

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas Alex

Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2021-001137

Jennings-Dill, Inc.,

Respondent,

v.

Eric Israel,

Appellant.

RECORD ON APPEAL

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SC Court of Appeals

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Form 4 Order of August 4, 2021

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP2303406

Jennings Dill Inc
PLAINTIFF(S)

Eric Israel
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

At the call of the case Attorney Phillip Kilgore appeared on behalf of the Plaintiff. Mr. Bruce Henson of Jennings Dill, Inc. was also present. The Defendant was also present with his Attorney Matt Ozment. The Court heard the arguments of Counsel for both parties and took the matter under advisement for further review. Counsel for both sides shall submit a proposed order to the Court no later than Thursday, August 12, 2021.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/03/2021 .

Sara Elizabeth Olschewske for Jennings Dill Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



Greenville Common Pleas

Case Caption: Jennings Dill Inc vs. Eric Israel

Case Number: 2021CP2303406

Type: Order/Electronic Form 4

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2021-08-03 16:01:16 page 3 of 3

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Order of September 9, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jennings-Dill, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 2021-CP-23-03406
	)	
Eric Israel,	)	
	)	
Defendant.	)	
_____	)	

TEMPORARY INJUNCTION ORDER

This matter is before the Court on Plaintiff's Motion for Temporary Injunction (the "Motion"). Based on Plaintiff's Motion, the Complaint, the affidavits on file, the memoranda of law submitted by both parties, and the oral arguments presented to the Court at the hearing held on August 3, 2021, the record supports a finding that Plaintiff Jennings-Dill, Inc. ("Jennings-Dill" or the "Company") has satisfied its burden of demonstrating entitlement to the relief it seeks.

Findings of Fact and Conclusions of Law

1. Jennings-Dill is a mechanical contractor providing services in heating, ventilation and air-conditioning ("HVAC"), plumbing and process piping primarily for industrial, commercial, school and hospital construction customers.
2. Defendant Eric Israel ("Israel") was employed at Jennings-Dill as a Plumbing Superintendent.
3. As the Plumbing Superintendent, Israel oversaw the operations and personnel of Jennings-Dill's Plumbing Division. In his role with Jennings-Dill, Israel had access to Jennings-Dill's confidential information related to employee payroll and retention, and the bidding process. Jennings-Dill issued Israel an iPad, which allowed access to Jennings-Dill's confidential

information through an application called ShareFile.

4. Jennings-Dill has numerous policies to protect its confidential business information. Israel was aware of these policies and signed an acknowledgement of such a policy directed to the use of the iPad he was issued.

5. On June 13, 2021, Israel resigned from his employment with Jennings-Dill. In his email to Andy Locklair, Jennings-Dill's Vice President of Operations, Israel stated that he had "...been given a good opportunity with another company for change and growth." From June 13 until June 24, 2021, Jennings-Dill management met with Israel to encourage him to stay with Jennings-Dill.

6. On June 24, 2021 at 6:38 pm, Locklair missed a call from Israel. Locklair called Israel back less than ten (10) minutes later. During the thirty-eight (38) minute call, Israel announced his resignation for the second time, offering to work a two-week notice. Locklair told him a two-week notice was not necessary, and directed him to return all of Jennings-Dill's property first thing the following morning. On June 25, 2021 at 6:20 am, Locklair sent Israel an email confirming the June 24, 2021 conversation.

7. Less than two hours after the conclusion of the call the evening of June 24, 2021, in which Israel made clear his resignation from employment, Israel accessed and downloaded documentation with the iPad Jennings-Dill had issued to him. The documentation was within Jennings-Dill's ShareFile and contains confidential information.

8. At 8:53 pm, Israel accessed and downloaded Jennings-Dill's document entitled "Personnel Report." Then, at 8:55 pm, Israel downloaded two documents, "Personnel Report Jan 2021 - Dec 2021" and "JD Employee List." Jennings-Dill did not authorize Israel to access, download, or use these three documents (collectively as "Electronic Property") after resigning

from the Company or for a competitor.

9. The Electronic Property contains Jennings-Dill's confidential information and is the property of the Company. The Electronic Property unlawfully downloaded by Israel contains monthly employee headcount information through July 2021, including hires and terminations, and personal contact information and pay rates for all Jennings-Dill employees, not just those in the Plumbing Division.

10. On the morning of June 25, 2021, Locklair discovered that Israel improperly accessed and downloaded the Electronic Property. It was not until July 13, 2021, however, that it became apparent to Jennings-Dill that Israel was using the stolen Electronic Property for his and that of his new employer, Place Services, Inc. ("PSI"), benefit.

11. Specifically, on July 13, 2021, Phillip Dobbins, former Jennings-Dill Superintendent and now employed by PSI, sent an email to Israel's Jennings-Dill email address by mistake. The email made clear Israel was now employed by PSI, a competitor of Jennings-Dill. The email from Dobbins to Israel directed Israel to communicate with another recently departed former Jennings-Dill employee, now employed at PSI, regarding a training issue.

12. Since his departure, Israel has communicated with several Jennings-Dill employees for what appears to be the purpose of soliciting them to join him at his new place of employment, PSI. Possession of the Electronic Property would be of great benefit to Israel and PSI in connection with such solicitations. Israel has been successful in several instances. However, it remains unclear as to how far Israel's solicitations reach.

13. Concurrent with Israel's apparent use of Jennings-Dill's Electronic Property and reliance upon it to solicit Jennings-Dill's plumbing foremen, plumbers and plumber helpers, the Company has lost one-third of its Plumbing Division workforce in the last month. Because of this,

Jennings-Dill was only able to bid on five (5) projects last month compared to what Jennings-Dill ordinarily bids, an average of thirteen (13) projects each month, and none of these bids sought the plumbing work.

14. In addition, Jennings-Dill has had to withdraw from confirmed work for customers, resulting in lost revenues. Jennings-Dill believes these withdrawals have affected its relationships with these customers. At least one of these customers has expressed frustration with the delays on another project caused by the lack of Jennings-Dill manpower.

15. Jennings-Dill's business relies on its success in bidding on projects. The bidding process involves the Company's evaluation of the proposed project and specifications, projecting the cost of materials, projecting the hours of labor necessary to complete the project, and assigning a blended hourly labor rate to the project. The wage information contained in the Electronic Property in the hands of a company in the business of providing mechanical contracting services would be of great value in recruiting Jennings-Dill's workforce and in submitting its own bids.

16. Without adequate manpower in its Plumbing Division, Jennings-Dill will be unable to bid on plumbing work until November 2021 or bid on work to commence before February 2022. Jennings-Dill believes that these limitations cause harm to its reputation to customers or prospective customers and may cause the customers and prospective customers to reject or turn down bids from Jennings-Dill in the future.

17. Jennings-Dill filed this action on July 20, 2021, and filed the Motion presently before the Court later that day.

18. The Court scheduled the hearing on this Motion to take place on August 3, 2021, which was the first available date after the filing of the action.

19. The Court concludes that Jennings-Dill has taken diligent steps to protect its

interests in this matter and has not caused an unreasonable delay in filing.

20. Absent an Order from this Court, Israel's actions will cause Jennings-Dill to suffer irreparable damage to and loss of its business reputation, business opportunities, goodwill, market share, and relationships with existing and potential customers.

21. The injury to Jennings-Dill is irreparable in that:

- a. Its relationships with customers will likely be impaired and/or lost permanently;
- b. Its business opportunities with customers and prospective customers will likely be impaired and/or lost permanently;
- c. Its confidential information in the hands of and being used by a former employee now employed with a company performing the same kind of mechanical contracting services would likely lead to:
 - i. the loss of even more employees; and
 - ii. possible misuse in competitive bidding;
- d. As it seeks to hire replacements for those who have left Jennings-Dill to go to work for PSI, Jennings-Dill's newer plumbing employees will likely have less skill and efficiency for a period impacting Jennings-Dill's reputation and profitability; and
- e. Jennings-Dill likely will suffer a loss of goodwill, a loss of market share, and damage to its business reputation.

22. Jennings-Dill lacks an adequate remedy at law because damages for the injuries Jennings-Dill has suffered as a result of Israel's actions - particularly including, but not limited to, the loss of good will, loss of market share, damage to business reputation, and disclosure of confidential information - are inherently difficult, if not impossible to calculate.

23. Although this Court does not engage in a balancing test between the irreparable

harm that Jennings-Dill would suffer in the absence of injunctive relief versus whatever harm Israel could suffer if the Court grants injunctive relief, it is appropriate for this Court, sitting in equity, to consider the impact on Israel. It appears that a grant of the relief Jennings-Dill seeks would have little impact on Israel.

24. First, all Jennings-Dill is requesting with respect to Jennings-Dill's Electronic Property is that Israel not possess or use the information and that he return or destroy it. Second, Jennings-Dill is asking that Israel not solicit its employees to work for a competitor, new to the upstate region, given that doing so would inevitably involve the use of the confidential information that Israel is able to retain even after a return of paper copies of the confidential information or the destruction of electronic versions. Third, these limitations do not in any way prevent Israel from working as a plumber at PSI. In his Memorandum in Opposition, Israel asserts that he is just a plumber working at PSI. If so, restricting his ability to solicit Jennings-Dill employees by using Jennings-Dill Electronic Property should not in any way inhibit his ability to perform the functions of a plumber.

25. Jennings-Dill has demonstrated a likelihood of success of the merits, as the Court finds as follows:

- a. Jennings-Dill's Electronic Property appears to amount to a trade secret under the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-1 *et seq.* and the record reflects that it has been misappropriated:
 - i. Jennings-Dill's Electronic Property appears to derive value from not generally known to or readily ascertainable to the public or its competitors, and the Company engages reasonable efforts in maintaining the secrecy of that information.

- ii. Israel misappropriated the data when he took the data in secret, and began using the data to systematically raid Jennings-Dill's Plumbing Division. Israel did not have permission to take the Electronic Property, and has conferred a benefit by doing so.
- b. Israel's conduct also rises to an unfair trade practice under the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.* ("SCUPTA"), that is offensive to the public interest.
 - i. Israel's deception has allowed an out of state company to unfairly compete for employee talent in the mechanical contracting field in the upstate South Carolina by the use of a formerly highly placed employee in possession of confidential information owned by an existing in-state company to raid its employees.
 - ii. The fact that Israel misappropriated the Electronic Property at the end of his last day of employment does not convert this into a workplace dispute outside the scope of the SCUTPA.
- c. Israel's conduct also rises to conversion. Here, Israel took the Electronic Property for no lawful reason, with the full intention of using the information to raid the Company for a competitor. Jennings-Dill has policies in place that safeguard against this, to which Israel has agreed to abide by. Israel is now using the Electronic Property to benefit himself and PSI at a detriment to Jennings-Dill.
- d. Jennings-Dill has also shown its likelihood of success as it pertains to unjust enrichment - quantum meruit. Israel inappropriately took the Electronic Property and realized a benefit by raiding the Jennings-Dill's Plumbing Division for his new

employer, PSI. No one at Jennings-Dill gave Israel permission to engage in such use of the Electronic Property.

Temporary Injunction

In consideration of the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:

1. Israel is enjoined and restrained from using any of Jennings-Dill's Electronic Property (as defined above) or the confidential information therein.
2. Israel is enjoined and restrained from bidding on any projects on behalf of PSI by using information found within Jennings-Dill's Electronic Property.
3. Israel is enjoined and restrained from soliciting any Jennings-Dill employees by using information found within Jennings-Dill's Electronic Property.
4. Within 14 days of the entry of this Order, Israel will identify all Jennings-Dill's current and former employees who he has directly or indirectly solicited for his own benefit or on behalf of any third party other than Jennings-Dill since June 24, 2021.
5. Within 14 days of the entry of this Order, Israel will identify all third parties who have received paper or electronic copies of the Electronic Property. Israel also will request such third parties return all paper copies of the Electronic Property to him and destroy all electronic versions of the Electronic Property. Israel will mail to Jennings-Dill any paper copies he has or receives from any third parties.
6. Within 14 days of requesting originals and copies of the Electronic Property and mailing such documents back to Plaintiff, Israel will provide a Sworn Affidavit:
 - a. Confirming that he has returned all paper copies and destroyed all electronic versions of the Electronic Property in his possession; and

- b. List who he requested returned paper copies and destroyed electronic copies of the Electronic Property, and stating when such Electronic Property was returned or confirmed as destroyed.

7. This Temporary Injunction shall remain in full force and in effect until a trial can be had on the merits.

8. A bond in the amount of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) is sufficient to pay Israel's costs and damages in the event Israel is found to have been wrongfully enjoined. Jennings-Dill shall post a bond in this amount within seven (days) after the date this Order is entered.

IT IS SO ORDERED ON THIS THE __ DAY OF _____, 2021.

The Honorable Alex Kinlaw, Jr.
South Carolina Circuit Judge
Thirteenth Judicial Circuit

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Greenville Common Pleas

Case Caption: Jennings Dill Inc vs. Eric Israel

Case Number: 2021CP2303406

Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

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Summons & Complaint

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE)

Jennings-Dill, Inc.,)

Plaintiff,)

v.)

Case No.: 2021-CP-23-_____

Eric Israel,)

Defendant.)

SUMMONS**TO THE DEFENDANT ABOVE NAMED:**

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint as stated herein, judgment by default will be rendered against you for the relief demanded in the Complaint.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Dated: July 20, 2021

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47873643.1

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
Jennings-Dill, Inc.,	)	
	)	
Plaintiff,	)	Case No.: 2021-CP-23- _____
	)	
v.	)	
	)	Jury Trial Demanded
Eric Israel,	)	
	)	
Defendant.	)	
_____	)	

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

COMES NOW Plaintiff, Jennings-Dill, Inc. (“Jennings-Dill”), by and through its undersigned counsel, and files this Complaint against Defendant Eric Israel (“Mr. Israel”) and in support thereof states as follows:

NATURE OF THE ACTION

1. Through this action, Jennings-Dill, seeks redress for the wrongful conduct of Mr. Israel, its former employee and plumbing superintendent, who, upon knowledge, information and belief, has engaged in wrongful conduct and interfered with Jennings-Dill’s business and relationships since leaving Jennings-Dill.

2. More particularly, since June 24, 2021, Mr. Israel has interfered with and injured Jennings-Dill’s business by his unauthorized access of Jennings-Dill’s electronically stored data, his misappropriation of Jennings-Dill’s employee personal records and other material, and his poaching of current and former Jennings-Dill employees to work for a competitor, all of which has caused damages and irreparable harm to Jennings-Dill’s business and adversely impacted the public interest.

THE PARTIES

3. Jennings-Dill is a South Carolina corporation with its principal place of business in Greenville County, South Carolina.

4. Upon information and belief, Mr. Israel is a citizen and resident of Greenville County, South Carolina.

JURISDICTION AND VENUE

5. Upon information and belief, all acts of which are herein complained occurred within the state of South Carolina, and this Court has jurisdiction over this matter.

6. This Court has *in personam* jurisdiction over the Defendant pursuant to S.C. Code Ann. § 36-2-803.

7. This Court has subject matter jurisdiction over the legal and equitable rights asserted by Jennings-Dill herein.

8. Venue is proper in this forum pursuant to S.C. Code Ann. § 15-7-10, § 15-7-20 and § 15-7-30.

SUMMARY OF THE FACTS

A. Jennings-Dill's Work in General

9. Jennings-Dill began primarily as a HVAC and piping contractor.

10. Jennings-Dill provides mechanical contracting to include heating, ventilation and air conditioning, plumbing, and process piping. Jennings-Dill provides its services primarily in industrial, commercial, hospital, school, and office buildings. Jennings-Dill is a full service plumbing and gas piping contractor, and has the ability to design and install all sizes and types of plumbing systems.

11. Jennings-Dill has conducted business in the Upstate Region since 1947.

12. In the late 1990's, Jennings-Dill added the plumbing division to its business to better serve general contractors, allowing less subcontractors on jobsites.

13. The plumbing division provides installation of complete systems for commercial, industrial, education, healthcare, and religious companies.

14. The plumbing division accounts for twenty to thirty percent (20-30%) of Jennings-Dill's revenue on a yearly basis.

B. Mr. Israel's Employment and Separation at Jennings-Dill

15. On April 19, 2010, Mr. Israel began his employment at Jennings-Dill.¹

16. Throughout his tenure with Jennings-Dill, Mr. Israel held the positions of plumber, foreman, and superintendent.

17. Mr. Israel last held position was a Plumbing Superintendent, and worked Monday through Thursday, 7:00 am to 5:30 pm.

18. On the evening of June 24, 2021, Mr. Israel called Andy Locklair, Vice President of Operations, and informed Jennings-Dill of his official resignation. At that time, Mr. Locklair told Mr. Israel that a two-week notice was not required, and that he needed to return all Jennings-Dill property in the morning, including but not limited to, iPad, keys, truck, and tools.

19. The iPad issued to Mr. Israel had an application called ShareFile, which gives access to Jennings-Dill's confidential information.

20. Immediately after informing Jennings-Dill of his resignation, Mr. Israel accessed Jennings-Dill's electronic data storage and downloaded Jennings-Dill's confidential information.

¹ On December 12, 2007, Mr. Israel began working with Jennings-Dill's staffing company, Link Staffing. On April 19, 2010, Mr. Israel became a Jennings-Dill employee.

21. Specifically, on June 24, 2021, at 8:53 pm, Mr. Israel accessed and downloaded Jennings-Dill's electronic document entitled "Personnel Report." At 8:55 pm, Mr. Israel downloaded Jennings-Dill's electronic document entitled "Personnel Report Jan 2021-Dec 2021." Also at 8:55 pm, Mr. Israel downloaded Jennings-Dill's electronic document entitled "JD Employees List."

22. The Personnel Report, the Personnel Report Jan 2021-Dec 2021 and the JD Employees List (hereafter, the "Electronic Property") contain Jennings-Dill's confidential information and trade secrets and are the property of Jennings-Dill.

23. The Personnel Report and the Personnel Report Jan 2021-Dec 2021 contain Jennings-Dill's monthly employee headcount information from July 2017 to July 2021, and outlines all changes made, including hires and terminations.

24. The JD Employee List contains contact and other confidential information regarding Jennings-Dill's employees, including names, telephone numbers, email addresses, and cities in which each employee lives. The JD Employee List also includes pay rates for each individual listed, including foreman, tradesman, journeyman, top helpers, and helpers. The JD Employee List reflects confidential data regarding all Jennings-Dill employees as of June 24, 2021, not just employees in Jennings-Dill's plumbing department.

25. Jennings-Dill did not authorize Mr. Israel to access, download or use the Electronic Property. His actions violated Jennings-Dill policy.

26. The improper download of the Electronic Property was discovered the next morning when the Vice President of Jennings-Dill went to disable Mr. Israel's permissions.

C. Conduct Since Mr. Israel's Resignation

27. Upon information and belief, Mr. Israel was solicited by a former Jennings-Dill employee to leave employment with Jennings-Dill and go to work for Place Services, Inc. ("PSI").

28. Upon information and belief, PSI is in the remodeling and new construction industry and engages in mechanical contracting including plumbing services.

29. According to its website, PSI has three locations in Canton, Georgia, one location in Columbus, Ohio, and another in Youngstown, Ohio. PSI's main office is located at 201 Gateway Drive, Canton, Georgia.

30. Upon information and belief, PSI has a few customers in Greenville County, but is engaging in extensive activities in Greenville County to increase its business in South Carolina.

31. Rather than enter the market and recruit a workforce using normal, ethical methods, PSI is attempting to steal Jennings-Dill's workforce, starting with its plumbing department.

32. Since separating from his employment with Jennings-Dill, Mr. Israel has made extensive use of Jennings-Dill's Electronic Property to recruit current and former Jennings-Dill employees to come to work for PSI.

33. For example, Mr. Israel successfully solicited Scottie Strickland ("Mr. Strickland"), a current Jennings-Dill Plumbing Foreman, to leave employment with Jennings-Dill to come to work for PSI. On July 14, 2021, Mr. Strickland informed Jennings-Dill that Mr. Israel approached him and persuaded him to take a position at PSI. Mr. Strickland said that he accepted the offered position at PSI, and his last day at Jennings-Dill is July 22, 2021.

34. Mr. Strickland is currently working on a project for Jennings-Dill worth over five-million dollars. The plumbing portion of this project, over which Strickland has responsibility, is worth over \$2.75 million. His abrupt departure has caused serious disruption to Jennings-Dill's

business and work on the project, and will cause harm to the relationship between Jennings-Dill and its customer.

35. Mr. Israel has been observed on numerous occasions entering Jennings-Dill jobsites and speaking with Jennings-Dill employees. On information and belief, Mr. Israel has been soliciting numerous Jennings-Dill employees to resign and go to work for PSI. Before July 2021, Jennings-Dills had a stable plumbing workforce, averaging around 30 employees and 29 in June 2021. As of the date of this Complaint, Jennings-Dill has lost almost half its plumbing workforce, down to 17 employees.

36. To date, Jennings-Dill has had to withdraw from roughly two and a half million dollars (\$2,500,000.00) of plumbing projects due to the shortage of manpower, most of which has resulted from Mr. Israel's bad faith acts. This inability to meet these commitments has damaged Jennings-Dill's standing with the general contractor customers.

37. Mr. Israel's misappropriation and misuse of Jennings-Dill's Electronic Property has caused actual and irreparable harm to Jennings-Dill and benefitted Mr. Israel and PSI.

FOR A FIRST CAUSE OF ACTION
Conversion

38. Paragraphs 1 through 37 are incorporated herein by reference as if fully set forth verbatim.

39. Jennings-Dill owns the Electronic Property.

40. Unlawfully and without authority, consent or permission, Mr. Israel has accessed the Electronic Property and now has assumed and exercised the right of ownership over the Electronic Property, for purposes of engaging in a recruitment campaign designed to deplete Jennings-Dill's work force and cause it harm.

41. Jennings-Dill did not grant Mr. Israel with access use the Electronic Property for the purpose of engaging in a recruitment campaign designed to deplete Jennings-Dill's workforce and to cause it harm.

42. Mr. Israel's conduct has been the proximate cause to Jennings-Dill's inability to bid on jobs and take on additional, and anticipated work, because it has lost a significant portion of its plumbing team.

43. As a result of Mr. Israel's willful and intentional conduct, Jennings-Dill has suffered actual and consequential damages, and lost profits, in addition to the lost value of the property converted plus interest from the date of conversion up until the time of the trial in this matter.

44. Jennings-Dill also is entitled to punitive damages because of Mr. Israel's misconduct was done recklessly and with conscious indifference to Jennings-Dill's rights.

FOR A SECOND CAUSE OF ACTION
Breach of Duty of Loyalty

45. Paragraphs 1 through 44 are incorporated herein by reference as if fully set forth verbatim.

46. While employed by Jennings-Dill, Mr. Israel had a duty of loyalty, to solely serve Jennings-Dill's interests, including not to steal Jennings-Dill's Electronic Property or use the Electronic Property for purposes contrary to Jennings-Dill's interests.

