Nowogroski Ins., Inc. v. Rucker*, 971 P.2d 936, 941–42 (Wash. 1999). Therefore, Ms.  
10          Motamedi is enjoined from utilizing Getty’s client lists in any way, including through the  
11          use of her own memory. Though it should be clear, the Court reiterates that Ms. Motamedi  
12          may not divulge this information to Silverhub.

13                 Washington courts recognize the Restatement (Second) of Agency. *See Kieburz &*  
14          *Assocs., Inc. v. Rehn*, 842 P.2d 985, 988 (Wash. Ct. App. 1992) (noting that Washington  
15          “courts have referenced the Restatement (Second) of Agency in many prior cases, and it  
16          cannot be argued that the Restatement is irrelevant to decisions made in this jurisdiction.”).  
17          According to the Restatement (Second) of Agency, employees may prepare to compete  
18          prior to resignation, but they may not actively solicit customers or use confidential  
19          information before resignation. Restatement (Second) of Agency § 393 (1958). Therefore,  
20          to preserve the status quo, Ms. Motamedi is enjoined from contacting any of Getty’s  
21          employees or freelancers that she had contacted prior to her resignation with regard to  
22          joining Silverhub. This prohibition will remain in effect until November 7, 2017, which is  
23          twelve months from the date of Ms. Motamedi’s resignation.

24                 Ms. Motamedi argued that allowing Getty to completely “wipe” her devices was a  
25          draconian measure. The Court agrees in part. The Court places the onus on Ms. Motamedi  
26          to identify the information on her phones and computers that is personal to her and  
27          unrelated to the current dispute. The Court orders Ms. Motamedi to identify this  
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1 information on any phone or computer she used in the course of her employment with  
2 Getty. Ms. Motamedi shall then turn over all of these devices along with the list of the  
3 identified personal information to an agreed upon neutral third party who will delete any  
4 information that Ms. Motamedi has not identified as personal. The parties shall direct the  
5 neutral third party to image the devices after this process so that Ms. Motamedi may  
6 confirm with Getty that its confidential information and trade secrets have been removed  
7 from her devices. The Court requires the parties to file a joint status report within one week  
8 from the date of this Order confirming that this process has been completed.

9           The Local Rules authorize the Court to “order the parties to engage in mediation . . . ,  
10 and may schedule the required steps so as to maximize the prospects of early settlement.”  
11 W.D. Wash. Local Rules LCR 39.1(c). Though the Court will not order the parties into  
12 mediation at this time, it strongly encourages the parties to consider such a path for this  
13 litigation.

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15           Dated this 19th day of January, 2017.

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19           The Honorable Richard A. Jones  
20           United States District Judge