47. Use of the Electronic Property stolen during employment to solicit Jennings-Dill employees to quit and go to work for a competitor is contrary to Jennings-Dill's interests and harmful to Jennings-Dill's business.

48. Mr. Israel secretly and intentionally engaged in misconduct and improper competition against Jennings-Dill while he employed by and receiving compensation from Jennings-Dill.

49. Mr. Israel's improper and disloyal activities, including his activities for or on behalf of himself and/or competing businesses with which he is now associated, violated the duty of loyalty he owed of Jennings-Dill under South Carolina common law.

50. As a result of Mr. Israel's breach, Jennings-Dill has suffered and will continue to suffer damage to and loss of its business opportunities, reputation, and goodwill, loss of its employee workforce, loss of referral sources, as well as damages in the form of actual and potential lost work (and profits derived therefrom). These actual and consequential damages are not fully ascertainable at this time, but Jennings-Dill will specifically show them at trial.

FOR A THIRD CAUSE OF ACTION
Breach of Fiduciary Duty

51. Paragraphs 1 through 50 are incorporated herein by reference as if fully set forth verbatim.

52. As a plumbing superintendent, Israel owed Jennings-Dill a fiduciary duty. Jennings-Dill reposed special confidence in Israel, so that he, in good conscience, was bound to act in good faith and with due regard for the interests of Jennings-Dill. Pursuant to that fiduciary duty, Israel was to exercise reasonable care and skill to advance the interests of Jennings-Dill.

53. Israel breached his fiduciary duty by engaging in self-dealing and employee raiding by stealing confidential information and unfairly competition against Jennings-Dill with a competitor, PSI.

54. Israel's breach of his fiduciary duties caused economic losses to Jennings-Dill.

55. Jennings-Dill is entitled to compensatory damages, costs and attorney fees as a result of Israel's breach of his fiduciary duties.

56. Because Israel's breach of his fiduciary duties was undertaken willfully, wantonly, and/or recklessly, Jennings-Dill is entitled to punitive damages.

FOR A FOURTH CAUSE OF ACTION
S.C. Unfair Trade Practice Claim (§ 39-5-10 et seq.)

57. Paragraphs 1 through 56 are incorporated herein by reference as if fully set forth verbatim.

58. Mr. Israel's conduct, as described above, constitute unfair methods of competition and unfair and deceptive acts.

59. Mr. Israel's conduct had the ability, effect or tendency to deceive.

60. Mr. Israel's conduct is offensive to and has adversely impacted the public interest, is immoral, unethical and/or oppressive.

61. Mr. Israel's improper solicitation and recruitment of Jennings-Dill employees for PSI, by systematically peeling off in-state employees, who are highly trained individuals, so that PSI can build a workforce without incurring the cost or expending the effort competitors normally incur and expend, is an unfair trade practice that causes harm to the competition in the marketplace and the public interest.

62. Mr. Israel knew or should have known that his continued misconduct violated the South Carolina Unfair Trade Practice Act (§39-5-10 et seq.) ("SCUTPA").

63. Mr. Israel's actions are the proximate cause of actual and consequential damages and irreparable harm under the SCUTPA. Because Jennings-Dill's remedy at law is inadequate, it seeks, in addition to damages, injunctive relief to recover and protect its confidential, proprietary, and trade secret information and other legitimate business interests. (S.C. Code Ann. §39-5-110).

64. Jennings-Dill's business relies on its good reputation in the industries in which it operates and among consumers of the products and services it provides in its business. It also relies on its competitive advantage based on employee training and skill development as well as its ability to maintain and grow its client base in a fair and competitive market.

65. Mr. Israel's actions have harmed Jennings-Dill's business reputation, placed it at an unfair competitive disadvantage, and caused it to lose opportunities for new business.

66. Jennings-Dill will continue suffering irreparable harm absent injunctive relief.

67. Jennings-Dill also is entitled to attorneys' fees and treble damages because Mr. Israel's conduct was a willful or knowing violation of South Carolina's Unfair Trade Practices Act. (S.C. Code Ann. §39-5-140).

FOR A FIFTH CAUSE OF ACTION
Misappropriation of Trade Secrets under the South Carolina Trade Secrets Act,
S.C. Code Ann §39-8-10 et seq.

68. Paragraphs 1 through 67 are incorporated herein by reference as if fully set forth verbatim.

69. As alleged above, Jennings-Dill owns and possesses certain confidential and proprietary information related to its business that is independently valuable and of considerable importance to Jennings-Dill's overall business.

70. Some or all of such information constitutes trade secrets as defined in the South Carolina Trade Secrets Act. ("SCTSA") (S.C. Code Ann §39-8-20(5)).

71. Jennings-Dill employs reasonable efforts to keep such information secret and confidential.

72. This confidential and trade secret information derives independent economic value from not being generally known to, and not being readily ascertainable through proper means by, another person who could obtain economic value from the disclosure or use of the information.

73. This confidential and trade secret information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

74. The Electronic Property Mr. Israel has misappropriated constitutes trade secrets under the SCTSA is unique to Jennings-Dill and not generally known in the industry.

75. Mr. Israel understands the value and importance of these trade secrets to Jennings-Dill.

76. Mr. Israel knew that he had acquired, possessed, used, or disclosed Jennings-Dill trade secrets in violation of the SCTSA.

77. Mr. Israel knowingly, unlawfully and improperly accessed, removed, retained, or failed to return Jennings-Dill's trade secrets to use for the benefit of himself and PSI.

78. Mr. Israel has used and disclosed the information without express or implied consent of Jennings-Dill.

79. As a result of Mr. Israel's misappropriation of Jennings-Dill's trade secrets, Jennings-Dill has been damaged, and faces further irreparable injury.

80. In violation of Jennings-Dill's rights, Mr. Israel has misappropriated Jennings-Dill's trade secrets in an improper and unlawful manner as alleged.

81. Mr. Israel's actions and omissions as alleged herein are in violation of the SCTSA under which Jennings-Dill is entitled to relief.

82. Mr. Israel's misappropriation of Jennings-Dill's trade secrets was intentional, knowing, willful, malicious, fraudulent, and oppressive.

83. If Mr. Israel's conduct is not remedied, he will continue to misappropriate, disclose, and use, or threaten to misappropriate, disclose, and use for his and PSI's own benefit and to Jennings-Dill's detriment.

84. As the direct and proximate result of Mr. Israel's conduct, Jennings-Dill has suffered significant actual and consequential damages in an amount to be proven at trial.

85. Jennings-Dill is also entitled to punitive/exemplary damages, attorney's fees, and costs due to Mr. Israel's willful and wanton actions and their conscious indifference to Jennings-Dill's rights.

86. Mr. Israel's actions also have caused irreparable harm under the SCTSA.

87. Jennings-Dill's business relies on its good reputation in the industries in which it operates and among consumers of products and services provided it provides in its business. It also relies on its competitive advantage based on employee training and skill development, as well as its ability to maintain and grow its client base in a fair and competitive market.

88. Mr. Israel's actions have harmed Jennings-Dill's business reputation, placed it at an unfair competitive disadvantage, and caused it to lose opportunities for new business. Jennings-Dill will continue suffering irreparable harm absent injunctive relief.

89. Because Jennings-Dill's remedy at law is inadequate, it seeks, in addition to damages, injunctive relief to recover and protect its confidential, proprietary, and trade secret information and other legitimate business interests.

FOR A SIXTH CAUSE OF ACTION
Civil Conspiracy

90. Paragraphs 1 through 89 are incorporated herein by reference as if fully set forth verbatim.

91. Upon information and belief, Mr. Israel, another former Jennings-Dill employee (the “Co-Conspirator”), now also employed at PSI, and perhaps others, combined together and agreed upon a common plan and scheme, designed and jointly executed by them, for the purpose of injuring Jennings-Dill.

92. Upon information and belief, pursuant to this plan, scheme, and design, Mr. Israel and the Co-Conspirator committed unlawful acts or acts by unlawful means by engaging in a campaign to unfairly compete against Jennings-Dill in the market. They did so by engaging in the overt acts in furtherance of this agreement, including the stealing of Jennings-Dill’s Electronic Property and depleting Jennings-Dill’s workforce by soliciting and diverting numerous highly trained and skilled Jennings-Dill employees from employment with Jennings-Dill to become employed by PSI.

93. The actions of Mr. Israel and the Co-Conspirator in furtherance of their plan, scheme and design were reckless, willful, wanton and malicious.

94. Such action has caused Jennings-Dill actual and consequential damages that result from foreseeable consequences of Mr. Israel’s conduct in an amount to be shown at trial.

**FOR AN SEVENTH CAUSE OF ACTION
Unjust Enrichment / Quantum Meruit**

95. Paragraphs 1 through 94 are incorporated herein by reference as if fully set forth verbatim.

96. Israel, and now his current employer, received a valuable benefit from Jennings-Dill - albeit through the unlawful actions of Israel - in the form of usage of confidential and trade secret information to employee raid and unfairly compete in South Carolina.

97. Israel and his employer did not have to find and recruit other plumbing personnel because of the benefit he received by utilizing Jennings-Dill's confidential and trade secret information and soliciting away Jennings-Dill's employees.

98. Israel intentionally and improperly retained and used the confidential, and trade secret information related to Jennings-Dill's employees without Jennings-Dill's permission.

99. Israel and his employer have realized and continue to realize benefits or value from his improper use and retention of confidential and trade secret information.

100. Israel and his employer have been unjustly enriched, and it would be inequitable to permit him to retain the benefits or value Israel and his current employer obtained from the unauthorized use of the confidential and trade secret information.

101. Jennings-Dill is entitled to restitution for all of the benefits and values that Israel has obtained from his unauthorized use and retention of the confidential and trade secret information related to Jennings-Dill's employees.

FOR AN EIGHTH CAUSE OF ACTION
Tortious Interference with Contractual Relations

102. Paragraphs 1 through 101 are incorporated herein by reference as if fully set forth verbatim.

103. There exists contractual relationships between Jennings-Dill and its employees.

104. Through his actions as described above, Israel has intentionally interfered with the relationships between Jennings-Dill and its employees, has misused confidential and trade secret information, and has breached a fiduciary relationship.

105. Israel intentionally interfered with Jennings-Dill's existing and potential relationships.

106. Jennings-Dill had a reasonable expectation that its relationships with its employees would have continued but for Israel's improper actions in luring Jennings-Dill employees to leave employment and go to work for Israel's new employer.

107. Israel's actions were for an improper purpose, were without privilege, and were accomplished using improper methods.

108. Israel's conduct was reckless, willful, wanton, and malicious.

109. As a result of Israel's interference, Jennings-Dill has suffered and will continue to suffer damage to its business reputation and its relationships with its existing and potential customers, damages in the form of lost sales and potential lost sales (and associated profits), and damages in the form of the costs and expenses associated with replacing the employees that have been improperly solicited away from Jennings-Dill. These damages are not fully ascertainable at this time, but Jennings-Dill will specifically show them at trial.

WHEREFORE, Plaintiff Jennings-Dill respectfully requests and prays:

- (1) That this Court take jurisdiction of the parties hereto and the subject matter hereof;
- (2) That this Court enter a preliminary and permanent injunction specifically prohibiting Mr. Israel from using or disclosing Jennings-Dill's confidential information and trade secrets;
- (3) That this Court enter a preliminary and permanent injunction ordering Mr. Israel immediately return to Jennings-Dill all confidential information and trade secrets;
- (4) That judgment be entered in favor of Jennings-Dill and against Mr. Israel for the actual losses caused by his actions;
- (5) That judgment be entered in favor of Jennings-Dill and against Mr. Israel for compensatory, consequential, treble and punitive damages;

- (6) That judgment be entered in favor of Jennings-Dill and against Mr. Israel for Jennings-Dill's costs in this litigation, including expenses and reasonable attorneys' fees;
- (7) That judgment be entered in favor of Jennings-Dill and against Mr. Israel for pre-judgment and post-judgment interest;
- (8) That this Court retain jurisdiction to enforce the terms of any orders entered; and
- (9) That this Court grant such other and further legal and equitable relief as may be just and proper.

Respectfully submitted this the 20th day of July, 2021.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

/s/Phillip A. Kilgore
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Transcript of Hearing held August 3, 2021

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2021-CP-23-03406

JENNINGS-DILL, INC.,
PLAINTIFF,

vs.

ERIC ISRAEL,
DEFENDANT.

TRANSCRIPT OF RECORD

ORIGINAL

August 3, 2021
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE.

A P P E A R A N C E S:

PHILLIP A. KILGORE, ESQ.
Attorney for the Plaintiff

MATTHEW R. OZMENT, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: The next matter before the Court is captioned Jennings-Dill, Incorporated vs. Eric Israel.

Who's here on that case?

Come forward.

MR. KILGORE: Good afternoon, Your Honor.

Phil Kilgore.

THE COURT: All right. Mr. Kilgore.

MR. KILGORE: On behalf of Jennings-Dill.

THE COURT: Good, good, good.

MR. OZMENT: Good afternoon, Your Honor.

I'm Matt Ozment on behalf of Mr. Israel.

THE COURT: How do you spell your last name, Mr. Ozment?

MR. OZMENT: O-Z-M-E-N-T.

THE COURT: What's your phone number?

MR. OZMENT: Yes, sir. 864 -- and it's new because I just went out on my own so I'm not --

THE COURT: I just like to put it on my --

MR. OZMENT: Absolutely. 864-516-2266 is my direct.

THE COURT: Got you.

All right. And I'm assuming, Mr. Kilgore, this is Mr. -- who's with you?

MR. KILGORE: Your Honor, this is the president of Jennings-Dill, Bruce Henson.

1 THE COURT: Bruce Henson.

2 How are you, Mr. Henson?

3 MR. BRUCE HENSON: Fine, sir.

4 Thank you.

5 THE COURT: And you spell it H-E-N-S-O-N?

6 MR. BRUCE HENSON: Yes, sir.

7 THE COURT: Okay. Good.

8 All right. It looks like this is before me for a
9 motion for temporary injunction. I'll be glad to hear
10 from the moving party.

11 And, please, give me a -- just a short synopsis of
12 the facts. I've read the pleadings, but just put it on
13 the record.

14 And y'all both admit --

15 And anybody who talks, feel to remove your mask, if
16 you want to -- if you want to, while you're here.

17 Okay. Go ahead, Mr. Kilgore.

18 MR. KILGORE: May it please the Court.

19 I'm very appreciative of the time you've taken to go
20 over the briefs. And I'm going to try to be mindful of
21 that and respectful of that and --

22 THE COURT: Okay.

23 MR. KILGORE: -- try to curtail my remarks to the
24 extent I can do so.

25 Your Honor is aware that Jennings-Dill was a well

1 known mechanical engineering company here in -- in
2 Greenville. They provide -- provide services to a wide
3 variety of industrial and commercial end customers. And I
4 think it's important to -- to know that they -- among the
5 services they provide are heating, ventilation, and air
6 conditioning services, plumbing services, and -- and
7 process piping.

8 And -- and the company does their business -- or
9 gains new business through the bidding process. That's,
10 also, very important to this case. And I'll go over that
11 in more detail.

12 But as a result of Mr. Israel's actions, I -- I just
13 want to state out -- from the outset that -- that the
14 company has suffered a mass outflow of -- of plumbers.
15 They've lost over a third of its plumbing capacity in its
16 plumbing division, and three out of eight foremen. And
17 this has had a direct -- direct impact on their ability to
18 handle jobs.

19 The -- Mr. Israel, also, as a result of his actions,
20 the company has had to slow down its performance of
21 contracts that are currently being handled by the company.
22 In fact, one of its customers has expressed great
23 displeasure at the -- at the pace of work. And this is a
24 direct impact of -- as a result of the loss of plumbers
25 and plumbing foremen.

1 We've also -- our company, also, has had to pass on
2 five plumbing bids because they no longer have the
3 capacity. And -- and the company is concerned that on a
4 going-forward basis, they're not going to be able to bid
5 on plumbing work until, perhaps, November and, certainly,
6 not work that -- that can -- where they can commence
7 performance in February of 2022.

8 Now, they're trying to -- they're scrambling, trying
9 to repair the damage. They're trying to hire plumbers.
10 But the availability of plumbers is very tight. And the
11 plumbers that they've been able to locate or hire are
12 primarily residential. They're not industrial and
13 commercial. And it's a -- a completely different set of
14 skills for this kind of work.

15 And, moreover, as I said, the -- the number of
16 foremen on -- in the plumbing division has a direct
17 correlation with the work that they're able to do. The
18 more foremen they have -- you have, the more contracts
19 that you can perform.

20 So let's talk a little bit about what Mr. Israel's
21 actions are. He -- he tendered a resignation on
22 June 13th. He's told this Court in pleadings that he
23 didn't have any offers of employment. But that's not what
24 he stated to Andy Locklair.

25 And, by the way, Andy Locklair is back here. I -- I

1 failed to introduce everybody in the room. This is my
2 colleague, Sara Olschewske. That's Andy Locklair in the
3 middle, a member of the management team, as well as Tyler
4 Henson, also, a member of the management team.

5 THE COURT: Okay.

6 MR. KILGORE: So in any event, he -- in his e-mail to
7 Andy Locklair, he -- when resigning, he stated that he had
8 been given an opportunity to work with another company for
9 a change and growth. But he represented to this Court
10 that he did not have any offers of employment at that
11 time.

12 So he was either not completely candid with this
13 Court or he was stating something incorrect to
14 Mr. Locklair. In -- in either way, it -- it bears on the
15 credibility of Mr. Israel.

16 So when he announced his resignation, the -- the
17 company did try to persuade him to stay. He was a valued
18 employee. He had always performed well. And -- and the
19 issues seemed to revolve around his -- his level of pay.
20 He didn't make much mention of others in connection with
21 his own decision to leave, but, rather, was referring
22 primarily to -- to his pay.

23 So I want to draw Your Honor's attention to the next
24 important event, which was on June 24th. And in court
25 papers, he's represented to the Court that on June 24th,

1 Andy Locklair called him and asked him if he still
2 intended to resign.

3 Well, what the -- what the -- Mr. Israel didn't flesh
4 out was the fact that even in his own affidavit, it's
5 clear that he's the one that initiated this exchange.
6 Seven minutes before, he called Mr. Locklair.
7 Mr. Locklair was unable to take the call at the time and
8 returned the call seven minutes later. So this call was
9 initiated by Mr. Israel.

10 So what was discussed on the call? As I mentioned,
11 Mr. Israel states that Mr. Locklair wanted to know if he
12 intended to resign. But, in fact, what really happened
13 was that Mr. Israel was calling to say that -- that he
14 was -- he was resigning. And -- and so that was a
15 confirmed fact. And Mr. Locklair, during that phone call,
16 explained to him, well, if you're going to resign, you
17 need to turn in your company equipment, and so forth.

18 So the -- the premise that Mr. Locklair called him
19 and tried to keep -- you know, tried to keep -- wanted to
20 find out if he was -- intended to resign is -- is a bit
21 lacking in credibility, if you will. Because does that
22 make sense that that kind of conversation would take place
23 on a 30-minute phone call? Do you intend to quit? And,
24 oh, by the way, the next day you're fired. That's not the
25 way the phone call went down.

1 And his own affidavit proves that wrong because he
2 attaches an e-mail that Mr. Locklair sent the following
3 day at 6:20 in the morning where he says, In follow-up to
4 our call late yesterday, we accept your resignation.
5 Mr. Israel never disputed that that -- that that is
6 exactly what occurred.

7 So what did Mr. Israel do within a couple hours of
8 the phone call? What he says he -- he did was somebody by
9 the name of Driggers wanted to know about a so-called
10 pending pay increase. So he -- after this conversation
11 with Locklair where it was clear -- made very clear that
12 the employment was ending, he got on his iPad and began
13 downloading documentation. He says he tried to "open" two
14 files, but the -- the documents that we provided in the
15 record in the supplemental affidavit make very clear that
16 he downloaded three very critical and confidential files.

17 So who was this -- this Driggers fellow that -- the
18 story is that prompted this -- this post-termination
19 inquiry into the companies documents? He says he
20 downloaded the files to answer a question from this former
21 subordinate. But -- but Mr. Israel had guilt. He'd been
22 told to turn his things in. Why would he then bother if
23 he's no longer going to be employed to respond to an
24 inquiry from Mr. Driggers?

25 Well, Mr. Driggers, basically, is Mr. Israel's

1 brother-in-law. He's the brother of Israel's girlfriend.
2 Mr. Driggers was, to put it mildly, not the best employee
3 in the world. And he was not in line for a raise. The
4 whole concept that Mr. Driggers wanted to check on the
5 status of his raise is preposterous, because he was not
6 going to be getting a raise.

7 Let's talk about the downloads. This was highly
8 confidential personnel information. It wasn't just names
9 and addresses of individuals. It was the collective
10 personnel documentation for all of the employees with
11 Jennings-Dill, not just the plumbing employees, but all of
12 the employees, names, addresses, phone numbers, where they
13 lived, their pay rates, attrition in the company, the --
14 the various -- the variable levels of -- of staffing for
15 the -- for the various departments with Jennings-Dill.
16 It's precisely the kind of information that a competitor
17 would want to have when trying to -- to identify potential
18 candidates to come for -- to work for them.

19 So that's the -- that's the documentation that --
20 that he downloaded. It was not documentation that he
21 created. It was documentation that Phillip Dobbins
22 created. Now, we'll circle back to Mr. Dobbins in a
23 moment. Mr. Dobbins is the gentleman who was already
24 working there before Mr. Israel.

25 So since going from -- he's -- since going to work

1 for this Place Services Company, which Mr. Dobbins had
2 previously gone to work for, Mr. Israel's been showing up
3 at Jennings-Dill job sites. He's making phone calls to
4 employees on his own phone and on his girlfriend's phone.

5 And as we presented in the supplemental affidavit
6 yesterday, exhibit D, he's taking direction from his old
7 boss, Phillip Dobbins, about the on boarding [phonetic] of
8 a former Jennings-Dill employee.

9 So I want to be delicate here. This is not an
10 individual that -- that -- that his affidavit should be
11 given complete credibility, if you will. And one of the
12 things I wanted to point out to Your Honor, if you look at
13 his brief, how he starts out, he comes across with the
14 first sentence saying, Defendant Eric Israel is a plumber
15 being sued for \$2.5 million. Okay. That sounds like a
16 very little guy versus a big corporate giant type of story
17 that you want to try to weave [phonetic] here.

18 But -- but that's not really what the story is. This
19 is a -- a good size company. It's a -- they're proud of
20 their reputation, history. And -- and it's a success
21 story for sure.

22 But Mr. Israel was a plumbing supervisor -- or excuse
23 me, superintendent. He was the most senior employee in
24 the plumbing division. And he had oversight of eight
25 foremen working under him and had numerous plumbers and

1 plumber helpers, also, rolling up to him. He was one of a
2 handful of those, among the management team, who had the
3 highest electronic security clearance in the company that
4 allowed him to take this iPad and access these highly
5 confidential documents.

6 And to be clear -- and this is repeated over and over
7 again in their opposition brief. They say, oh, this is a
8 case where they're -- the little guy's being sued for \$2.5
9 million. I think Your Honor knows the distinction between
10 lost revenue and what the true loss is, the profit, if you
11 will.

12 But, again, I can't sit here and tell Your Honor that
13 there's a probability of irreparable harm unless I could
14 show you the reality of the harm that's already occurred.
15 And it's true that they have had to back out of -- of
16 three contracts worth \$2.5 million. But it's the
17 irreparable harm that I'm going to explain in a moment
18 that is -- is supported by the reality of those losses.

19 Let's talk now about the legal issues. The elements
20 for a temporary injunction, as Your Honor is aware, is
21 that we have to show irreparable harm, the likelihood of
22 success on the merits, and an inadequate remedy of law.
23 Your Honor is, I'm sure, very aware of all those -- the
24 authorities supporting that -- the -- the area of law of
25 temporary injunction. So I won't go into all of that.

1 I'm going to try to focus on what I think are the areas of
2 dispute.

3 Israel's brief makes the rather bold statement that
4 we repeatedly cited the wrong standard for issuance of a
5 preliminary junction. If you look at our brief, we cite
6 those same three elements that I have just mentioned. We
7 do -- do, indeed, point out since Your Honor right now is
8 sitting as a -- in a -- as a -- in a -- now, we're sitting
9 in a court of equity. You are sitting in your equitable
10 capacity, in addition to your legal capacity. And it's
11 appropriate for Your Honor to consider the equities of the
12 matter.

13 So Mr. Israel focuses on the Poynter case and says
14 that the balancing of equities requirement is neither
15 necessary or appropriate in a preliminary injunction case
16 where the three requirements -- and I've -- we've already
17 been over theirs -- those are well established and,
18 clearly, delineate the burden of persuasion. But that
19 misstates what our position is.

20 We have not said that -- that Poynter has been
21 overruled or Poynter should be disregarded. In fact, we,
22 clearly, stated the three-prong test. But we're -- we
23 are, also, correct that Your Honor should consider
24 equities of the matter. Because the Poynter case goes on
25 to say at Southeast -- whatever the -- the volume is --

1 Poynter at 587 that the balancing requirement is subsumed
2 by the irreparable harm and -- and adequate remedy at law
3 components of the three-part test.

4 What does subsume mean? Well, it means included,
5 absorbed. It means considered. It doesn't mean
6 eliminated, abolished, rejected, or disregarded. So Your
7 Honor is well within your right to consider the relative
8 equities in the matter. It's just not one of the four
9 elements any more.

10 And, as I said, Your Honor is now sitting in part
11 as -- as a court in equity trying to reach an equitable
12 result. And your -- this Court unquestionably will want
13 to consider the relative impact on the parties.

14 So it really begs the question why Mr. Israel
15 wouldn't want the Court to consider the impact on him from
16 the issuance of the temporary injunction. That's a
17 curious question, indeed. And it's probably because his
18 own allegations demonstrate that the motion should be
19 granted.

20 In his affidavit at 12, he says he doesn't have the
21 confidential information. And at paragraph 14, he says he
22 didn't give it to anybody. Well, if he says he didn't
23 have -- doesn't have it and didn't give it to anybody,
24 which we dispute, then -- then there's no impact on him by
25 an injunction that enjoins him from -- from passing it

1 along to anybody or using it in any capacity.

2 Singularly, he states in Paragraph 16, I believe, of
3 his affidavit, he says he hasn't solicited or offered
4 employment to any Jennings-Dill employees. Well, if
5 that's the case, again, there's no harm to Israel from an
6 injunction that restrains him from doing exactly that.

7 These are two very modest injunctive -- items of
8 injunctive relief that we're seeking which have minimal
9 impact on Mr. Israel. If he -- if all he's doing now is
10 working for Place Services, Inc., he goes to work,
11 reports, and does a typical plumbing or plumbing
12 supervisor-type job. That's not an issue. So why would
13 he care if he's being enjoined from doing the two things
14 we're asking to be enjoined?

15 The second area of legal dispute has to do with the
16 correlation between identifal -- or identifiable or
17 quantifiable damage and irreparable harm. At Pages 4 and
18 5 of the opposition brief, there's a heavy innuendo that
19 if there is quantifiable damage that somehow that
20 automatically should deny the issuance of an injunction.
21 But that's not at all the law of the case.

22 A party can suffer both quantifiable damage and
23 irreparable harm in the same case on multiple claims. And
24 there's ample supporting case law for this proposition.
25 I'll be happy to supply the citations to Your Honor. But

1 very briefly, one is Columbia Broadcast Systems, Inc. vs.
2 Custom Recording. Also, Peek vs. Spartanburg Regional
3 Healthcare Systems. And then, also, Levine vs.
4 Spartanburg Regional Service District, Inc.

5 And the -- and -- and these cases make clear that
6 when there -- that monetary damages and -- and injunctive
7 relief are not mutually exclusive. If you can articulate
8 a damage theory, as well as an irreparable harm theory,
9 you can obtain both. Where there is uncertainty in fixing
10 the measure of damages, as I'll go over momentarily, then
11 injunctive relief is appropriate.

12 So Your Honor is aware of -- of the -- the kind of
13 things that -- that give rise to irreparable injury in a
14 business setting. One would be damage to business
15 reputation, loss of business opportunities, loss of good
16 will, market share, damage to relationships with current
17 and prospective customers.

18 And a very good case for that -- for these elements
19 is Industrial Packing Supplies vs. Martin, a -- a district
20 court case, as well as Evans vs. -- Milliken vs. Evans,
21 also, a district court case.

22 So -- so those kinds of things that I mentioned,
23 well, how do they -- how do they relate to this case? So
24 what we think we have -- have shown through the evidence
25 before Your Honor is that we already have an impact on

1 current customers. In -- in Mr. Dozier's affidavit, he
2 relates that Bryant Nixon of Triangle Construction has
3 expressed high dissatisfaction with Jennings-Dill for
4 delays associated with a charter -- a charter high school
5 project.

6 This -- Triangle Construction is a company that
7 Jennings-Dill has done business with over the years. And
8 this is extremely harmful to Jennings-Dill's reputation.
9 Triangle, also, is a -- is the contractor on the Prisma
10 Easley Hospital project alluded to in the papers.

11 And, again, if you have -- if you've got a contract
12 to perform and the -- the customer is expecting you to
13 perform and you have to withdraw from the -- the contract,
14 this is extremely damaging to Jennings-Dill's reputation.
15 So it runs the risk of -- of -- of loss of permanent
16 relationships with customers such as Triangle.

17 We, also, mentioned DPR in connection with the
18 Greenville County Administration building project and,
19 also, Brasfield & Gorrie, a large plumbing job that the --
20 the company had to withdraw from.

21 I've, also, mentioned, Your Honor, that as a result
22 of Mr. Israel's actions, we've lost the ability to bid on
23 projects. We've already -- so let me digress for just a
24 minute. When bidding on contracts, typically, my client
25 bids on all three at the same time, the HVAC, the

1 plumbing, and the -- and the process priping -- piping.
2 This is attractive to contractors -- to customers because
3 they would rather have one company on-site performing all
4 three of those services, rather than multiple companies
5 on-site.

6 But for those -- the last -- the five bids within the
7 last month, they have had to decline to bid on the
8 plumbing aspect of those projects. And as I mentioned
9 to -- to Your Honor earlier, it's going to be months
10 before they're able to bid on new work.

11 And then, finally, good will. Clearly, Jennings-Dill
12 has suffered a -- a blow to its reputation and the
13 goodwill among these long-time valued customers.

14 Now -- now, how do we sit here and take all those
15 facts and calculate a damage remedy for it? I think I can
16 probably find a way to articulate a dollar figure
17 associated with the abandoned contracts, the contracts
18 they've had to forfeit. That's possible. But how do
19 you -- how do you measure a measure of damage for
20 inability to bid on contracts or the damage to the
21 relationships?

22 Finally, Your Honor, I want to pivot and talk about
23 the likelihood of success on the merits. They can
24 minimize the information that was stolen all they want,
25 but it's extremely valuable information. It -- it is not

1 information that's available to anybody else out in the
2 market. And they took appropriate measures to try to
3 protect it. They had policies. They had people on a
4 need-to-know basis.

5 As I mentioned, this gentleman was a very highly
6 placed individual in the -- in the company in the plumbing
7 department. So this is extremely [sic] information. And
8 we think it would qualify for trade secrets. But for
9 purposes of the other claims, it's, at a minimum,
10 confidential information supportive of those claims. And
11 the use of that information does support those claims.

12 Mr. -- turning now to the unfair trade practices.
13 Mr. Israel's core argument is that it doesn't apply to
14 employee -- employee -- employer-employee relationships.
15 And they cite to a case there.

16 But our argument is these claims are not based on the
17 employment relationship. It has nothing to do with wages,
18 nothing to do with benefits, or compensation. It has
19 nothing to do with the conditions of employment. It has
20 everything to do with the theft of information from the
21 company the same day that you have resigned and walking
22 out the door and then your post-employment use of that
23 information.

24 And it's not a direct analogy, but what if the
25 employee, instead of stealing electronic property, stole a

1 physical object like an automobile and took that
2 automobile property and caused damage to one of my
3 client's vehicles? I think it's comparable here. That's
4 what's happened is he's -- he's taken the confidential
5 information and he's now using it to cause injury to my
6 client.

7 And then I think the unjust enrichment claims and --
8 the unjust enrichment claim and the conversion claim
9 equally have like -- high likelihood of success on the
10 merits.

11 Your Honor, that winds up my prepared remarks. I'm
12 happy to answer any questions you may have.

13 THE COURT: Okay. I don't have any -- any at this
14 juncture.

15 Go ahead, Counsel.

16 MR. KILGORE: Thank you.

17 MR. OZMENT: Thank you, Your Honor.

18 May it please the Court.

19 He stole my line, but I do represent Mr. Israel, who
20 is a plumber being sued for \$2.5 million. I want to make
21 clear at the outset, this is not a non-compete or a
22 non-solicitation case. There's no agreement here. He's
23 under no obligations not to solicit.

24 This entire case hinges on if he took confidential
25 information and then used it to solicit. And I think

1 that's a key thing here and plays a lot on the success on
2 the merits.

3 You know, there's a lot of mud slinging in these
4 affidavits. Well, theirs says this. Well, theirs says
5 this. Well, theirs says this. We can go back and forth.
6 I think that's really a reason that discovery needs to be
7 held in this case to, actually, get to these merits.
8 Because it sounds like we have two different -- two very
9 different versions of what happened here.

10 But something that I think holds true is nowhere in
11 any affidavit from any Jennings-Dill employee or otherwise
12 does it say he, actually, misappropriated anything. It
13 says that he had his Jennings-Dill iPad. He went on their
14 shared-upon system and viewed three files.

15 In the response affidavit that was filed yesterday,
16 there's a lot of hay of access versus view versus
17 download. But I would point to exhibit B of that very
18 response affidavit. This is the Jennings-Dill SharePoint
19 activity log for Mr. Israel. I would point to the
20 activity types. Download/view in their own system is the
21 same thing.

22 So they -- you know, there's a lot of hairsplitting
23 as to he downloaded and viewed. Either way, the only
24 evidence we have is that these two files went onto a -- an
25 iPad that was property of Jennings-Dill. That then went

1 back to Jennings-Dill. There's no evidence anywhere --
2 and they haven't said there was any that he e-mailed it to
3 himself, that he sent it to somebody, that he put it onto
4 a thumb drive. There's no misappropriation anywhere in
5 this case. That's complete supposition, apparently, that
6 happened because he put it on his work iPad that he
7 returned 12 hours later to Jennings-Dill.

8 And I think that's important because what they're,
9 essentially, trying to do is ask Your Honor to impose an
10 agreement not to solicit for free. As you're well aware,
11 Your Honor, any covenant not to compete in South Carolina
12 requires consideration. That goes back to the standard
13 Register case. And they didn't have one with him.

14 And now, they're asking the Court to impose without
15 any proof, essentially, a covenant not to solicit their
16 employees. Now -- and I think that's -- you know,
17 that's -- they could have had one with him. They never
18 asked for one. They never negotiated one. I think that's
19 important.

20 Now, I'm going to address, first, this discussion
21 about equities. And I have the Poynter case right here.
22 I'm happy to pass one up for Your Honor, if you would like
23 it.

24 THE COURT: I -- I've read it. But if you've got a
25 paper copy, you can give it to me.

1 MR. OZMENT: And I have highlighted some on it. So
2 I'll, also, give one to opposing Counsel.

3 And I think this is important. Because what they're
4 asking the Court to do is exactly what Poynter addressed.
5 If you look in their motion, they, actually, cite,
6 specifically, balancing the equities. And this is all
7 cited in my brief.

8 And then if you look at their memo, they have an
9 entire paragraph saying, well, if -- if -- if it's not
10 imposed, this is what happens to us. And if it's not
11 imposed, this is what happens to Mr. Israel. They exactly
12 ask the Court to balance the equities.

13 What Poynter says is, no, they have to meet the three
14 requirements. This isn't a, well, no harm, no foul.
15 We -- we balance what's -- what's better for either side.
16 And there's no case that does it. There's no case that
17 goes back and balances the equities in state court. And
18 so I think that's important that we're not here to balance
19 the equities. It is -- the burden is on them to impose an
20 extraordinary remedy on Mr. Israel to impose an
21 injunction.

22 Your Honor, as far as irreparable harm goes, there
23 are money damages in this case. I think they've conceded
24 that. Now, what they're saying is there's this loss of
25 good will. There's all this. A few -- a few points on

1 that. First, every case cited in their brief deals with a
2 sales employee. It deals with salesman lose -- leaves
3 company A, joins company B, and starts stealing customers.
4 This is different.

5 Mr. Israel -- and we'll get to the fact that he is
6 not stealing employees either. But he is a plumber. He
7 is not a customer-facing role. So the fact that they
8 don't have the manpower to service their customers is not
9 Mr. Israel's fault. He's not stealing customers. He's
10 not costing contracts.

11 Your Honor has seen his affidavit. He hasn't
12 solicited anyone. They implied that 11 -- 11 plumbers
13 have left since Mr. Israel. And we think they all
14 followed him. That's just not true. You know, they have
15 hearsay upon hearsay that Scottie Strickland was solicited
16 by him. We have an affidavit from Mr. Strickland. He
17 said, No, I called Eric Israel.

18 But -- but back to where I was with irreparable harm.
19 The cases they've cited are sales. Mr. Israel is not
20 that.

21 Now, moving beyond that, if you impose an injunction,
22 it's not going to fix their problem. They still don't
23 have the plumbers to service these contracts. What
24 they're asking the Court to do doesn't address the harm
25 that they're citing as irreparable. The only way to fix

1 that would be money, say, we lost this contract. We
2 didn't get this contract. That's the nature of a
3 contract. That's the easiest damage in the world to
4 calculate. This contract was breached. We couldn't get
5 this contract. This contract paid X. So I think there's
6 absolutely money damages. And imposing an injunction
7 won't -- none of those plumbers will go back on their
8 payroll wherever they are.

9 You're also -- Your Honor, I think there's, also, an
10 issue with delay here. Mr. Locklair's affidavit said on
11 June 25th, he was aware that these documents had been
12 "stolen." They waited a month to do anything at all on
13 this.

14 Now, in their response, they said, Oh, that's because
15 we got an e-mail on July 13th that was accidentally sent
16 to Mr. Israel's old e-mail and we saw that former
17 Jennings-Dill employees were now working for PSI. I'm not
18 sure what that has to do with Mr. Israel and how that
19 somehow showed that he had stolen documents. That --
20 that -- those dots don't really connect for me.

21 And beyond that, there's only two former
22 Jennings-Dill employees on those e-mails. One of them
23 left before Mr. Israel. And the other one joined PSI on
24 the same day as Mr. Israel. So it's impossible that he
25 solicited people that joined before he was even at PSI,

1 which is what, apparently, they would have the Court
2 believe. So I don't see how that e-mail would have
3 anything to do with all the sudden thinking Mr. Israel is
4 soliciting employees.

5 Going to success on the merits. The argument about
6 employment law was that the South Carolina Unfair Trade
7 Practices Act does not apply to plumbing cases. There's a
8 whole line of cases that say that. Among their causes of
9 action are a breach of duty of loyalty. One of the
10 specific elements of that claim is the person has to be an
11 employee when they took the action.

12 So, you know, the argument -- that's a limited one.
13 And I don't know if I like the truck analogy. Because,
14 certainly, Your Honor would recognize if he had stolen a
15 truck and then failed to return it, that wouldn't be a
16 South Carolina Unfair Trade Practices claim. So I'm not
17 really sure how good that was. But I think here that the
18 success on the merits is there's no evidence that he took
19 these documents. The only evidence is it went on their
20 iPad that went back to them.

21 To -- on -- to the contrary, Mr. Israel has sworn, I
22 don't have this. I've never had this. I've never given
23 it to anyone. And so I think there's -- there's, at
24 least, a good question on the merits as to if these
25 documents were ever taken. And every claim flows from

1 that crucial fact.

2 Additionally, Your Honor, as to their argument on
3 trade secrets. They could have submitted these documents
4 to Your Honor under seal to look at today. We could,
5 actually, know what's in these -- these three documents.
6 They haven't done that. They're just saying, oh, believe
7 us. These are -- these are really serious trade secrets.

8 As part of their policy, they had Mr. Israel do all
9 of his work on his personal cell phone. Every time he had
10 to call someone that worked for him, a foreman, a
11 supervisor, it was on his cell phone. He has all these
12 peoples contact information because that's how they have
13 it set up.

14 So I'm not sure how now the contact information of
15 employees and where they live is somehow this -- this
16 protected trade secret. But even beyond that, he's not
17 using that to solicit any employees, nor does he say he
18 is. But I -- I do note they haven't given Your Honor
19 these alleged trade secrets. And by their own policy, he
20 had most of this information on his cell phone.

21 Your Honor, lastly, I'll note the remedy at law. As
22 we've already said, there are money damages available in
23 this case. Mr. Dozier's affidavit goes down to the dollar
24 as to what these contracts are. I mean, there's six
25 seven-figure contracts and they have it down to the dollar

1 what -- their amount. So I, certainly, think there's
2 remedy at law. And as to the good will arguments, I think
3 it goes back to this -- he was not a sales employee. He
4 was a plumber.

5 Beyond that, Your Honor, I do want to just briefly
6 point out all of this information that he was going to job
7 sites and soliciting people, Your Honor, every bit of that
8 in those affidavits is based on hearsay, every bit of it
9 versus, you know, what we have submitted. Mr. Israel
10 says, I haven't solicited anybody.

11 And as far as I know, only two Jennings -- people
12 went from Jennings-Dill straight to PSI. That's in his
13 affidavit. One of those started on the same day as him.
14 And the other one is Scottie Strickland, who submitted an
15 affidavit with the Court saying, I called Mr. Israel. He,
16 certainly, did not solicit me.

17 So I would just ask Your Honor to -- and I know you
18 will -- to, you know, thoroughly look at the affidavits
19 with a fine tooth comb.

20 And I'll point out the complaint in this case is not
21 verified. So the -- the affidavits are sworn statements,
22 but the complaint is not. And I think there's a lot of
23 dots here that are trying to be connected that when we get
24 into discovery and get into the case, we'll find don't
25 connect.

1 Thank you, Your Honor.

2 THE COURT: Anything in reply, Mr. Kilgore?

3 MR. KILGORE: Yes, Your Honor, very briefly. As Your
4 Honor is aware, we don't have to file a verified complaint
5 in -- in South Carolina. There's an affidavit that was
6 filed with the motion for temporary injunction. I think
7 that's just a red herring.

8 So emphasis was made that this is not a compete case.
9 We never said it was a non-compete case. But injunctions
10 are issued for a wide variety of cases.

11 And it's well recognized that you can issue an
12 injunction in connection with a violation of the South
13 Carolina Trade Secrets Act. You can issue an injunction
14 in connection with a South Carolina Unfair Trade Practices
15 Act. You can issue an injunction, of course, in an equity
16 case such as quantum meruit, which we've pled. So the --
17 the idea that injunction relief is not -- is inappropriate
18 for -- for technical reasons is -- is not correct.

19 The whole notion that Your Honor cannot consider the
20 impact of -- on Jennings-Dill, if I understood Counsel
21 correctly, strikes me as somewhat preposterous. How else
22 do you prove irreparable harm if you don't show the impact
23 on Jennings-Dill? Okay. So maybe I misunderstood him.
24 But I think I can explain the dramatic impact on
25 Jennings-Dill. And that's precisely the persuasion that

1 we want you to have with respect to a finding of
2 irreparable harm and issuing the injunction.

3 But, Your Honor, I -- I -- I want to be real clear
4 about this. I'm not contending that the -- the standard
5 is a four-element standard, including balancing of
6 equities. The Poynter case -- and I'll just pick up his
7 version of it -- of the case.

8 The -- in the middle of two -- two out of three
9 pages, the -- the last thing that's highlighted, it says,
10 Moreover the balancing requirement is subsumed by the
11 irreparable harm and inadequate remedy at law components
12 of the three-part test.

13 Subsumed doesn't mean eradicated, eliminated, we no
14 longer consider it. It means it's an -- it's an essential
15 part of it. Of course, Your Honor can consider the
16 relative equities because Your Honor is sitting, in part,
17 as a Judge in equity.

18 Your Honor is -- he -- Counsel, also, said that
19 Mr. Israel's not causing a loss of business. An essential
20 part of this case is the -- the theft of the confidential
21 trade secret information, the use of it, and the
22 systematic raiding of employees has led to a decline in
23 the plumbing division. We've lost a third of our
24 capacity. We've lost three out of eight plumber -- of
25 plumbing foremen.

1 Your Honor, there is evidence in the record that they
2 have had to withdraw because of this from three contracts.
3 They have -- have declined to bid on plumbing work on five
4 contracts and on and on and on, at least, until November
5 and, perhaps, February. So, yes, Your Honor, there are
6 allegations in the record that Mr. Israel, a -- a very
7 highly placed individual in this company, has caused this
8 loss of business and future potential loss of business.

9 Your Honor, this -- this idea that we sat on our
10 hands and that there was a delay -- we were aware that he
11 took the information. We didn't know his employment
12 status. And Mr. Israel didn't declare his employment
13 status. On June 13, he said that he had another
14 opportunity to go to work for another company. He said
15 that. He wrote the e-mail.

16 And so at that point in time, he was going somewhere.
17 If he changed his mind later on, I don't know. But all we
18 knew was that he was leaving the company. He stole the
19 information on June 24. We watched it carefully. And
20 then when -- when -- Mr. Locklair was monitoring
21 Mr. Israel's e-mail account. And this e-mail rolls in
22 from a former, also, highly placed individual, Phillip
23 Dobbins. Mr. Dobbins sent the e-mail.

24 And Your Honor has the e-mail. It's, I think,
25 exhibit D to Mr. Israel's supplemental affidavit.

1 Mr. Dobbins communicates to Mr. Israel on the -- on the --
2 the 13th or 12th -- the 12th of July. And that's when the
3 connection was made. Okay. Israel's now over there.
4 He's collaborating with Dobbins. He's got our
5 information. We need to move quickly. And that's what
6 we've done here today.

7 So that's the -- the final comment we have about the
8 alleged delay, Your Honor. We acted as expeditiously as
9 we could.

10 Thank you, Your Honor.

11 THE COURT: All right. Anything else?

12 MR. OZMENT: Very briefly, Your Honor. I will say,
13 you know, affidavits were kind of being filed in this case
14 up until the last minute. So I did not pepper the Court
15 with, yet, another affidavit at the last minute. I -- I
16 know under Rule 6(b), there is a time limit on those
17 things.

18 On June 13th, when Mr. Israel sent the e-mail, he had
19 talked to three companies about possible employment. All
20 three of them said we would love to have you, apply if
21 you're interested. At that point, he submitted his
22 resignation. He had not, actually, applied for a job and
23 did not have any firm job offer. But he felt confident,
24 based on those three conversations with three different
25 employees -- employers, that he could get a job.

1 So he resigned at that time. But at the time, he was
2 let go early on the 24th, 25th for the purposes of this
3 hearing. I'm not sure if it really matters exactly if it
4 was the night or the morning. He had not applied for a
5 job. And he did not have a job in hand on that day. So I
6 will just clear up that point.

7 I'd, also, say I was not saying that the Court isn't
8 to look at the possible irreparable harm to Jennings-Dill.
9 My point is that Poynter, specifically, modified the
10 Levine case.

11 In their motion that we're here on today, in
12 Paragraph 16, they cite the Levine case. They say there's
13 three elements. The last sentence of that paragraph says,
14 In considering whether to grant an injunction, the Court
15 should balance the equities, yada, yada, yada, citing
16 Levine. I think Poynter's pretty clear on that point.
17 And I'll -- I'll let Poynter speak for itself.

18 Thank you, Your Honor.

19 THE COURT: All right. Let me tell you what I'm
20 going to do, gentlemen. I want -- I'm going to look again
21 at these affidavits. But let me tell you what -- I want
22 some quick turn around on this, if it's possible. So I'm
23 not going to give you a lot of time to submit me a
24 proposed order. But I'm going to give you about -- give
25 you about a week. I'm going to give you about a week. So

1 I'm going to be gone Thursday and Friday. And I'll be
2 back here next week all week.

3 So is it plausible that I could get a proposed order
4 from both sides? I'm going to look at these affidavits
5 again. A proposed order from both sides by next Thursday?

6 MR. OZMENT: Yes, Your Honor.

7 MR. KILGORE: Yes, Your Honor.

8 THE COURT: If you need additional time other than
9 that, let me know. But I think for both sides, we just
10 need to go ahead and move on this as quickly as we can.

11 So, Mr. Kilgore, Counsel, if you can get that to me
12 by next Thursday. Go ahead and e-mail it to me to my -- I
13 don't have a law clerk at the present time, but I will
14 shortly. AKinlawj@sccourts.org. And, of course, make
15 sure you put the "S" on courts or it will come back to
16 you. It won't get to me.

17 But next Thursday, I anticipate getting that from
18 both of you. And I will not read any of it unless I've
19 got both of them in hand. So whoever sends it to me
20 first, I've got to have both. So I'm assuming if you both
21 send it on Thursday, we'll be in business.

22 All right. Next Thursday.

23 *****END OF TRANSCRIPT OF RECORD*****
24
25

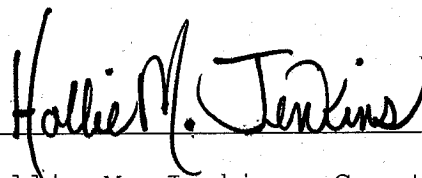
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 3rd day of August, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 4, 2021

A handwritten signature in cursive script, reading "Hollie M. Jenkins", written over a horizontal line.

Hollie M. Jenkins, Court Reporter

Plaintiff's Notice of Motion and Motion for
Temporary Injunction

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
Jennings-Dill, Inc.,	)	
	)	
Plaintiff,	)	Case No.: 2021-CP-23-03406
	)	
v.	)	
	)	
Eric Israel,	)	
	)	
Defendant.	)	
_____	)	

PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR TEMPORARY INJUNCTION

TO: DEFENDANT ERIC ISRAEL:

YOU WILL PLEASE TAKE NOTICE that Plaintiff Jennings-Dill, Inc. will move within ten days or as soon thereafter as may be heard for injunctive relief prohibiting you from any further use or disclosure of its confidential information and trade secrets and from improperly soliciting its employees. "The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001).

Plaintiff, Jennings-Dill, Inc. ("Jennings-Dill"), by and through its undersigned counsel, files this Motion for a Temporary Injunction against Defendant Eric Israel ("Mr. Israel") under Rule 65 of South Carolina Rules of Civil Procedure.

Jennings-Dill shows as follows as support of this Motion, which is directly supported by Jennings-Dill's Complaint for Injunctive Relief and Damages ("Complaint") and the Affidavit of Andy Locklair (attached to this Motion as Exhibit A), filed contemporaneously herewith:

1. Mr. Israel is a former Jennings-Dill employee who resigned from Jennings-Dill on June 24, 2021. (Complaint at ¶¶15-18.)

2. Upon his resignation, Mr. Israel stole away current and former Jennings-Dill employees to Jennings-Dill's competitor, Place Services, Inc. ("PSI"). (*Id.* at ¶¶ 20-25, 32-37.)

3. After resigning from Jennings-Dill, Mr. Israel accessed and downloaded Jennings-Dill's Personnel Report, the Personnel Report Jan 2021-Dec 2021, and the JD Employee List. (*Id.* at ¶ 20-21.) The personnel reports contain Jennings-Dill's monthly employee headcount information from July 2017 to July 2021, and outlines all employment changes made. (*Id.* at ¶ 23.) The JD Employee List contains contact and other confidential information regarding Jennings-Dill employees, including names, telephone numbers, emails, and cities in which each employee lives. (*Id.* at ¶24.) The JD Employee List also includes pay rates for each listed employee. (*Id.*)

4. Since leaving Jennings-Dill, Mr. Israel has used the personnel reports and employee lists to solicit current and former Jennings-Dill employees to come work for PSI. (*Id.* at ¶¶ 32-35.)

5. On July 14, 2021, Scottie Strickland, current Jennings-Dill Plumbing Foreman, put in his notice of resignation with Jennings-Dill. (*Id.* at ¶ 33.) When he informed Jennings-Dill of his resignation, Mr. Strickland stated that Mr. Israel approached him to work at PSI. (*Id.*) Mr. Strickland accepted Mr. Israel's offer. (*Id.*) Mr. Strickland is currently working on a project worth over \$5 million, with the plumbing portion of the project accounting for over \$2.75 million. (*Id.* at ¶34.) Strickland's abrupt departure has caused serious disruption to Jennings-Dill's business and work on the project, and will cause harm to the relationship between Jennings-Dill and the customer. (*Id.*)

6. To date, Jennings-Dill has turned down roughly \$2.5 million in plumbing work due to the shortage of manpower, most of which has resulted from Mr. Israel's bad faith acts. (*Id.* at ¶ 36.)

7. Jennings-Dill has suffered and will continue to suffer irreparable injury, loss and damage as a result of Mr. Israel's wrongful conduct.

8. A temporary injunction is necessary to prevent further irreparable harm, injury, and damage to Jennings-Dill.

9. Mr. Israel's unlawful conduct will continue unless enjoined by this Court.

10. Jennings-Dill is without adequate remedy at law, and Jennings-Dill is threatened with irreparable loss, injury, and damage, unless the equitable relief prayed for herein is granted by this Court.

11. The injury to Jennings-Dill is irreparable in that (a) Israel's employer and a Jennings-Dill's competitor will continue to target Jennings-Dill's employees unfairly because they have unlawfully obtained salary and contact information; (b) due to the unfair competition, Jennings-Dill will be unable to maintain its talent, causing Jennings-Dill to lose existing work and be unable to bid on future work; (c) due to unfair competition, Israel's employer and a Jennings-Dill's competitor will be able to underbid Jennings-Dill based on its wage information; and (d) Jennings-Dill will suffer a loss of goodwill and damage to business reputation.

12. Jennings-Dill lacks an adequate remedy at law because of the amount of the injury Jennings-Dill has suffered and will continue to suffer as a result of Mr. Israel's actions - particularly including, but not limited to, the loss of goodwill, the inability to keep work and bid on jobs, damages to business reputation, and use and disclosure of confidential information and/or trade secrets - are inherently difficult, if not impossible, to calculate.

13. The potential harm to Jennings-Dill if injunctive relief is denied decidedly outweighs any potential harm to Mr. Israel from granting such relief, as Mr. Israel is able to continue his employment at PSI without interference.

14. The facts of the Complaint show that Jennings-Dill has a strong likelihood of success on the merits.

15. The public interest weighs in favor of granting a temporary injunction, as (a) PSI and Israel are currently employee raiding Jennings-Dill's plumbing division to the point that it lost roughly half of its plumbing staff, and (b) Jennings-Dill will continue to provide its services to customers and the general public.

16. "To obtain an injunction, the plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation." *Levine v. Spartanburg Regional Services District, Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005). Obtaining an injunction requires the plaintiff to show that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005). In considering whether to grant an injunction, the court should balance the equities of the opposing parties on the particular facts of the case to determine which side is more entitled to relief. *Levine*, supra.

17. In this instance, Jennings-Dill will suffer irreparable harm if the injunction is not granted, it will likely succeed on the merits and there is not an adequate remedy at law.

WHEREFORE, Jennings-Dill respectfully requests that the Court grant this Motion and issue a temporary injunction enjoining Mr. Israel from using confidential and trade secret

information and from soliciting Jennings-Dill employees to leave their employment and go to work for Mr. Israel's new employer.

Respectfully submitted this the 20th day of July, 2021.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

/s/Phillip A. Kilgore

Phillip A. Kilgore, SC Bar No. 3349

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Affidavit of Andy Locklair (filed July 20,
2021)

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Jennings-Dill, Inc.,)
Plaintiff,)
v.)
Eric Israel,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT

C. A. NO.: _____

AFFIDAVIT OF ANDY LOCKLAIR

I, **ANDY LOCKLAIR**, declare under penalty of perjury that the following facts are true and correct to the best of my information and belief:

1. I am the Vice President of Operations at Jennings-Dill, Inc. ("Jennings-Dill" or the "Company"). I have held this position since May 29, 2017.
2. Jennings-Dill is engaged in the mechanical contracting business providing heating, ventilation, and air conditioning ("HVAC"), plumbing and process piping services.
3. Jennings-Dill is a full service plumbing and gas piping contractor, with the ability to design and install all types of plumbing systems.
4. Jennings-Dill provides its services to customers primarily for industrial and commercial facilities, hospitals, schools, and office buildings.
5. I have personal knowledge about Defendant Eric Israel's ("Israel") employment with, and departure from, Jennings-Dill, and Israel's activities since his last day of employment.
6. Israel began working with Jennings-Dill as a temporary worker through Link Staffing in December 2007. On April 19, 2010, Israel became a Jennings-Dill employee.

7. During his tenure with Jennings-Dill, Israel held the positions of plumber, foreman, and superintendent. Israel was a Plumbing Superintendent when he resigned.

8. Israel's normal work schedule was Monday through Thursday, from 7:00 am to 5:30 pm.

9. On June 24, 2021, at around 6:45 pm, Israel called my cell phone, and informed me that he was resigning from Jennings-Dill. This was after business hours and I was no longer at work at the main office.

10. This call from Israel came eleven (11) days after I received an email from him indicating that he was resigning. After that June 13 email, I and other Jennings-Dill managers had a number of conversations with Israel in an attempt to encourage him to remain with Jennings-Dill.

11. During the June 24 phone call, I told Israel that he did not need to put in a two-week notice, but that he needed to return all Jennings-Dill property the following morning. The property included, but was not limited to, Jennings-Dill's iPad, keys, truck and tools. As a plumbing superintendent, Israel was one of a limited number of managers Jennings-Dill entrusted with access to Jennings-Dill's electronic data storage, whether Cloud-based or site-based.

12. As Jennings-Dill's Vice President of Operations, I am responsible for the administration of several operations related software applications that our Company uses. Because the June 24 conversation with Israel took place after business hours and I was no longer at the office, I was not able to terminate Israel's access to Jennings-Dill's computer systems until the morning.

13. One of the computer software applications Jennings-Dill utilizes is called ShareFile, and it is available on certain computers and iPads used by employees in whom Jennings-

Dill has confidence and trust. ShareFile is an application that allows these employees to access Jennings-Dill's confidential and trade secret information stored in its data storage facilities.

14. Jennings-Dill has issued a number of personnel policies instructing employees about the confidentiality of its business information. These include:

- a. A "Work Product Ownership" policy that makes clear that Jennings-Dill considers the product of employee work, including electronic documents, to be the property of Jennings-Dill;
- b. A "Use of Company Equipment and Computer Systems" policy, which provides, in part, that "[u]pon termination of employment, the employee must return all Company property including . . . work product and documents in his or her possession or control."
- c. An "Internet and Email Use Policy" which provides, in part, that "Jennings-Dill, Inc.'s Internet and Email systems are to be used solely for company business purposes. . . . In addition, no unapproved downloads are to be completed on company computers."

15. In addition, employees who are issued iPads or other electronic devices receive Jennings-Dill's iPads or Electronic Devices Usage Policy. This policy provides, in part, "As an employee, you are responsible to recognize the need to protect confidential data that is . . . accessed using an electronic device. . . . You are forbidden from copying sensitive data from email, calendar and contact applications to other application on the device or to an unregistered personally owned device." Israel signed an acknowledgment of receipt of this policy.

16. These policies are contained in and part of Jennings-Dill's employee handbook and all employees are expected to comply.

17. Some examples of confidential information and trade secrets maintained in Jennings-Dill's cloud based data storage include pitch documents, contracts, and employee information.

18. First thing in the morning of June 25, 2021, I began the process of removing Israel's access to ShareFile and other protected electronic information. I immediately discovered that Israel had accessed Jennings-Dill's electronic data storage the night before, after business hours, and had downloaded Jennings-Dill's confidential and trade secret information.

19. I immediately disabled Israel's access and reported the breach to Dave Dozer, Jennings-Dill's Executive Vice President, so that others in the senior management would be aware.

20. Upon further investigation, I determined that Israel had accessed the ShareFile system and downloaded three (3) confidential files after announcing his resignation.

21. Specifically, on June 24, 2021, at 8:53 pm, well after Israel's normal working hours, Israel accessed and downloaded Jennings-Dill's electronic document entitled "Personnel Report."

22. At 8:55 pm, Israel downloaded Jennings-Dill's electronic document entitled "Personnel Report Jan 2021-Dec 2021."

23. Also at 8:55 pm, Israel downloaded a third electronic document entitled "JD Employees List."

24. The Personnel Report and Personnel Report Jan 2021-Dec 2021 contain Jennings-Dill's monthly employee headcount information from July 2017 to July 2021, and outlines all changes made, including hires and terminations. This information is highly sensitive and is not available anywhere else other than Jennings-Dill's computer files.

25. The JD Employee List contains contact and other confidential information regarding Jennings-Dill's employees, including names, telephone numbers, emails, and cities in

which each employee lives. The JD Employee List also includes pay rates for each individual listed, including foremen, tradesmen, journeymen, top helpers, and helpers. The JD Employee List reflects confidential data regarding all Jennings-Dill employees as of June 24, 2021, not just Jennings-Dill's plumbing division. This information is highly sensitive and is not available anywhere else other than Jennings-Dill's computer files.

26. Such collections of information ("Jennings-Dill Personnel Data") are highly confidential, have economic value to Jennings-Dill, and are not generally known to and are not readily ascertainable through proper means by anyone other than by improper access to Jennings-Dill's computer systems.

27. No one at Jennings-Dill authorized Israel to access, download or use the Jennings-Dill Personnel Data after hours and after his resignation, for purposes outside of his scope of work at Jennings-Dill or for purposes of aiding a competitor to systematically recruit and hire Jennings-Dill's employees.

28. Israel's last day at Jennings-Dill was June 24, 2021.

29. It is my understanding that Israel was solicited by a Phillip Dobbins, a former Jennings-Dill employee, who is now employed at Place Services, Inc. ("PSI"), to go to work for PSI.

30. Mr. Dobbins held an important position with Jennings-Dill. In addition to being Israel's manager, he was the Operations Manager for the entire Company. Dobbins had responsibility and oversight for all facets of Jennings-Dill's business, including heating, ventilation and air conditioning, plumbing, and piping.

31. Dobbins was licensed in South Carolina, North Carolina and Georgia. Clearly, PSI's hiring of Dobbins was the first step in an attempt at a wholesale takeover of Jennings-Dill's plumbing division.

32. Dobbins had extensive knowledge of Jennings-Dill's business, confidential information and trade secrets, customers and employees.

33. Dobbins had contractual post-employment obligations not to misappropriate Jennings-Dill's confidential information and trade secrets, not to compete in a specific territory and not to solicit Jennings-Dill employees to leave employment to go to work for a competitor.

34. Based in Israel's activities, it seems logical that Israel is acting at Dobbins' direction in an attempt to skirt his non-compete. Unless Dobbins and Israel destroy evidence of their emails and text messages, I believe it will be clear they have been working together to raid Jennings-Dill's workforce.

35. From my understanding, PSI is in the remodeling and new construction industry. It is my understanding that PSI has limited customers in Greenville, Spartanburg or Anderson counties, and is making extreme efforts to build a workforce to conduct business in South Carolina, including in the upstate of South Carolina.

36. Since Israel's departure, I received reports from at least four (4) employees that Israel has entered Jennings-Dill jobsites for no legitimate business purpose, and has solicited Jennings-Dill employees to leave Jennings-Dill and to go work for PSI. It stands to reason that Israel has used the Jennings-Dill Personnel Data he stole on June 24, 2021, in the course of these conversations and solicitations.

37. Two of these four have announced their resignation from Jennings-Dill. One of these two, Daniel Strickland, plumber, resigned on July 15, 2021, without notice but he did not

indicate where he is going to work. His brother, Scottie Strickland ("Strickland"), a current Jennings-Dill Plumbing Foreman, told the Company that Israel solicited him to leave employment with Jennings-Dill to go to work for PSI. On July 14, 2021, Strickland informed Jennings-Dill that Israel approached him and persuaded him to take a position at PSI. Strickland said that he accepted the offered position at PSI, and his last day at Jennings-Dill is July 22, 2021.

38. Strickland is currently working on a project for Jennings-Dill worth over \$6.74 million. The plumbing portion of this project, over which Strickland has responsibility, is worth over \$2.75 million. Strickland's abrupt departure has caused serious disruption to Jennings-Dill's business and work on the project, and will cause harm to the relationship between Jennings-Dill and its customer.

39. In addition, I am aware that Israel has contacted or attempted to contact at least four (4) other employees. He solicited one of these employees to leave employment Jennings-Dill, pumped another employee for information about Jennings-Dill's efforts to require Dobbins to honor his non-compete agreement, asked another employee if he "needed anything" or whether he could help him, and called the wife of a fourth employee. In these efforts to contact Jennings-Dill employees, Israel used his phone in two instances and his girlfriend's phone in the other instances.

40. Several other Jennings-Dill plumbing employees have resigned recently. The job titles and years of service of employees who have resigned are as follows: Israel, Plumbing Superintendent (19 years); Plumbing Foreman (1 year, 2 months); Plumbing Foreman (6 years); Plumbing Foreman (5 years, 11 months); Plumber (6 years); Plumber (6 years, 2 months); Plumber (5 years, 9 months); Plumber (4 years, 10 months); Plumber (3 years, 3 months); Plumber (2 years, 9 months) and Plumber Helper (2 years, 1 month). Other than Israel and one other employee, the other nine (9) employees have resigned in the month of July.

41. Most of these employees are relatively long term and none have ever expressed any unhappiness with their employment with Jennings-Dill. And with one exception, none of these employees gave a reason for leaving. I believe we will find out that most of these have gone to work for PSI.

42. Before Dobbins and Israel's scheme to poach Jennings-Dills' employees, the Company had a stable plumbing workforce. Between July 2020 and June 2021, Jennings-Dill's plumbing workforce was between 27 and 33 employees with 29 in June 2021. At this moment, in three short weeks since Israel left, we are down to 17 employees.

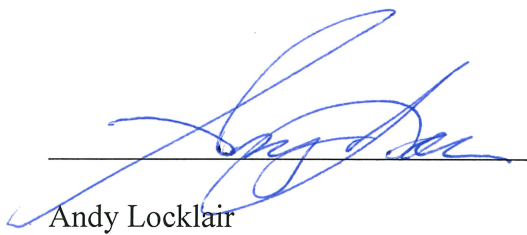
43. To date, Jennings-Dill has lost three jobs because of Israel's tactics. This has caused roughly \$2,500,000 in lost revenue.

44. Specifically, Jennings-Dill lost:

- a. a \$1,800,000 job after being forced to withdraw from a project with Brasfield & Gorrie;
- b. a \$600,000 contract change order with DPR for Greenville County Administration for a tenant up fit; and
- c. a \$200,000 contract with Triangle Construction for Prisma hospital system for a project at its Easley campus.

45. These are long-term customers. Israel's actions are doing serious damage to our customer relationships that will go well beyond these projects. They also will hamper our ability to successfully pursue other projects in the future.

46. This affidavit is accurate and true to the best of my knowledge.

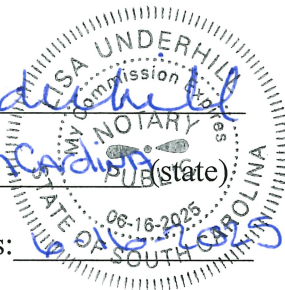

Andy Locklair

7/20/21
Date

Sworn to before me this

20th day of July, 2021


Notary Public for South Carolina (state)
My Commission Expires: 06-18-2025



47883815.1

Plaintiff's Memorandum Supporting Motion
for Temporary Injunction

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jennings-Dill, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 2021-CP-23-03406
	)	
Eric Israel,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM SUPPORTING MOTION FOR TEMPORARY INJUNCTION

On July 20, 2021, Plaintiff Jennings-Dill, Inc. (“Jennings-Dill” or the “Company”) filed its Complaint for Injunctive Relief and Damages against Defendant Eric Israel (“Israel”) alleging Israel had performed unlawful actions against Jennings-Dill since his departure from the Company. At the same time, Jennings-Dill filed its Motion for Temporary Injunction (“Motion”). The Motion is set for hearing at 2:00 pm on August 3, 2021, at the Greenville County Courthouse.

In its Motion, Jennings-Dill seeks an Order enjoining Israel from using (and to return and destroy all copies of) Jennings-Dill’s confidential and trade secret information and from raiding the Company of its employees for a competitor company seeking to enter business in the upstate region. Jennings-Dill seeks injunctive relief, limited in scope, to adequately protect Jennings-Dill’s interests, which do not impose undue hardship on Israel.

Immediately after resigning from his tenure at Jennings-Dill, Israel downloaded Jennings-Dill’s confidential and trade secret information and began using it to assist his new employer and competitor of Jennings-Dill, Place Services, Inc. (“PSI”). Israel launched his attack against Jennings-Dill by soliciting Jennings-Dill’s plumbers to leave and work for PSI. Israel not only used the stolen confidential and trade secret information to contact Jennings-Dill’s employees, but

even went to Jennings-Dill's job sites to talk to the plumbers and other employees in the Plumbing Division one-on-one. Unfortunately for Jennings-Dill, Israel's employee raid has been successful and, as a result, the Company has lost almost half of its Plumbing Division and roughly \$2.5 million in revenue, from which the Company would have gained profits.

These circumstances present a classic case of the need for injunctive relief. Israel stole information property as he was exiting from Jennings-Dill, is using the stolen property to engage in unlawful and unfair solicitations, and is exacting incalculable harm on the business by gutting an operating division. Only an Order of the Court will prevent the irreparable harm that Jennings-Dill will inevitably suffer in the absence of Court intervention. Jennings-Dill is entitled to temporary injunctive relief against Israel pending a trial on the merits.

I. FACTUAL BACKGROUND

A. Jennings-Dill's Business.

In 1947, Jennings-Dill began in the upstate region of South Carolina as a heating, ventilation and air conditioning ("HVAC") and piping contractor. (Complaint ("Compl.") ¶¶ 9, 11.) Today, Jennings-Dill provides multiple mechanical contracting services, to include HVAC, plumbing, and process piping services. (Affidavit of Andy Locklair ("Locklair Aff."), at ¶¶ 2-3) Jennings-Dill provides these services primarily in industrial, commercial, hospital, school, and office buildings. (*Id.* at ¶ 4.)

Jennings-Dill's business is separated into divisions, one of which is the Plumbing Division. (Compl. at ¶12.) Jennings-Dill added the Plumbing Division in the 1990s so that it could better serve its general contractor customers by allowing fewer subcontractors on jobsites. (*Id.*) The Plumbing Division installs complete systems for commercial, industrial, education, healthcare, and religious companies. (*Id.* at ¶13.) The Plumbing Division accounts for twenty to thirty percent

(20-30%) of Jennings-Dill's annual revenue. (*Id.* at 14.) As of June 24, 2021, the Plumbing Division averaged between 29 and 30 employees. (Locklair Aff. at ¶42.) As of July 20, 2021, the Plumbing Division had 17 employees. (*Id.*)

Most of Jennings-Dill's business comes from submitting bids. (Affidavit of Dave Doser ("Doser Aff."), at ¶ 4.)¹ The bidding process involves Jennings-Dill's evaluation of the proposed project and specifications, projecting the cost of materials, projecting the hours of labor necessary to complete the project, and assigning a blended hourly labor rate to the project. (*Id.*) Jennings-Dill's ability to participate in job bidding is dependent on the number of pending projects and the availability of skilled employees to participate in new projects. (*Id.* at ¶ 8.) Once accepted, Jennings-Dill assigns a project manager, and reviews the schedule of the project to determine when Jennings-Dill employees need to be on site to accomplish the work. (*Id.* at ¶ 9.) Thereafter, the operations manager and the trade superintendent review, and determine which foreman to assign to the project and how many employees need to fill out the crew. (*Id.*) When the project commences, the assigned foreman and crew are provided with the required material and equipment through the superintendent and project manager. (*Id.* at ¶ 10.) The foreman and crew work on completing the tasks outlined in the project schedule until the complete system is installed and final inspections are achieved. (*Id.*) Each month, Jennings-Dill bids on an average of thirteen (13) projects for mechanical work, including plumbing, HVAC, and process piping. (*Id.* at ¶ 27.)

Jennings-Dill has issued numerous personnel policies instructing employees how to use and how not to use the Company's confidential business information. (Locklair Aff. ¶ 14, 16.) First, the "Work Product Ownership" policy states that employee work product, including electronic documents, are the property of Jennings-Dill. (*Id.*) Second, the "Use of Company

¹ The Doser Affidavit is attached to this Memorandum as "Exhibit A." The Doser Affidavit is a supplemental affidavit in support of Jennings-Dill's Motion for Temporary Injunction and Locklair Affidavit in support.

Equipment and Computer Systems” policy, states that employees must return all Company property at termination of employment, including “...work product and documents in his or her possession or control.” (*Id.*) Third, the “Internet and Email Use” policy states that the internet and email systems are to be used solely for company purposes, and “[i]n addition, no unapproved downloads are to be completed on company computers.” (*Id.*) Finally, for those who are issued iPads or other electronic devices, there is an “iPads or Electronic Devices Usage” policy, which provides, in part, that employees “are responsible to recognize the need to protect confidential data....” and “...are forbidden from copying sensitive data from email, calendar and contact applications to other application on the device or to an unregistered personally owned device.” (*Id.*) Israel was aware of these policies.

B. Israel’s Employment with Jennings-Dill.

Israel first began working with Jennings-Dill through a staffing company, Link Staffing, in December 2007. (*Id.* at ¶ 6.) On April 19, 2010, Israel became a Jennings-Dill employee. (*Id.*) Israel worked his way up within the Plumbing Division: first as a plumber, then foreman, and lately as a superintendent. (*Id.* at ¶ 7.) The last position Israel held was Plumbing Superintendent, and his normal work schedule was Monday through Thursday from 7:00 am to 5:30 pm. (*Id.*)

As the Plumbing Superintendent, Israel oversaw the operations and personnel of the Plumbing Division. The plumbing foremen reported to him and the plumbers and plumber helpers reported to the foremen. To allow him to perform his duties, Jennings-Dill issued Israel an iPad, which had a ShareFile² application that contained Jennings-Dill’s confidential information. (*Id.* at ¶¶ 11, 13.) Since Israel had access to the iPad, ShareFile and other confidential information,

² ShareFile is an electronic application that allows Jennings-Dill employee access to Jennings-Dill confidential and trade secret information stored in its data storage facilities. (Locklair Aff. at ¶ 13.)

Jennings-Dill had Israel sign an acknowledgment of receipt of the “Jennings-Dill’s iPads or Electronic Devices Usage” policy. (*Id.* at ¶ 15.)

C. Israel’s Separation from Jennings-Dill.

On June 13, 2021, Israel sent Andy Locklair, Jennings-Dill’s Vice President of Operations, an email indicating that he was resigning from Jennings-Dill. (Locklair Aff. at ¶ 10.) From June 13, until June 24, 2021, Jennings-Dill management had multiple conversations and meetings with Israel encouraging to remain with the Company. (*Id.* at ¶ 10.) Unfortunately, on June 24, 2021, at around 6:45 pm, Israel called Locklair. (*Id.* at ¶ 9.) At the end of the conversation, Israel informed Locklair of his resignation. (*Id.*) At that time, Locklair told Israel that a two-week notice was not necessary. (*Id.* at ¶ 11.) Locklair also told him that he needed to return all Jennings-Dill property in the morning, including iPad, keys, truck, and tools. (*Id.*) Since Israel called Locklair after hours, Locklair was unable to terminate Israel’s access to Jennings-Dill’s computer system. (*Id.* at ¶ 12.)

After informing Jennings-Dill of his resignation, Israel logged on to his Jennings-Dill iPad, accessed Jennings-Dill’s electronic data storage, and downloaded Jennings-Dill’s confidential information. (*Id.* at ¶ 20.) Specifically, at 8:53 pm, Israel accessed and downloaded Jennings-Dill’s document entitled “Personnel Report.” (*Id.* at ¶ 21.) At 8:55 pm, Israel downloaded Jennings-Dill’s electronic document entitled “Personnel Report Jan 2021-Dec 2021.” (*Id.* at ¶ 22.) Also at 8:55 pm, Israel downloaded Jennings-Dill’s electronic document entitled “JD Employee List.” (*Id.* at ¶ 23.)

The Personnel Report, the Personnel Report Jan 2021-Dec 2021 and the JD Employee List (collectively, the “Electronic Property”) contain Jennings-Dill’s confidential and trade secret information, and are property of Jennings-Dill. (*Id.* at ¶¶ 24-27.) The downloaded Personnel Report and Personnel Report Jan 2021-Dec 2021 contain Jennings-Dill’s monthly employee headcount information through July 2021, and outline all changes made, including hires and

terminations. (*Id.* at ¶ 24.) The JD Employee List contains contact and other confidential information regarding Jennings-Dill's employees, including names, telephone numbers, email addresses, and cities in which each employee lives. (*Id.* at ¶ 25.) The JD Employer List reflects confidential data regarding *all* Jennings-Dill employees as of June 24, 2021, not just employees in the Plumbing Division, and includes pay rates for each individual listed. (*Id.*) Jennings-Dill did not authorize Israel to access, download or use the Electronic Property. (*Id.* at ¶ 27.)

The first thing the following morning, June 25, 2021, Locklair accessed Jennings-Dill's computer systems to disable Israel's permissions. (*Id.* at ¶ 18.) Locklair immediately discovered Israel had accessed Jennings-Dill's electronic data storage and downloaded Jennings-Dill's confidential and trade secret information. (*Id.*) Once discovered, Locklair disabled Israel's access and reported the breach to Dave Doser, Jennings-Dill's Executive Vice President. (*Id.* at ¶ 19.)

The Electronic Property Israel accessed, downloaded and used is highly confidential, has economic value to Jennings-Dill, and is not generally known to and is not readily ascertainable through proper means by anyone other than by improper access to Jennings-Dill's computer systems. (*Id.* at ¶ 26.) No one at Jennings-Dill authorized Israel to access or download the Electronic Property for disclosure or use after his resignation, for purposes outside his scope of work at Jennings-Dill or for purposes of aiding a competitor to systematically recruit and hire Jennings-Dill employees.

D. Israel's Use of the Electronic Property to Raid Jennings-Dill.

Since his departure from Jennings-Dill, Israel has made extensive use of the Electronic Property to recruit Jennings-Dill employees to PSI.³ Known examples include:

³ Upon information and belief, PSI is a remodeling and now construction contractor, and engages in mechanical contracting, including plumbing. (*Locklair Aff.* at ¶ 28.). At the time of this memorandum, it is Jennings-Dill's understanding that PSI has a few customers in Greenville County, but is engaging in extensive activities in the County to increase its business in South Carolina. (*Id.* at ¶ 30.)

- At least four (4) Jennings-Dill employees observed Israel entering Jennings-Dill jobsites since Israel left the Company. (*Id.* at ¶ 36.) These employees informed Jennings-Dill that Israel solicited each of them to leave Jennings-Dill and to go work for PSI. (*Id.*)
- Two of the four employees have announced their resignation from Jennings-Dill. (*Id.* at ¶ 37.) Of these two, Daniel Strickland, plumber, resigned on July 15, 2021, without notice. (*Id.*)
- His brother, Scottie Strickland (“Strickland”), a recently departed Jennings-Dill Plumbing Foreman, resigned from the Company to work with Israel at PSI. (*Id.* at ¶¶ 37-38.) Strickland told Jennings-Dill that Israel approached him and persuaded Strickland to take the position at PSI. (*Id.*) At the time of his departure, Strickland was working on a project worth over \$6.74 million, of which Strickland was responsible for overseeing the \$2.75 million in plumbing work. (*Id.* at ¶ 38.) Strickland’s departure -- because of Israel’s solicitation -- has caused serious disruption to Jennings-Dill’s business and work on the project, and will harm the relationship with the customer.
- Israel has contacted or attempted to contact four (4) other employees. (*Id.* at ¶ 39.) Israel solicited one of the employees to leave; he questioned another employee about information surrounding a former employee’s non-compete agreement; he asked another Jennings-Dill employee if he “needed anything” or whether he could “help him;” and Israel called the fourth employee’s wife. (*Id.*) In two of these instances, Israel used his girlfriend’s phone so the Jennings-Dill employees would pick up. (*Id.*)

- In addition, in the month of July 2021 alone, seven (7) other employees within Jennings-Dill's Plumbing Division have resigned, bringing the total to roughly 10 Plumbing Division departures since Israel began his ploy. (*Id.* at ¶ 40.) Most of these employees were relatively long-term Jennings-Dill employees and none of them ever expressed unhappiness with their employment with the Company. (*Id.* at ¶ 41.) With the exception of Strickland, none of these employees gave a reason for leaving. (*Id.*)

E. The Irreparable Harm to Jennings-Dill Resulting from Israel's Violations.

Israel's actions have and will continue to cause Jennings-Dill to suffer injury, mostly in the form of irreparable damage to and loss of its business reputation, business opportunities, goodwill, market share, and relationships with existing and potential customers, and referral sources. (Compl. at ¶ 37.)

To date, Jennings-Dill has had to withdraw from three (3) plumbing projects due to a shortage of manpower, most of which resulted from Israel's bad faith acts. (Locklair Aff. at ¶ 43.) First, Jennings-Dill had to withdraw from a project with Brasfield & Gorrie. (*Id.* at ¶ 44(a).) After Brasfield & Gorrie accepted the plumbing bid, Josh Stewart, Director of Preconstruction Services at Jennings-Dill, had to inform the customer that Jennings-Dill needed to withdraw from the accepted bid because Jennings-Dill no longer had the manpower to complete the work. (Doser Aff. at ¶¶ 13-15.) At the time of the withdrawal, Jennings-Dill had lost one-third of its plumbing staff. (*Id.* at ¶ 16.) This plumbing bid alone was for \$1,809,381. (*Id.* at ¶¶ 11, 17.)

Second, on July 26, 2021, Jennings-Dill had to inform Albert VanLeakin of DPR that the Company would be withdrawing from additional work at the Greenville County Administration Building due to the loss of plumbing manpower. (*Id.* at ¶ 19.) This job lost roughly \$600,000 in revenue. (*Id.* at ¶ 20.)

Jennings-Dill was also required to withdraw from a third contract because the plumbing division was severely understaffed. (*Id.* at ¶ 22.) On June 11 and 30, 2021, Jennings-Dill was awarded contracts by Triangle Construction for two Prisma Health System projects at its Easley, South Carolina campus. (*Id.* at ¶ 21.) On July 6, Steward had to call Hunter Sizemore of Triangle Construction to inform him of the Company's withdrawal due to the loss of plumbing employees. (*Id.* at ¶ 22.) This job lost Jennings-Dill \$202,567 in revenue. (*Id.* at ¶ 23.)

All three contracts involved long-term customers, and the cancellations/withdrawals have greatly damaged the relationships. (Locklair Aff. at ¶ 45.) Bryant Nixon of Triangle Construction has already expressed his frustration with Jennings-Dill's inability to timely complete work at another project located on Greenville Tech's campus. (Doser Aff. at ¶ 24.) In this instance, Jennings-Dill has already caused Triangle to miss two inspections due to the lack of Company employees on site. (*Id.*) Moreover, the consequences will hamper Jennings-Dill's ability to successfully bid and win projects with these companies in the future. (Locklair Aff. at ¶ 45.) In fact, Jennings-Dill has lost out on the opportunity to bid on five plumbing projects since Israel's departure and raid on Jennings-Dill's employees. (Doser Aff. at ¶ 27.)

II. LEGAL ARGUMENT

A. Standard for Temporary Injunction.

Jennings-Dill seeks injunctive relief requiring Israel to immediately cease from using the Company's confidential and trade secret information from poaching Jennings-Dill employees until such time as the Court hears the full case on the merits. At that time, Jennings-Dill will seek a permanent injunction based on its claims.

"Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the

merits of the litigation; and (3) there is an inadequate remedy at law.” *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009) (citing *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004)). “The plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction, but the plaintiff must present a reasonable question as to the existence of such a right.” *Id.* at 51, 674 S.E.2d at 509 (citing *Peek v. Spartanburg Reg’l Healthcare Sys.*, 367 S.C. 450, 456, 626 S.E.2d 34, 37 (Ct. App. 2005)).

Once a plaintiff makes a *prima facie* showing that it is entitled to injunctive relief, “a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.”” *Id.* (quoting *Helsel v. North Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992)). The question of whether temporary injunctive relief should be granted rests within the sound discretion of the trial judge to whom the application is addressed. *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 199 S.E.2d 60, 61 (1973); *Fuller-Ahrens P’ship v. S.C. Dep’t of Highways*, 311 S.C. 177, 427 S.E.2d 920, 923 (Ct. App. 1993).

B. Jennings-Dill is Entitled to a Temporary Injunction.

Jennings-Dill satisfies the requirements for a temporary injunction and is entitled to equitable relief. First, if Israel is not enjoined from using Jennings-Dill’s confidential and trade secret information and from unfairly poaching its Plumbing Division employees, Jennings-Dill will further suffer irreparable injury in the form of lost market share, lost employees, lost customer goodwill, lost opportunity to bid on future work and the use and disclosure of its confidential and trade-secret information.

Conversely, Israel will not suffer any harm if the injunction is granted because enjoining him from using Jennings-Dill’s confidential and trade secret information will not in any way limit

his continued employment at PSI. Specifically, stopping Israel from possessing or using Jennings-Dill's Electronic Property should not require him to seek other employment. Israel is free to work at any place of employment of his choosing and, can talk to whomever he wants without using the confidential and trade secret information found within Jennings-Dill's Electronic Property and without engaging in unfair and unethical methods.

Moreover, unless Israel was hired by PSI for the specific purpose of plundering Jennings-Dill's workforce, he is free to perform ordinary duties associated with plumbing or plumbing construction management activities.⁴ The Court should prohibit Israel's use of Jennings-Dill's information as a means to raid Jennings-Dill's employees for his new employer, PSI's benefit, and enjoin him from further systemic dismemberment of Jennings-Dill's Plumbing Division.

Jennings-Dill is likely to succeed on the merits, as there is overwhelming evidence of Israel's unlawful conduct, including the taking and continued use of the Electronic Property, the brazen job site solicitation of Jennings-Dill employees and the relentless communication and disparagement campaign.

Finally, the requested restraint is not adverse to South Carolina's public interest in any way, as Jennings-Dill is seeking to protect its legitimate business interests, and the restraint is reasonable in scope and will not subject Israel to any undue hardship.

1. *Jennings-Dill will Continue to Suffer Irreparable Injury in the Absence of Injunctive Relief, and the Relative Harm to Jennings-Dill Substantially Outweighs any Harm to Israel.*

Irreparable harm is, by its very nature, harm that is difficult, if not impossible to quantify. See *e.g. Columbia Broad. Sys., Inc. v. Custom Recording Co.*, 258 S.C. 465, 477-78, 189 S.E.2d 305, 311 (1972) (holding that the mere uncertainty of fixing the measure of damage may be

⁴ If Jennings-Dill learns in discovery that raiding Jennings-Dill's workforce was exactly what PSI hired him to do, then Jennings-Dill will return to the court to seek additional relief.

sufficient to justify equitable jurisdiction); *Peek v. Spartanburg Reg. Healthcare Sys.*, 367 S.C. 450, 456 n.2, 626 S.E.2d 34, 37 n.2 (Ct. App. 2005) (citing *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex. App. 2005) (for the holding that “loss of business goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable harm”))). Moreover, South Carolina courts consistently recognize that the loss of relationships with customers, goodwill, or the market share constitute irreparable harm. *Industrial Packaging Supplies, Inc. v. Martin*, CA 6:12-713-HMH, 2012 WL 1067650, at *1 (D.S.C. Mar. 29, 2012); *Milliken & Co. v. Evans*, No. 7:14-cv-00778-BHH, 2014 WL 8240512 (D.S.C. Oct. 10, 2014) (holding that “loss of goodwill, customers, and market share are types of harm that satisfy the irreparable harm prong).

Israel has shown that he has used, Jennings-Dill’s confidential and trade secret information to loot the Company’s Plumbing Division. Absent a temporary injunction, Israel will continue to use the Electronic Property and raid Jennings-Dill’s employee base for the benefit of a competitor, causing Jennings-Dill to have to forfeit and/or withdraw from contracts and bids. Accordingly, if the Court does not prevent this conduct from continuing now, Jennings-Dill will be without means to complete contract work, successful bid on projects, and re-establish business relationships. It may take years to rebuild successful functionality of Jennings-Dill’s Plumbing Division.

Conversely, any harm to Israel by the issuance of the requested temporary injunction order pales in comparison to those immeasurable and irrevocable harms Jennings-Dill has and will continue to suffer.

Under the terms of the order Jennings Dill proposes to the Court, Israel would be enjoined as follows:

- A. Immediately cease from continued or further use of the stolen confidential and trade secret information.

- B. Immediately cease any ongoing communications with Jennings-Dill employees, including communications supported by the use of the stolen confidential and trade secret information.
- C. Preserve any copies of the stolen confidential and trade secret information in Israel's possession.
- D. Provide a list of individuals with whom Israel shared the confidential and trade secret information.
- E. Retrieve and return all stolen confidential and trade secret information, regardless who has current possession including all hard copies. If in electronic form, locate and destroy. The return of the hard copies of documents and the destruction of electronic copies shall be completed within a reasonable time to be set by the Court.
- F. Provide affirmations to this Court and Jennings-Dill that steps A through E have been completed.

There is no reason believe that any of these restrictions will unduly harm Israel or that any possible harm to Israel exceeds the existing and potential harm to Jennings-Dill. Jennings-Dill has shown that the Company has suffered and will continue to suffer immediate and irreparable harm, which outweighs any potential harm to Israel if a temporary injunction is not issued.

2. *Jennings-Dill Has a High Likelihood of Success on the Merits.*

a. Misappropriation of Trade Secrets under South Carolina Trade Secrets Act.

Jennings-Dill's right of injunction exists because the information stolen by Israel constitutes confidential trade secrets which were misappropriated by Israel in violation of the South Carolina Trade Secrets Act, S.C. Code Ann. Sections 39-8-1, *et seq.* Since Israel has misappropriated Jennings-Dill's Electronic Property, pursuant to S.C. Code Ann. § 39-8-50, Jennings-Dill is entitled to an injunction against Israel from further use of such information.

Jennings-Dill's Electronic property amounts to a "trade secret" because it is a "compilation" of "information" that "derives independent economic value... from not being generally known to, and not being readily ascertainable by proper means by the public or any other

person who can obtain economic value from its disclosure.” See S.C. Code Ann. § 39-8-20(5)(a)(i). Moreover, Jennings-Dill’s Electronic Property was the subject of efforts by the Company to maintain its secrecy. See S.C. Code Ann. § 39-8-20(5)(a)(ii).

Specifically, Jennings-Dill’s Electronic Property is not readily available to the public and certainly not to other competitors. Jennings-Dill’s proprietary information, such as the pay rates of all of its employees (not just the Plumbing Division) are not known outside the Company, and allow Jennings-Dill to remain competitive in the bidding process. Such information is properly considered a “trade secret” assuming reasonable efforts are put forth to maintain its secrecy. See *Williams v. Reidman*, 339 S.C. 251, 284, n.1, 529 S.E.2d 28 (Ct. App. 2000). Here, Jennings-Dill maintained stringent policies, prohibiting the misuse of its electronically stored data. (Locklair Aff. at ¶¶ 14-15.) Jennings-Dill allowed only limited number of employees to have access to the data within the ShareFile platform, and required those employees to sign acknowledgements agreeing not to take the data. (*Id.* at ¶ 13.) There is nothing more that Jennings-Dill could have done to protect itself - outside of not providing the data to anyone within the organization.

Misappropriation includes acquisition of a trade secret by someone by improper means, as well as acquisition or use of a trade secret by someone who knows or has reason to know that the trade secret was obtained by improper means without consent from the owner of the trade secret. S.C. Code Ann. § 39-8-20(2)(a)-(c). “Improper means” includes, but is not limited to, theft, breach or inducement of a breach of a duty to maintain secrecy, common law duties (such as the duty of loyalty) as well as duties imposed by contract. See S.C. Code Ann. § 39-8-20(1). In this case, even at its onset and without the benefit of discovery, the evidence is that Israel was well aware that Jennings-Dill intended to keep its Electronic Property a secret. Despite that awareness, Israel began

using the information to systematically pick off Jennings-Dill employees from its Plumbing Division to go work for a competitor - Israel's new employer.

Accordingly, in light of Israel's misappropriation of Jennings-Dill's trade secrets, Jennings-Dill is entitled to an injunction enjoining further misappropriation of the Company's confidential information and trade secrets.

b. SC Unfair Trade Practice Claim - ("SCUPTA") 39-5-10 et seq.

In addition, Jennings-Dill's request for a temporary injunction should be granted because Israel's acts of misconduct constitute unfair methods of competition and unfair and deceptive practices.

"A cause of action pursuant to SCUTPA requires plaintiffs to demonstrate the following: '(1) that the defendant engaged in an unlawful trade practice, (2) that the plaintiff suffered actual, ascertainable damages as a result of the defendant's use of the unlawful trade practice, and (3) that the unlawful trade practice engaged in by the defendant had an adverse impact on the public interest.'" *City of Charleston, South Carolina v. Hotels.com, LP*, 520 F. Supp. 2d 757, 773 (D.S.C. 2007)(citations omitted).

South Carolina courts have defined an unfair trade practice trade as "a practice which is offensive to public policy or which is immoral, unethical, or oppressive." *Beneficial Financial I, Inc. v Windham*, 431 S.C. 256, 268, 847 S.E.2d 793, 800 (Ct. App. 2020) (citing *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006) (internal citation omitted)). A plaintiff has proven an adverse effect on public interest once plaintiff is able to allege and prove facts demonstrating the potential of repetition of defendant's actions. *Id.* (citing *Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998)). Moreover, cases looking at the impact on public interest should be evaluated on their own merits. *Id.* (citing *Crary*, 329 S.C. at 388, 496 S.E.2d at 23).

The overwhelming evidence has already shown that Israel's conduct of stealing confidential and trade secret information to then use to raid Jennings-Dill of its employees is clearly within the scope of an unfair trade practice. Israel's conduct by manipulation of Jennings-Dill employees and use of the Electronic Property had the ability, effect and/or tendency to deceive. Moreover, Israel's improper solicitations and recruitment of Jennings-Dills employees to cut out the heart of Jennings-Dill's workforce to help competitor establish a new business in South Carolina causes harm to the competition in the marketplace and is against public interest.

Jennings-Dill, and all other employers in South Carolina, expect to compete fairly and rely on a good reputation in the industry built up the old fashioned way, through hard work, adherence to business ethics, and the creation of competitive advantages, including those based on employee training and skill development. Israel's actions on behalf of his new employer and a new entrant into the Upstate market is a direct, willful violation against SCUPTA, and should be stopped immediately.

c. Unjust Enrichment / Quantum Meruit

Jennings-Dill will be able to show that it is entitled to equitable relief, under the theory of unjust enrichment. South Carolina courts recognize quantum meruit as an equitable doctrine that allows a party to recover for unjust enrichment. *Columbia Wholesale Co. Inc., v. Scudder May N.V.*, 312 S.C. 259, 261 (1994) (citations omitted). "Absent an express contract, recovery under quantum meruit is based on quasai-contract, the elements of which are: (1) a benefit conferred upon by the defendant by the plaintiff; (1) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. *Id* (citations omitted). In other words, quantum meruit is applicable

when one party has unjustly retained a benefit through by abusing its relationship with another. See *e.g. Pitts v. Jackson National Insurance Co.*, 352 S.C. 319 (2002).

Here, Jennings-Dill is able to establish that Israel inappropriately took the Electronic Property and realized a benefit by raiding all of Jennings-Dill employees for his new employer, PSI. Such conduct has allowed him to now work with his old crew at a competitor, causing unjust enrichment for Israel and PSI. Moreover, no one at Jennings-Dill authorized such conduct or use, nor did Israel obtain authorization to use it through permission or some lawful action. Thus, the elements are already shown to have been satisfied and Jennings-Dill will be entitled to relief.

d. Jennings-Dill Can Succeed at Showing the Elements of Conversion

Jennings-Dill will also be successful at proving all of the elements of conversion. To recover under the theory of conversion, a plaintiff must show (1) an interest by plaintiff in the thing converted; (2) defendant converted the property to his own use; and (3) the use of the property was without the plaintiff's permission. *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990); *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 220 S.E.2d 116 (1975). Moreover, plaintiff must be able to show that plaintiff had title or right of possession over the property. *Crane v. Citicorp. Nat'l Servs., Inc.*, 313 S.C. 70, 72, 437 S.E.2d 50, 52 (1993) (superseded by statute on other grounds).

Here, Jennings-Dill owns the Electronic Property at issue. Jennings-Dill's Electronic Property was created for the business, and is used for many purposes - here being used for the purposes of bidding on potential clients against its competitors. The evidence has and will continue to show that Israel unlawfully took the Electronic Property for no reason other than to use it to raid Jennings-Dill of its employees and to recruit them to PSI. Moreover, Jennings-Dill has established

clear policies regarding the taking of such documents, and never gave Israel permission to access and download the documents to use after his resignation or for a competitor.

Having shown such elements have been met, it is abundantly clear that Israel is in violation of South Carolina law, and the only way in which he can be stopped is through injunctive relief.

3. *Absent Injunctive Relief, Jennings-Dill has no Adequate Remedy at Law.*

The final factor this Court should consider in determining whether to issue the injunctive relief Jennings-Dill seeks is whether Jennings-Dill has an adequate remedy at law. In cases where harm to business goodwill is alleged and established by affidavit, as in this case, even where a legal remedy (money damages) exists, injunctive relief to avoid damage to business goodwill is appropriate. *See Columbia Broad. Sys., Inc. v. Custom Recording Co.*, 258 S.C. 465, 189 S.E.2d 305 (1972) (rejecting the argument that the availability of money damages was a sufficient basis upon which to deny a motion for temporary injunction, where there may be uncertainty in fixing the measure of damages, business goodwill is at issue, or where the wrongful act may continue); *see also Peek v. Spartanburg Reg. Healthcare Sys.*, 367 S.C. 450, 456 n.2, 626 S.E.2d 34, 37 n.2 (Ct. App. 2005) (commenting that the availability of monetary damages does not preclude injunctive relief where loss of business or business goodwill is at stake); *Levine v. Spartanburg Reg. Serv. Dist., Inc.*, 367 S.C. 458, 467, 626 S.E.2d 38 (Ct. App. 2005) (holding that an injunction is proper where monetary damages alone would not remedy the harm).

Jennings-Dill has no adequate remedy at law. The damage that is being done, and will continue to be done to Jennings-Dill's business and goodwill is substantial and irreparable. While it is true that Jennings-Dill may be able to articulate some consequential damages resulting from being forced to withdraw from certain contractual obligations and projects, it will never be able to

place a monetary value on the utter destruction of its business at the hands of a ruthless former employee.

As stated above, Jennings-Dill has already seen instances where customers have expressed their frustrations with current delays and projections. These customers can elevate their frustrations by not inviting the Company to bid in the future, and may tell other customers or potential customers to not accept bids or allow Jennings-Dill to even bid on upcoming projects. Such damages are real, but not calculable at the time because it could be one customer or it could be all of Jennings-Dill's customers. The Company should not be forced to use a "wait and see" method as means to calculating damages. Instead, relief in the form of an injunction is most appropriate.

Unless Israel is immediately enjoined from ceasing his activity, Jennings-Dill's business strategy and relationships will be permanently impaired.

III. CONCLUSION

Jennings-Dill respectfully requests that the Court enter an Order granting its Motion for Temporary Injunction and restraining Israel from continued use of confidential and trade secret information.

Dated this 29th day of July, 2021.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: /s/ Phillip A. Kilgore
Phillip A. Kilgore, SC Bar No. 3449
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Affidavit of David Doser (filed July 29,
2021)

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13 TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
Jennings-Dill, Inc.,	)	
	)	
Plaintiff,	)	C. A. NO.: 2021-CP-23-03406
	)	
v.	)	
	)	
Eric Israel,	)	
	)	
Defendant.	)	
	)	

AFFIDAVIT OF DAVID DOSER

I, **DAVID DOSER**, declare under penalty of perjury that the following facts are true and correct to the best of my information and belief:

1. I am the Executive Vice President at Jennings-Dill, Inc. ("Jennings-Dill" or the "Company"). I have held this position since March 2015.

2. I have personal knowledge about Defendant Eric Israel's ("Israel") employment with, and departure from, Jennings-Dill, and Israel's activities since his last day of employment.

3. As the Executive Vice President, I have direct oversight of the pre-construction department, including estimating and engineering. I am also responsible for business development and general management. Additionally, as Executive Vice President, I am involved in operational decisions, situations and personnel matters.

A. Jennings-Dill's Bidding Process

4. Most of the business Jennings-Dill receives comes from submitting bids. I am personally involved in almost all of Jennings-Dill's bids. This process involves our evaluation of the proposed project and specifications, projecting the cost of materials, projecting the hours of labor necessary to complete the project and assigning a blended hourly labor rate to the project.

In the case of a plumbing bid, the blended rate would include wage rates for plumber helpers, plumbers, plumbing foremen, plumbing superintendent, and the project manager.

5. Jennings-Dill considers what it pays its employees, including Plumbing Division employees, to be highly confidential information. In the hands of a competitor, Jennings-Dill would be at a competitive disadvantage. In the hands of a company in the plumbing business, it would allow that company to lure away Jennings-Dill plumbers with wages above what Jennings-Dill is paying.

6. While what an individual Jennings-Dill employee earns per hour may not be confidential, a collection of all Jennings-Dill wages would be very confidential. Jennings-Dill's wage rates are unique, provide the Company with a competitive edge during the bidding process, are kept confidential and are not available to the public.

7. By using its collective wage rate data to prepare bids, Jennings-Dill does not reveal the specifics of such collections. Contractors receiving Jennings-Dill's bids cannot determine actual individual, average or collective wage rates for Jennings-Dill employees.

8. Jennings-Dill's ability to participate in project bids is dependent on the number of pending projects and the availability of skilled employees to participate in new projects.

9. Once accepted, Jennings-Dill assigns a project manager and reviews the schedule of the accepted project to determine when employees are needed on site to accomplish the work. This information is reviewed with the operations manager and the trade superintendent to see how this fits within the schedule of our existing projects. The operations manager and trade superintendent also determine which foreman should be assigned to the job and how many Jennings-Dill employees will be required to complete the work within the durations set forth in the schedule.

10. Once the job begins, the assigned foreman and crew are provided with the required material and equipment through the efforts of the superintendent and the project manager. The employees then work on performing the tasks outlined in the project schedule until the complete system is installed according to the contract documents (drawings and specifications) and final inspections are achieved.

B. Israel's Interference and Damage to Jennings-Dill's Business

11. On June 24, 2021, Jennings-Dill sent a bid to Brasfield & Gorrie for its "Project Walker" project. I was involved with developing the bid on the project through reviewing the work of our estimators against the project documents and developing the proposal. The plumbing bid was for \$1,809,381.

12. After Jennings-Dill submitted this bid, the Company suffered an abrupt and unexpected loss of employees in the Plumbing Division. Between the date of this bid and July 14, 2021, Jennings-Dill lost or learned it was going to lose a substantial portion of its plumbing workforce due to resignation, including three out of eight of its plumbing foremen. The loss of these foremen has a direct impact on the number of projects Jennings-Dill can handle.

13. On July 13, 2021, Josh Stewart, Director of Preconstruction Services at Jennings-Dill, received a call from a representative of Brasfield & Gorrie who informed him that, while our bid for the heating, ventilation and air conditioning ("HVAC") work on "Project Walker" was not accepted, our bid for the plumbing work was accepted. We were asked to confirm our acceptance of this plumbing project.

14. Members of the Jennings-Dill management team had internal discussions about whether and how we could fulfill a commitment on this Brasfield & Gorrie project and concluded we did not have the plumbing manpower to do it.

15. On July 14, 2021, Stewart informed Brasfield & Gorrie by email that Jennings-Dill needed to withdraw from the accepted bid. I was personally involved in the drafting of this email.

16. Jennings-Dill was forced to withdraw from this work because the Company lost a third of its plumbing staff between June 24, 2021, and July 14, 2021. It is my understanding that most of the employees we lost were solicited and recruited by Israel to go work at Place Services, Inc. ("PSI").

17. Jennings-Dill lost \$1,809,381 in revenue on this Brasfield & Gorrie project.

18. It is impossible for Jennings-Dill to calculate future monetary injury it has suffered and will suffer due to its loss of reputation with Brasfield & Gorrie. Jennings-Dill also cannot determine in monetary terms the cost resulting from our current inability to bid on Brasfield & Gorrie plumbing work and, even when we are able in the future, from unsuccessful bids due to the damage to our reputation.

19. Similarly, on July 26, 2021, Jennings-Dill informed construction contractor DPR that it would be withdrawing from additional work at the Greenville County Administration Building. Jennings-Dill had been awarded a change order for a "tenant fit up." Unfortunately, Jennings-Dill was forced to inform Albert VanLeaken of DPR that it had to withdraw from this additional work due to loss of plumbing manpower.

20. Jennings-Dill lost approximately \$600,000 in revenue on this project.

21. On June 11 and 30, 2021, Jennings-Dill was awarded contracts by Triangle Construction for two Prisma Health System projects at its Easley, South Carolina campus. The projects were for a renovation for to the Oncology Department and a renovation to the Emergency Department.

22. On July 6, 2021, Jennings-Dill was forced to withdraw from the contracts, again because its plumbing division was severely understaffed. Stewart informed Hunter Sizemore of Triangle by phone call.

23. Jennings-Dill lost \$202,567 in revenue lost on this project.

24. Since the dramatic loss of plumber helpers, plumbers and plumbing foremen, I have had to deal with difficult discussions with existing customers. For example, Bryant Nixon of Triangle Construction complained about our inability to timely complete our work at the Charter High School building on the Greenville Tech campus. Nixon informed me that Triangle has missed two inspections due to delays caused by Jennings-Dill's lack of capacity to complete the job. The delays are up to about two weeks at this point.

25. Since Israel's departure and raid on Jennings-Dill plumbing employees, the Company has lost over \$2.5 million in revenue from work awarded to it by the three above-mentioned contractors. Jennings-Dill has lost its trust, good will, and relationships with these long-standing customers, and likely many others.

26. In addition to these three projects it has withdrawn from, Jennings-Dill has lost out on the opportunity to bid on as many as five plumbing projects.

27. Each month, Jennings-Dill bids an average of thirteen (13) projects for mechanical work, including plumbing, HVAC, and process piping. Out of the bids received since Israel's departure and employee raid, Jennings-Dill has bid for the process piping and/or HVAC work on five projects, but was unable to bid on the plumbing work.

28. It is impossible to calculate the monetary losses Jennings-Dill has suffered from these lost opportunities.

29. If Israel is allowed to continue to use Jennings-Dill's confidential information and to raid our plumbing workforce, he will harm our ability to bid on plumbing projects in the future.

30. As a result of the gutting of our plumbing workforce, we do not expect to be in the position of being able to bid on any new work that would start prior to February of 2022.

31. It is impossible to calculate the monetary losses we will suffer if Israel is allowed to continue his unfair activities.

C. Impact of Israel's Conduct on the Business.

32. Jennings-Dill's business model relies on its ability to successfully bid on jobs. With only two thirds of the plumbing staff left, it is nearly impossible to complete the jobs already bid on, much less continuing to bid on others.

33. Jennings-Dill is doing the best it can to hire replacements for the plumbing employees who have been raided by Israel. Most of the plumbers Jennings-Dill has been able to hire in the last few weeks have come from the residential plumbing field which is very different than the commercial and industrial plumbing work Jennings-Dill specializes in. It will take years for these new plumbers to achieve the same level of productivity as those solicited by Israel and hired by PSI.

34. It also will take a long time for Jennings-Dill to be able to promote any of its remaining plumbers to plumbing foremen. As mentioned, this will have a serious impact on Jennings-Dill's ability to take on new projects.

35. This affidavit is accurate and true to the best of my knowledge.

[SIGNATURE PAGE FOLLOWS]

[Signature]

Dave Doser

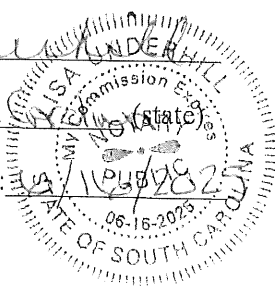
7-29-2021

Date

Sworn to before me this

29th day of July, 2021

[Signature]
Notary Public for South Carolina (state)
My Commission Expires: 06-16-2023



47996621.1

Defendant's Opposition to Motion for
Temporary Injunction

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Jennings-Dill, Inc.,)
))
Plaintiff,)
vs.)
Eric Israel,)
))
Defendant.)
_____)

CASE No.: 2021-CP-23-03406

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION FOR TEMPORARY
INJUNCTION**

Defendant Eric Israel is a plumber being sued by his former employer, Jennings-Dill, Inc. (“Plaintiff” or “Jennings-Dill”) for \$2,5000,000. Plaintiff seeks to have this Court enjoin Mr. Israel despite having no evidence that Mr. Israel ever misappropriated any confidential information and admittedly having no idea why their at-will employees are leaving. Jennings-Dill did not have any non-compete or non-solicitation agreement with Mr. Israel. Plaintiff instead relies solely on three downloads made by Mr. Israel onto an iPad *owned by Jennings-Dill and in the current possession of Jennings-Dill*. Jennings-Dill has not provided *any* sworn statements that the three files were ever removed from Jennings-Dill’s iPad or retained by Mr. Israel. In contrast, Mr. Israel has provided sworn statements that he does not possess any of the information alleged in the unverified Complaint and has provided the reason why he accessed the three files on this company-issued iPad. (Israel Aff. ¶¶10-14). There is no evidence that Mr. Israel ever misappropriated any trade secret belonging to Jennings-Dill or that he ever wrongfully solicited any at-will employee. This Court should deny Plaintiff’s Motion for a Temporary Injunction.

I. Relevant Factual Background

Mr. Israel worked at Jennings-Dill for approximately 11 years as an at-will employee with no restrictive covenants. Mr. Israel started as a plumber and was eventually promoted to foreman and then superintendent. (Israel Aff. ¶ 3). As with many professions, there is currently a labor shortage for plumbers resulting in a market-wide rise in wages. (Israel Aff. ¶ 5). Mr. Israel repeatedly raised to Jennings-Dill that they were paying below market rates and needed to raise wages to retain employees. (Israel Aff. ¶¶ 4,6). Mr. Israel also requested a raise for himself to remain at a fair wage. (Israel Aff. ¶ 6). On June 13, 2021, Mr. Israel sent an email to Jennings-Dill's management giving notice of his resignation effective July 8, 2021. (Israel Aff. ¶ 6). At that time, he did not have any offers of employment and resigned out of frustration over the low compensation being paid to those he supervised and himself. (Israel Aff. ¶ 6).

On June 24, 2021, Andy Locklair called Mr. Israel and asked if he still intended to resign on July 8. (Israel Aff. ¶ 7). The following day, Mr. Israel received an email stating that he was terminated immediately and could not work out the remainder of his notice period. (Israel Aff. ¶ 7). At that time, Mr. Israel did not have a job lined up and was unemployed due to being terminated without warning. (Israel Aff. ¶ 8). Mr. Israel was hired by Place Services, Inc. ("PSI") on July 6, 2021. (Israel Aff. ¶ 9).

On the evening of June 24, 2021, Anthony Driggers, a plumber with Jennings-Dill, inquired with Mr. Israel about a raise he had been promised. (Israel Aff. ¶ 10). During the conversation, Mr. Israel opened Sharepoint on the company issued iPad to check Mr. Drigger's current pay rate. (Israel Aff. ¶ 11). The file he initially tried to open failed to open on the iPad due to its large size. (Israel Aff. ¶ 11). Mr. Israel then tried to open the file again. Finally, he tried a different file to check Mr. Drigger's payrate. (Israel Aff. ¶ 11). None of files showed Mr. Drigger's payrate. (*Id.*) Mr. Israel did not misappropriate, take, copy, or otherwise retain any the

files he viewed on the iPad. (Israel Aff ¶ 12). The following morning on June 25, 2021, Mr. Israel returned the iPad to Jennings-Dill. (Israel Aff ¶ 13).

Mr. Israel started with PSI on July 6, 2021. Sometime later, Scottie Strickland contacted Mr. Israel to ask if PSI was hiring because he was leaving Jennings-Dill.¹ (Israel Aff ¶ 15; Strickland Aff. ¶¶ 7-8). Mr. Strickland is the only Jennings-Dill employee to be hired by PSI since Mr. Israel started at PSI.² (Israel Aff. ¶ 15). Mr. Israel has not solicited any Jennings-Dill employee to leave their position, nor has he offered any jobs to any Jennings-Dill employees. (Israel Aff. ¶ 16). Mr. Israel never entered any jobsite where Jennings-Dill was working to solicit its employees. (Israel Aff. ¶ 17).

Mr. Israel never misappropriated any confidential or trade secret information belonging to Jennings-Dill. (Israel Aff ¶ 12). Mr Israel has not possessed any confidential or trade secret information belonging to Jennings-Dill since he returned the iPad to Jennings-Dill on June 25, 2021 and never provided such information to any other entity including PSI. (Israel Aff ¶¶ 12-14).

II. Legal Standard

“Whether to grant a preliminary injunction is left to the sound discretion of the trial court....” *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) (citing *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007)). A court must remember that “[t]he remedy of injunction is a drastic one and should be cautiously applied only when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected.” *LeFurgy v.*

¹ Mr. Israel has previously discouraged Mr. Strickland from leaving Jennings-Dill. (Strickland Aff. ¶ 5).

² One other former Jennings Dill employee started at PSI on the same day as Mr. Israel. Mr. Israel did not solicit this employee to leave Jennings-Dill or to offer him a job at PSI. (Israel Aff. ¶ 16).

Long Cove Club Owners Ass'n, 313 S.C. 555, 443 S.E.2d 577, 578 (Ct. App. 1994); *Carter v. Lake City Baseball Club*, 218 S.C. 255, 62 S.E.2d 470 (1950). A preliminary injunction should be issued when it is necessary “to preserve the status quo ante.” *Hook Point, LLC v. Branch Banking & Tr. Co.*, 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012). Under South Carolina law, to obtain a preliminary injunction, a plaintiff must show: (1) irreparable harm; (2) a likelihood success on the merits; and (3) an inadequate remedy at law. *Richland Cty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018) (citing *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010)).

Plaintiff has repeatedly cited the wrong standard for issuance of a preliminary injunction. In both Plaintiff’s Motion for Temporary Injunction at ¶ 16 and in the Memorandum Supporting the Motion for Temporary Injunction on pages 10-11, Plaintiff argues that the court should “balance the equities” between the parties. The Supreme Court of South Carolina has explicitly held that “balancing the equities” is “neither necessary nor appropriate in a preliminary injunction case....” *Poynter Invs. Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15, 159 Lab.Cas. P 61 (S.C. 2010). The Court held that “the balancing requirement is subsumed by the irreparable harm and inadequate remedy at law components of the three-part test.” *Id.* The case cited by Plaintiff, *Levine v. Spartanburg Reg. Serv. Dist., Inc.*, 367 S.C. 458, 626 S.E.2d 38 (Ct. App. 2005), was specifically modified by the Court in *Poynter Invs. Inc.* to remove balancing of equities. *Id.*

III. Plaintiff Cannot Show Irreparable Harm because Plaintiff Can Easily Quantify Any Damages and Delayed Seeking an Injunction.

Plaintiff’s motion must be denied because Plaintiff is not subject to irreparable harm absent an injunction. Plaintiff has conceded that “[i]rreparable harm is, by its very nature, harm

that is difficult, if not impossible to quantify.” (Plaintiff’s Memorandum Supporting Motion for Temporary Injunction, pg 11). Plaintiff has *repeatedly* stated the exact amounts of alleged damages. (*see e.g.* Complaint ¶ 36, Motion for Temporary Injunction ¶ 6, Affidavit of Andy Locklair ¶ 43, Memorandum in Supporting Motion for Temporary Injunction at pages 8-9.) Plaintiff has easily quantified the exact amount of the alleged damages.

Plaintiff’s delay in seeking an injunction further demonstrates the lack of irreparable harm. A delay in seeking an injunction weighs against Jennings-Dill’s allegation that they will suffer irreparable damage if the preliminary injunction does not issue. *Wasabi Japanese Rest., Inc. v. Chai, Inc.*, No. 6:05-1643-HMH, 2005 U.S. Dist. LEXIS 55021, at *7 (D.S.C. Sep. 21, 2005) (finding no irreparable harm where plaintiff waited to seek preliminary injunction) (citing *Comic Strip, Inc. v. Fox Television Stations, Inc.*, 710 F. Supp. 976, 981 (S.D.N.Y. 1989); *Citibank N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985) (stating that “delay in seeking enforcement of . . . rights [via a preliminary injunction] . . . tends to indicate at least a reduced need for such drastic, speedy action.”)). According to the Affidavit of Andy Locklair submitted by Plaintiff, Jennings-Dill “discovered that Israel had accessed Jennings-Dill’s electronic data storage” on June 25, 2021. (Affidavit of Andy Locklair ¶ 18). Despite this knowledge, Plaintiff waited approximately one month to seek an injunction. Notably, despite waiting a month to protect the allegedly confidential information, ***Plaintiff has not put forward any digital forensic evidence*** that the three files were ever taken off of the company-issued iPad or misappropriated. Presumably, either Jennings-Dill was not concerned enough to preform any forensic analysis on the iPad during the month they waited or did not find any evidence that Mr. Israel misappropriated anything. Plaintiff cannot show irreparable harm to warrant an injunction.

IV. Plaintiff Cannot Show Likelihood of Success on the Merits.

a. Plaintiff has not put forward any evidence that Mr. Israel misappropriated anything.

All of Plaintiff's causes of action rely on the false premise that Plaintiff misappropriated or converted three files accessed on a company-issued iPad between 8:53 and 8:55 pm on June 24, 2021. Plaintiff has not provided any evidence that these files were misappropriated or converted by Mr. Israel. None of the affidavits filed by Plaintiff state that Mr. Israel ever copied, downloaded, or otherwise removed these files from Plaintiff's iPad, which was promptly returned to Plaintiff on June 25, 2021 as requested by Andy Sinclair. (Israel Aff. ¶ 7, Ex. A.) Likewise, Plaintiff has not provided any forensic evidence that these files ever left the company-issued iPad.

In contrast, Mr. Israel has submitted a sworn affidavit stating that he did not misappropriate any of Jennings-Dill's files at any time and has not possessed any confidential or trade secret information since he returned his iPad to Jennings-Dill on June 25, 2021. (Israel Aff. ¶¶ 12-14). Mr. Israel has not ever provided any confidential or trade secret information belonging to Jennings-Dill to any other individual or entity, including his current employer. (*Id.*)

b. Plaintiff has not put forward any evidence that Mr. Israel wrongfully solicited any Jennings-Dill employees.

Mr. Israel did not have any non-compete or non-solicitation agreement with Jennings-Dill. Mr. Israel has not used any confidential or trade secret information to contact or solicit any Jennings-Dill employee. (Israel Aff. ¶¶ 12-14, 16). South Carolina has long recognized the doctrine of employment at-will. *Nelson v. CCPRC*, 362 S.C. 1, 605 S.E.2d 744 (S.C. App. 2004) (citing *Prescott v. Farmers Tel. Coop., Inc.*, 335 S.C. 330, 516 S.E.2d 923 (1999)). "At-will employment is generally terminable by either party at any time, for any reason or no reason at all." *Id.* (quoting *Prescott*, 335 S.C. at 334, 516 S.E.2d at 925).

Without any proof or explanation, Jennings-Dill attempts to blame Mr. Israel for its failure to retain plumbers. Only one employee of Jennings-Dill has joined PSI from Jennings-Dill since Mr. Israel started on July 9, 2021. (Israel Aff. ¶ 15). This employee, Scottie Strickland, has provided an affidavit to this Court specifically stating that he was not solicited by Mr. Israel and in fact reached out to Mr. Israel about a job at PSI after he became unsatisfied with his job at Jennings-Dill and decided to leave. (Strickland Aff. ¶¶ 6-7.)

Plaintiff's own recitation of the facts does no support that Mr. Israel is using any confidential information to solicit employees. Plaintiff alleges that Mr. Israel has gone onto Jennings-Dill jobsites to solicit employees. While Mr. Israel denies he has gone onto any jobsite since his termination, such behavior would indicate that he does not have access to any contact information for these employees. (Israel Aff. ¶¶ 16-17). Even if Mr. Israel was actively soliciting Plaintiff's employee—and he is not—any solicitation would not be wrongful as solicitation is not prohibited by any contract and no confidential or trade secret information is being used in any solicitation. Plaintiff is not likely to be successful on the merits of its claims.³

³ Plaintiff's claims additionally fail on their merits because the information allegedly taken is not a trade secret under South Carolina law. Employees' contact information is not proprietary information belonging to Jennings-Dill as this information was already in Mr. Israel's cell phone because Jennings-Dill required him to use his personal phone to communicate with employees. (Israel Aff. ¶ 18). Plaintiff's claims under the South Carolina Unfair Trade Practices Act ("SCUPTA") fail because SCUPTA does not apply to disputes between an employer and employee and these allegations do not adversely affect the public interest. *See e.g. Woodson v. DLI Props., LLC*, 406 S.C. 517, 753 S.E.2d 428, 435 (S.C. 2014) (holding that SCUPTA "is not available to redress a private wrong because an unfair or deceptive act that affects only the parties to the transaction is beyond the scope of the SCUTPA"); *Miller v. Fairfield Communities, Inc.*, 299 S.C. 23, 382 S.E.2d 16, 20 (S.C. Ct. App. 1989) (holding that a plaintiff's claim based on the employer-employee relationship is not covered by the SCUTPA), *Davenport v. Island Ford, Lincoln, Mercury, Inc.*, 320 S.C. 424, 465 S.E.2d 737, 740 (S.C. Ct. App. 1995) (stating that the employer-employee relationship does not fall within the intended scope of the SCUTPA).

V. Plaintiff Has an Adequate Remedy at Law Because Plaintiff Has Alleged Money Damages.

Plaintiff has an adequate remedy at law. Plaintiff seeks money damages for their claims. “[E]quitable relief is unnecessary when an adequate remedy for money damages is available at law.” *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 8, 732 S.E.2d 876, 879 (2012). An “injury is irreparable where the damages are estimable only by conjecture, and not by any accurate standard.” (5A Corbin on Contracts § 1142; 42 Am. Jur. 2d Injunctions § 49 (1969)). Here, Plaintiffs have pled to the dollar how much they allege they are owed. Plaintiff has an adequate remedy at law and is not entitled to equitable relief because the alleged damages can be specifically calculated in some manner. *Milliken & Co. v. Morin*, 685 S.E.2d 828, 386 S.C. 1 (Ct. App. 2009) Plaintiff has an adequate remedy at law and is not entitled to an injunction.

VI. Conclusion

For the reasons stated herein, Plaintiff’s Motion for a Temporary Injunction should be denied.

Respectfully Submitted,

GROVE OZMENT, L.L.C.

/s Matthew R. Ozment
 Matthew R. Ozment (#80072)
 Email: Matt@go-lawyers.com
 100 Williams Street
 Greenville, SC 29601
 Telephone: 864-516-2222

ATTORNEY FOR PLAINTIFF

August 1, 2021

Affidavit of Eric Israel and exhibit filed
therewith (filed August 2, 2021)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
 _____)

AFFIDAVIT OF ERIC ISRAEL

I HEARBY SWEAR AND AFFIRM UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY RECOLLECTION:

1. I, Eric Israel, am a competent adult over the age of 18 and can truthfully testify. I hereby testify voluntarily and without any coercion.
2. I am a citizen and resident of South Carolina.
3. I was employed by Jennings-Dill, Inc. as a plumber, then foreman, and then superintendent for approximately 11 years until June 25, 2021.
4. Prior to my termination, I repeatedly raised to Jennings-Dill's management that the plumbers and foremen working under me were being paid below market rates. I requested raises for plumbers, foremen, and myself.
5. Plumbers are currently in high demand due to a labor shortage resulting in higher wages.
6. On or about June 13, 2021, I sent an email to Jennings Dill's management giving notice of my intent to resign July 8, 2021. I did not have any offers of employment when I decided to resign. I resigned out of frustration over the low compensation being paid to those I supervised and myself.
7. Andy Locklair called me on June 24, 2021 (Ex. A) to ask if I still intended to resign. On June 25, 2021, Andy Locklair informed me that I was terminated and did not need to continue working the final two weeks of my notice of resignation.
8. The termination caught me off guard and was not expected. I did not have any job offers at the time I was terminated. Consequently, I was out of work until I was able to find a new job.

9. I was hired by Place Services, Inc. ("PSI") on July 6, 2021. Additionally, another former Jennings-Dill employee started with PSI on the same day. I did not have any involvement with this employee leaving Jennings-Dill or being hired by PSI.
10. On the evening of June 24, 2021, Anthony Driggers asked me if he had received a raise that he was promised by Jennings Dill. I supervised Mr. Driggers at Jennings Dill.
11. While I was talking to Mr. Driggers, I opened Sharepoint on the company issued iPad to check Mr. Drigger's current pay rate. The file I initially tried to open failed to open on the iPad due to its size. I tried to open it again. I then tried a different file to check Mr. Drigger's payrate. I was unable to find the payrate in the files I viewed.
12. I did not misappropriate, take, copy, or otherwise retain any of the files off of SharePoint or off of the iPad and never have participated in such conduct.
13. I do not possess any confidential or trade secret information belonging to Jennings-Dill. I have not possessed any confidential or trade secret information belonging to Jennings-Dill since I returned the iPad to Jennings-Dill on June 25, 2021.
14. I have never provided any confidential or trade secret information belonging to Jennings-Dill to any other individual or entity, including my current employer.
15. Since I left Jennings-Dill, only one former Jennings-Dill employee, Scottie Strickland, has been hired by PSI directly from Jennings-Dill. This employee contacted me regarding a job at PSI. I did not solicit him to leave Jennings-Dill.
16. I have not solicited any employee with Jennings-Dill to leave Jennings-Dill. I have not offered any position with PSI to any former Jennings-Dill employee.
17. I have never entered a jobsite where Jennings-Dill was working to solicit any employee.

Exhibit A to Affidavit of Eric Israel



Andy Locklair

Jennings Dill

(704) 363-3778



View contact details

History



Jun 25 11:24 AM

Incoming call, 3 mins 13 sec



Jun 24 6:45 PM

Incoming call, 38 mins 21 sec



Jun 24 6:38 PM

Outgoing call, 0 mins 3 sec



Jun 22 1:26 PM

Incoming call, 6 mins 11 sec



Favorites



Edit



Share



More





Resignation



June 25, 2021 6:20 AM

Andy Locklair

Details

Eric,

In follow up to our conversation late yesterday afternoon, we accept your resignation. A two week notice will not be required. Please make arrangements this morning to return all company assets including but not limited to truck, keys, electronic devices (with passwords), etc. [today](#). Most of our operational assets are in the field, so please let me know what time this morning you will be here and I will clear my schedule to receive.

Andy Locklair

Vice President | **Jennings-Dill, Inc.**

Office [864-235-2518](tel:864-235-2518) Cell [704-363-3778](tel:704-363-3778)

alocklair@jennings-dill.com

www.jennings-dill.com

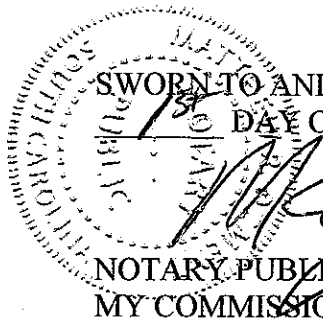
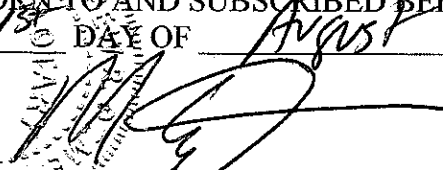
18. At Jennings-Dill's direction, I used my personal cell phone during my employment at Jennings-Dill for all business matters.

19. At no time have I ever worked at the direction of or with Phillip Dobbins to solicit any Jennings-Dill employee.

I certify under penalty of perjury that the foregoing affidavit is true and correct.

Executed on this 1 day of August, 2021.


Eric Israel


SWORN TO AND SUBSCRIBED BEFORE ME THIS
1st DAY OF August, 2021.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3/22/27

Affidavit of Scottie Strickland (filed August
2, 2021)

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

AFFIDAVIT OF SCOTTIE STRICKLAND

I HEARBY SWEAR AND AFFIRM UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY RECOLLECTION:

1. I, Scottie Strickland, am a competent adult over the age of 18 and can truthfully testify. I hereby testify voluntarily and without any coercion.
2. I am a citizen and resident of South Carolina.
3. I was employed by Jennings-Dill, Inc. as a plumber and then a foreman for approximately 6 years.
4. Eric Israel was my superintendent for most of my employment with Jennings-Dill.
5. In 2021 while Mr. Israel was my superintendent, I decided I was no longer happy with my employment at Jennings-Dill and told Mr. Israel that I was considering resigning from Jennings-Dill to pursue other employment. Mr. Israel discouraged me from leaving Jennings-Dill and convinced me to stay at Jennings-Dill.
6. In late June 2021, Mr. Israel left Jennings-Dill. After Mr. Israel left, I again decided I was not satisfied with the working conditions and pay at Jennings-Dill. I decided to pursue other employment.
7. I contacted Mr. Israel to inquire about employment at his new employer, Place Services, Inc. I made the initial contact with Mr. Israel.
8. Mr. Israel never solicited me or contacted me in any way regarding Place Services prior to my contact to him asking for a job.
9. After deciding to leave Jennings-Dill, I actively investigated employment with several employers other than Place Services.

SDS

10. I am not aware of Mr. Israel ever going ^{on} to any Jennings-Dill jobsite since his termination.

I certify under penalty of perjury that the foregoing affidavit is true and correct.

Executed on this 1 day of August, 2021.


Scottie Strickland

SWORN TO AND SUBSCRIBED BEFORE ME THIS
12th DAY OF August, 2021.


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3/22/24

Supplemental Affidavit of Andy Locklair
and all exhibits filed therewith (filed August 2, 2021)

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Jennings-Dill, Inc.,)
Plaintiff,)
v.)
Eric Israel,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT

C. A. NO.: 2021-CP-23-03406

SUPPLEMENTAL AFFIDAVIT OF ANDY LOCKLAIR

I, **ANDY LOCKLAIR**, declare under penalty of perjury that the following facts are true and correct to the best of my information and belief:

1. I am providing this supplemental affidavit to my affidavit provided to the Court with Jennings-Dill, Inc.'s ("Jennings-Dill") Motion for Temporary Injunction, filed on July 21, 2021.

2. I have reviewed a brief filed on behalf of Defendant Eric Israel ("Israel") in this case ("Israel Brief") along with his affidavit ("Israel Aff.").

3. Israel states, "At [the] time [Israel sent his June 13, 2021, email], he did not have any offers of employment" (Israel Brief at p. 2 (citing Israel Aff at ¶ 6).

4. This is not what he stated to me. On June 13, 2021 at 6:56 pm, Defendant Eric Israel ("Israel") emailed me. (Exhibit A.) In the email, Israel said he was resigning from Jennings-Dill and "**ha[d] been given a good opportunity with another company** for change and growth." (emphasis added). Despite the email, I and other members of management tried to convince Israel to stay.

5. Israel states, “On June 24, 2021, Andy Locklair called Mr. Israel and asked if he still intended to resign on July 8” and “The following day, Mr. Israel received an email stating that he was terminated immediately and could not work out the remainder of his notice period.” (Israel Brief at p. 2 (citing Israel at ¶ 7).)

6. This is a misstatement of what happened. On June 24, 2021 at 6:38 pm, Defendant Israel called my cell phone. (*See* Israel Aff. Exhibit A.) I was tied up and I texted him something like: “I’m in the middle of something, I will call you right back.” I do not have the text message saved any longer. I deleted Israel’s messages and cell phone number after he left Jennings-Dill for business reasons, but before litigation began.

7. I called Israel back at 6:45 pm. We talked on the phone for about thirty-eight (38) minutes. (*See* Israel Aff. Exhibit A.) During the call, Israel resigned and tried to give a two week notice. I told him that was not necessary, and his final day would be that day. I asked him to bring all Jennings-Dill property to the office the following day.

8. Israel states, “On June 25, 2021, **Andy Locklair informed me that I was terminated** and did not need to continue working the final two weeks of my notice of resignation.” (Israel Aff. ¶ 7 (emphasis added).) This also misstates what occurred.

9. Israel voluntarily resigned the night before. Israel had no right to work a notice period. My email to him the next day was simply confirmation of the conversation: “In follow up to our call late yesterday afternoon, **we accept your resignation**. A two week notice will not be required.” (Israel Aff. Exhibit A (emphasis added).)

10. On June 25, 2021, at around 6:30 am, I discovered Israel had accessed and downloaded three (3) Jennings-Dill confidential and trade secret documents from ShareFile. The terms “access” and “download” mean two different things. Israel could “access” or “view” the

documents on ShareFile, or Israel could “download” the files and move them to other sources, such as cell phones or personal emails.

11. Exhibit B to this Supplemental Affidavit is a screen shot of what I saw when I checked Israel’s ShareFile activity. Exhibit C to this Supplemental Affidavit is an Excel spreadsheet of the items Israel accessed and downloaded.

12. Shortly after the discovery, Israel came to the Jennings-Dill office to return his iPad, keys, truck and other Jennings-Dill property. I did not ask Israel about the downloads at the time because I wanted to talk to Bruce Henson, President of Jennings-Dill, first.

13. Israel states that Jennings-Dill delayed taking action in this case. (Israel Brief at pp. 4-5.) Jennings-Dill acted as quickly as it could when it learned relevant information.

14. This started on July 13, 2021, when Phillip Dobbins, former Jennings-Dill Plumbing Superintendent, sent an email to Israel’s Jennings-Dill email address. (Ex. D.) It appears Dobbins sent the email to Israel’s old email address by mistake. In the email, Dobbins, now a Place Services, Inc. (“PSI”) is giving direction to Israel, now a new PSI employee, regarding training for a former Jennings-Dill employee.

15. It was at that time, Jennings-Dill discovered that Israel was now employed at PSI, and that some of the other plumbers who recently left Jennings-Dill who were referred to in the email were now also employed by PSI.

16. It was only at this moment that Jennings-Dill was able to connect Israel’s actions to download its documents with what appeared to be a clear scheme to solicit and recruit Jennings-Dill employees by having Israel use the unlawfully obtained information to raid Jennings-Dill’s plumbing department.

17. As a result, Jennings-Dill took legal action against Israel and Dobbins.

18. Anthony Driggers no longer works for Jennings-Dill. His last day was July 15, 2021. Jennings-Dill terminated his employment because he “no-called/no-showed” too many times.

19. Driggers is the brother of Israel’s girlfriend.

20. Driggers was not a reliable employee, and had performance issues. Specifically, Driggers had difficulty showing up for work, and his main source of transportation was his foreman.

21. Driggers’ last pay raise was in October 2020, and the Company never told Driggers about an anticipated or expected pay raise around the months of June or July 2021.

22. Bruce Henson and I process and approve all pay raises, and we did not discuss a raise for Driggers around the time of Israel’s departure.

23. Prior to leaving Jennings-Dill, Scottie Strickland told our Operations Manager that Israel had come on to a jobsite to talk to him about leaving Jennings-Dill. Israel was already employed at PSI at the time of the conversation.

24. This affidavit is accurate and true to the best of my knowledge.

[SIGNATURE PAGE FOLLOWS]

Andy Locklar
Andy Locklar

8/2/21
Date

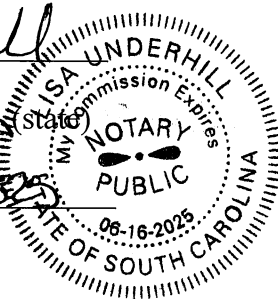
Sworn to before me this

2nd day of August, 2021

Ron Underhill

Notary Public for South Carolina (state)

My Commission Expires: 6/16/2025



48027736.1

EXHIBIT A

From: Eric Israel <eisrael@jennings-dill.com>
Sent: Sunday, June 13, 2021 6:56 PM
To: Andy Locklair <alocklair@jennings-dill.com>
Subject: Resignation

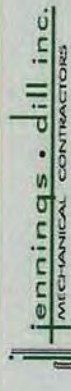
This has not been an easy decision to make but July 8th will be my last day. I have been given a good opportunity with another company for change and growth.

I am very appreciative of the opportunity that has been given to me at Jennings Dill, I have grown alot and I have learned alot can't say enough positive.

I will work my one month notice to my fullest and will continue to make the plumbing department the best I can. Monday I will be happy to take any phone calls about this.

Thanks,
Eric Israel
Jennings Dill, superintendent
864-373-1908

EXHIBIT B



Dashboard

Folders

Workflows

 Inbox

People

[Manage Users Home](#)

[Browse Employees](#)

Browse Clients

Shared Address Book

Personal Address Book

Distribution Groups

[Resend Welcome Emails](#)

Settings

Eric Israel's Folders and Activity Logs

i All reports statistics are generated in real time. Please be patient as some reports may take several minutes to load

Folder Access

To generate a report of all folders that this user has access to, click the "Generate Folder Access Report" link below.

Some users have access to hundreds or thousands of folders, so this report may take several minutes to compile.

Generate Folder Access Report

Activity Log

To generate an activity log, you may specify the timeframe and activity types. Some reports may take several minutes to load.

*User activity log data available beginning 4/16/21

Start Date:

06/24/2021

End Date:

06/25/2021

Activity Types

☒ Download/View
 ☒ Move Files/Folders
 ☒ Create URLs
 ☒ DLP Share

☒ Upload ☒ Restore Files/Folders ☒ Check In/Check Out

☒	Delete Files/Folders	☒	Create Folders	☒	DLP Scan (OK)
-------------------------------------	----------------------	-------------------------------------	----------------	-------------------------------------	---------------

☒ Edit
 ☒ Create Notes
 ☒ DLP Scan (Rejected)

Generate Excel report
021CP2303406

EXHIBIT C

Date	ItemName	Activity	User	Email	Company	IPAddress	Location	EventID
6/24/21 8:55 PM	/Jennings-Dill Common Folder/Field Resources/Personnel Report Jan 2021 - Dec 2021.xlsx	Download	Eric Israel	eisrael@jennings-dill.com	Jennings-Dill	174.193.1.126	US, Fayetteville, North Carolina	ffc56932-9a2b-ect5-3d0d-c2e2ae20ceff
6/24/21 8:55 PM	/Jennings-Dill Common Folder/Field Resources/ID Employees List.xlsx	Download	Eric Israel	eisrael@jennings-dill.com	Jennings-Dill	174.193.1.126	US, Fayetteville, North Carolina	ff585b9b-f80a-42ee-95ff-1ad5ffc15886
6/24/21 8:53 PM	/Jennings-Dill Common Folder/Field Resources/Employee Documents/Personnel Report.xlsx	Download	Eric Israel	eisrael@jennings-dill.com	Jennings-Dill	174.193.1.126	US, Fayetteville, North Carolina	ffc7abb6-b090-19ac-abdf-15e4dc769d77

EXHIBIT D

From: Phillip Dobbins <pdobbins@placeservicesinc.com>
Sent: Monday, July 12, 2021 11:53 AM
To: Eric Israel <erisrael@jennings-dill.com>
Subject: Fwd: Mindforge Status

Tony smith needs to do this.

Thanks-
 Phillip Dobbins
 864-991-1603



Phillip Dobbins
 Estimator

M: 864-991-1603
 T: 678-880-4777x 217
 201 Gateway Drive Canton, Ga 30115



www.placeservicesinc.com

Begin forwarded message:

From: Ashley Bruley <abruley@placeservicesinc.com>
Date: July 12, 2021 at 11:48:47 AM EDT
To: Jeff Lax <jlax@placeservicesinc.com>, Scott Blakley <sblakley@placeservicesinc.com>, David Daniel <ddaniel@placeservicesinc.com>, Kasey Underwood <kunderwood@placeservicesinc.com>, James Devine <jdevine@placeservicesinc.com>, Phillip Dobbins <pdobbins@placeservicesinc.com>
Subject: RE: Mindforge Status

Good Moring,

I know I have spoken to some of you individually regarding your status but, this is where Mindforge stands as of this morning. I have attached the instructions and details here for you. If you have any questions please feel free to reach out to me. Again this needs to be resolved ASAP.

Employee	Division	Mindforge Status
Craig Campbell	Electrical	Not Started
Dillon Kent	Plumbing	Not Started
Jorge Gutierrez	Electrical	Not Started
Phillip Palmer	Electrical	2/4 Courses
Casey Neiderman	Electrical	Not Started
Daimion Mahone	Electrical	Not Started
Eric Edwards	Plumbing	2/4 Courses
Anthony Smith	Plumbing	Not Started
Bradley Hulme	Electrical	Not Started
Angel Pineiro	Electrical	Not Started
James Perkins	Electrical	Not Started

Gerardo Montalvo	Electrical	Not Started
James Wright	Electrical	Not Started
Robert Spruill	Electrical	Not Started
Zaire Myers	Plumbing	Not Started
Brian Weaver	Electrical	Not Started

Ashley Bruley
Office Manager- Electrical & Plumbing

M: 770-710-4220
T: 678-880-4777x132
201 Gateway Drive Canton, Ga 30115

www.placeservicesinc.com

From: Ashley Bruley

Sent: Friday, July 9, 2021 2:15 PM

To: 'Jeff Lax (jlax@Placeservicesinc.com)' <jlax@Placeservicesinc.com>; Scott Blakley <sblakley@Placeservicesinc.com>; David Daniel <ddaniel@Placeservicesinc.com>; Kasey Underwood <kunderwood@Placeservicesinc.com>; James Devine <jdevine@Placeservicesinc.com>; Phillip Dobbins <pdobbins@placeservicesinc.com>

Cc: jgarciajoel9@gmail.com; craigcampbell6223@gmail.com; dillonkent75@gmail.com; Drumjorgy25@gmail.com; ZAIREMYERS@AOL.COM; gerar.mmg@gmail.com; howellphillip42@gmail.com; virusenterprise@yahoo.com; Bhulme45@gmail.com; aw.smith429@gmail.com; Edub761@gmail.com; d96mahone@gmail.com; casey.neiderman@hotmail.com; phillippalmer_5@hotmail.com

Subject: Mindforge Status

Good Afternoon,

The following guys are still pending Mindforge completion. We have provided more than sufficient time to get this resolved. They need to have all 4 courses complete by the end of the day Monday 7/12/2021.

PMs: If/when you speak with them please remind them to get this taken care of.

Employee	Division	Mindforge Status
Angel Pineiro	Electrical	Not Started
Bradley Hulme	Electrical	Not Started
Casey Neiderman	Electrical	Not Started
Craig Campbell	Electrical	Not Started
Daimion Mahone	Electrical	Not Started
Dillion Kent	Plumbing	Not Started
Eric Edwards	Electrical	2/4 Courses Complete

Gerardo Montalvo	Electrical	Not Started
James Perkins	Electrical	Not Started
James Wright	Electrical	Not Started
Joel Garcia	Electrical	2/4 Courses Complete
Jorge Gutierrez	Electrical	Not Started
Phillip Howell	Electrical	Not Started
Phillip Palmer	Electrical	Not Started
Tony Smith	Plumbing	Not Started

Proposed Order submitted by Appellant on
August 12, 2021

wrongfully solicited. Jennings-Dill submits that it “believes” it has lost eleven plumbing employees due Mr. Israel’s solicitations but has not submitted any admissible evidence to support this claim. With the exception of Defendant and one other former employee, Jennings-Dill has not shown that any of the eleven employees even work for PSI. Mr. Israel’s sworn affidavit states that he has not solicited any employee to leave Jennings-Dill. Defendant has also filed an affidavit from Scottie Strickland, the only employee named by Jennings-Dill as being solicited by Mr. Israel. Mr. Strickland swears in his affidavit that he was not solicited by Israel and in fact contacted Israel for a job at PSI after growing tired of the working conditions at Jennings-Dill.

Jennings-Dill has not shown that irreparable harm will occur absent an injunction as the alleged harm is conjectural and dependent on the speculative beliefs of Plaintiff. Furthermore, Jennings-Dill also appears to have an adequate remedy at law through monetary damages for each of its claims. Defendant Plaintiff’s Motion for Temporary Injunction is **DENIED**.

BACKGROUND

Many of the facts before the Court are not in dispute.

1. The Parties.

Plaintiff Jennings-Dill, Inc. (“Jennings-Dill” or “Plaintiff”) is a mechanical contracting business providing HVAC, plumbing, and process piping services to customers primarily for industrial and commercial facilities, hospitals, schools, and office buildings. Defendant Eric Israel is a plumber who started with Jennings-Dill approximately eleven years ago. Mr. Israel was initially hired as a plumber and was then promoted to foreman, and eventually superintendent at Jennings-Dill.

2. End of Israel’s Employment at Jennings-Dill

On June 13, 2021, Mr. Israel sent an email to Andy Locklair, the Vice President of Operations at Jennings-Dill, resigning from his employment with his final working day being July 8, 2021. On June 24, 2021, Mr. Locklair and Mr. Israel spoke on the phone regarding Mr. Israel's intent to follow through with his resignation. The following day, Mr. Locklair sent Mr. Israel an email ending his employment stating that "two week notice will not be required" and instructing Mr. Israel to return all Jennings-Dill property the same day.

Also on June 24, 2021, after Mr. Israel and Mr. Locklair spoke on the phone, Mr. Israel accessed Jennings-Dill's Sharepoint on Jennings-Dill's iPad and downloaded three files between 8:53 and 8:55 p.m. These files were entitled "Personnel Report," "Personnel Report Jan 2021-Dec 2021," and "JD Employee List." Jennings-Dill contends these files constitute trade secrets under the SCTSA because they contain employee contact information and pay data effecting their ability to competitively bid.¹ None of these files nor their contents have been submitted as evidence to the Court. On June 25, 2021, in accordance with Mr. Locklair's instruction, Mr. Israel returned the iPad to Jennings-Dill. Mr. Israel submitted a sworn affidavit stating that he accessed the three files to check the payrate of a Jennings-Dill employee under his supervision at that employee's request. Mr. Israel stated in his affidavit that he "did not misappropriate, take, copy, or otherwise retain any of the files off of SharePoint or off of the iPad" and does not possess any of the three files.

3. Post-Employment Actions

Mr. Locklair submitted an affidavit stating that he became aware that Mr. Israel downloaded the three files on June 25, 2021, the same day that Mr. Israel returned the iPad. Mr. Israel's sworn affidavit states that he was hired by PSI on July 6, 2021. On July 13, 2021, Mr.

¹ Jennings-Dill has not alleged that it lost any bid or customer related to a competitor's knowledge of this data nor has it alleged it lost any bid or customer to Mr. Israel's current employer.

Locklair became aware that another former Jennings-Dill employee who worked for PSI, Phillip Dobbins, sent an email to Mr. Israel's old Jennings-Dill email address regarding the training of another former Jennings-Dill employee who was employed by PSI.

It is undisputed that that eleven Jennings-Dill plumbing employees including Mr. Israel have recently left the company with nine leaving in July. Mr. Locklair's affidavit states that he has "received reports" that Mr. Israel solicited Jennings-Dill employees at jobsites and provided a hearsay account that Mr. Israel solicited one former Jennings-Dill employee, Scottie Strickland, who left Jennings-Dill and is now employed by PSI. Without any evidence or additional sworn statements, Mr. Locklair states that he "believes we will find out most of these have gone to work for PSI."

Mr. Israel submitted a sworn affidavit denying that he entered any Jennings-Dill jobsite or solicited any employees to leave Jennings-Dill. Scottie Strickland, the only employee who Locklair averred by name to have been solicited by Israel, submitted a sworn affidavit stating that he was not solicited to leave Jennings-Dill by Mr. Israel. To the contrary, Mr. Strickland swore that he contacted Mr. Israel regarding a position at PSI.

Mr. Locklair has sworn that Mr. Israel's alleged solicitations "has caused roughly \$2,500,000 in lost revenue." Jennings-Dill also submitted an affidavit from David Doser, its Executive Vice President stating that Jennings-Dill "lost over \$2.5 million on revenue" due to Mr. Israel's "raid" on employees and has not been able to bid on five new projects. Additionally, Mr. Doser averred that Jennings-Dill cannot bid on any new plumbing work that will begin prior to February of 2022 due to the loss of plumbers. Jennings-Dill also purports that the loss of ability to perform work has resulted complaints from one customer and damaged its reputation.

4. Lawsuit filed by Jennings-Dill

Plaintiff filed this action on July 20, 2021, alleging conversion, breach of duty of loyalty, breach of fiduciary duty, violation of the South Carolina Unfair Trade Practice Act (“SCUTPA”), misappropriation of trade secrets under the South Carolina Trade Secrets Act (“SCTSA”), civil conspiracy, unjust enrichment/quantum meruit, and tortious interference with contractual relations. On the same day, Plaintiff filed the Motion now before the Court seeking to enjoin Defendant from using confidential and trade secret information and from soliciting Jennings-Dill employees to leave their employment and to work for Mr. Israel’s new employer. A hearing was held on the Motion for Temporary Injunction on August 3, 2021, with all Parties present and represented by counsel. Prior to the hearing, each Party submitted briefs along with supporting affidavits for consideration by the Court.

LEGAL STANDARD

Due to its extraordinary nature, courts should issue injunctions with caution and only where no adequate remedy exists at law. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006); *LeFurgy v. Long Cove Club Owners Ass’n*, 313 S.C. 555, 443 S.E.2d 577, 578 (Ct. App. 1994) (“[t]he remedy of injunction is a drastic one and should be cautiously applied only when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected.”). Under South Carolina law, to obtain a preliminary injunction, a plaintiff must show: (1) irreparable harm; (2) a likelihood success on the merits; and (3) an inadequate remedy at law. *Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018) (citing *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010)).

An injunction is a drastic remedy that courts may use in their discretion in order to prevent irreparable harm to a party. *Denman v. City of Columbia*, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010). “[T]he sole purpose of a temporary injunction is to preserve the status quo....” *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). The

decision to grant or deny temporary injunctive relief is within the sound discretion of the trial judge and will not be overturned absent an abuse of discretion. *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 520 (2000).

ANALYSIS

Jennings-Dill has failed to satisfy the three elements necessary for this Court to grant an injunction. No evidence exists in the record to show Mr. Israel took any trade secrets or confidential information belonging to Jennings-Dill. Jennings-Dill's allegation that Mr. Israel used its trade secrets to solicit employees is purely speculative and reliant on hearsay statements. Jennings-Dill has failed to show that it will suffer irreparable harm or that no adequate remedy at law exists.

1. Jennings-Dill Failed to Show a Likelihood of Success on the Merits to Warrant an Injunction.

a. Plaintiff has failed to show that Mr. Israel has misappropriated any trade secret or confidential information belonging to Jennings-Dill.

Plaintiff has not submitted any evidence to show Mr. Israel possessed or used any trade secrets or confidential information belonging to Jennings-Dill. Each of the four causes of action relied on by Plaintiff for an injunction stand on the unproven premise that Plaintiff stole Jennings-Dill's trade secrets in the form of the three files viewed by Mr. Israel on is company-issued iPad on June 24, 2021.² Jennings-Dill has not submitted *any* evidence that Mr. Israel misappropriated or converted these files. There is no evidence before the court that the three files ever left Jennings-Dill's iPad before it was returned to Jennings-Dill on June 25, 2021. Jennings-Dill asks this court to assume that Mr. Israel stole the files simply because he viewed them. However, when issuing an injunction, the Court "cannot substitute assumption for proof."

² Plaintiff argues an injunction is appropriate under the SCTSA, the SCUTPA and its claims for unjust enrichment and conversion.

Delmar Studios of Carolinas v. Kinsey, 104 S.E.2d 338, 233 S.C. 313 (S.C. 1958). According to the Affidavit of Andy Locklair submitted by Plaintiff, Jennings-Dill “discovered that Israel had accessed Jennings-Dill’s electronic data storage” on June 25, 2021. Despite this knowledge, Plaintiff waited approximately one month to seek an injunction and has not put forward any digital forensic evidence that the three files were ever taken off of the company-issued iPad or misappropriated. Mr. Israel has submitted under penalty of perjury that he “did not misappropriate, take, copy, or otherwise retain any of the files off of SharePoint or off of the iPad and never have participated in such conduct” and that he does “not possess any confidential or trade secret information belonging to Jennings-Dill.”

Additionally, Plaintiff has failed to show that the three files are trade secrets under the SCTSA. Plaintiff must first prove the existence of a trade secret to show any misappropriation. *Lowndes Products, Inc. v. Brower*, 259 S.C. 322, 191 S.E.2d 761 (S.C. 1972) (“The burden of proving the existence of a trade secret falls, of course, upon the plaintiff”). The SCTSA defines “Trade secret” as follows:

(5) “Trade secret” means:

(a) information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) A trade secret may consist of a simple fact, item, or procedure, or a series or sequence of items or procedures which, although individually could be perceived as relatively minor or simple, collectively can make a substantial difference in the efficiency of a process or the production of a product, or may be the basis of a marketing or commercial strategy. The collective effect of the items

and procedures must be considered in any analysis of whether a trade secret exists and not the general knowledge of each individual item or procedure.

S.C. Code § 39-8-20(5).

Plaintiff has not met its burden to show that the three files accessed by Mr. Israel were trade secrets. Plaintiff has not submitted the files to the Court for review. Plaintiff contends the files contained the names, email addresses, phone numbers, cities of residence, and pay information for Jennings-Dill employees. However, it is uncontroverted that much of this information was known to Defendant as Plaintiff required him to use his personal cell phone to contact employees. Furthermore, there is no evidence that this information has been used to solicit any employee. There are no allegations of emails or phone numbers being used in any solicitations. To the contrary, Plaintiff has submitted hearsay statements from unnamed individuals that Mr. Israel personally visited employees at job sites. Plaintiff has failed to show it is likely to be successful in proving Mr. Israel took any trade secrets or confidential information.

b. Plaintiff failed to show that Mr. Israel solicited any employees.³

Plaintiff's sole evidence of solicitation of employees by Mr. Israel are hearsay statements in the affidavits of Andy Locklair and Mr. Locklair's personal speculation. Plaintiff has not submitted *any* direct evidence of solicitation by Mr. Israel. Plaintiff cannot rely on hearsay in its

³ As an initial matter, the Court notes that it is undisputed that Mr. Israel is not under any non-solicitation agreement. Mr. Israel is currently free to solicit Jennings-Dill's employees. South Carolina courts recognize that the rights curtailed by restrictive covenants have value and held that valuable consideration is required for a restrictive covenant to be enforceable. *Poole v. Incentives Unlimited, Inc.*, 345 S.C. 378, 548 S.E.2d 207 (S.C. 2001) (citing *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 72, 119 S.E.2d 533, 542 (1961) (emphasis added)). Here, Plaintiff seeks to have this Court impose a non-solicitation restrictive covenant through an injunction despite having no agreement and never having paid any valuable consideration. Absent any misappropriation of trade secret information or other tortious act, Mr. Israel is free to solicit Plaintiff's employees. Regardless, Mr. Israel submitted a sworn affidavit that he has not solicited any Jennings-Dill employee to leave Jennings-Dill or come to work for PSI.

affidavits to prove the truth regarding the solicitation of its employees to support an injunction. *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 303, 433 S.E.2d 871, 873 (Ct. App. 1993); *see also Jones v. Doe*, 372 S.C. 53, 62, 640 S.E.2d 514, 519 (Ct. App. 2006) (hearsay improper in affidavit and does not satisfy personal knowledge requirement)); *Fairfield Resorts, Inc. v. Fairfield Mountains Prop. Owners Ass'n, Inc.*, CIV. 1:06-cv-191, 2007 WL 186537 (W.D.N.C. Jan. 22, 2007) (“Plaintiff’s injunction is based purely on hearsay and speculation by Duncan which is insufficient to establish Plaintiff’s need for an injunction.”) (citing *Atari Games Corp. v. Nintendo of Am., Inc.*, 897 F.2d 1572, 1575 (Fed. Cir. 1990) (“[A] district court should be wary of issuing an injunction based solely upon allegations and conclusory affidavits submitted by plaintiff.”)). Locklair’s affidavits do not contain any personal knowledge of solicitation by Mr. Israel. Mr. Locklair’s affidavit concedes that Jennings-Dill does not know where most of its 11 departed employees went or whether they were solicited by Mr. Israel. Locklair avers that he “received reports” of solicitation and “believes” that employees are being solicited. These statements lack personal knowledge and are purely speculative. Such statements are not sufficient to support the issuance of an injunction.

Mr. Israel submitted an affidavit swearing that he has not solicited any Jennings-Dill employee to leave Jennings-Dill or to join PSI. The only employee named in Mr. Locklair’s affidavit as being solicited by Mr. Israel—Scottie Strickland—has submitted his own affidavit to the Court stating that he was *not* solicited by Mr. Israel and in fact reached out to Mr. Israel seeking employment at PSI. Plaintiff has failed to show it is likely to prove Mr. Israel wrongfully solicited its employees.

c. Plaintiff has failed to show that its SCUTPA claim is likely to succeed.

Lastly, SCUTPA does not apply to disputes between an employer and employee and these allegations do not adversely affect the public interest. *See e.g. Woodson v. DLI Props.*,

LLC, 406 S.C. 517, 753 S.E.2d 428, 435 (S.C. 2014) (holding that SCUTPA “is not available to redress a private wrong because an unfair or deceptive act that affects only the parties to the transaction is beyond the scope of the SCUTPA”); *Miller v. Fairfield Communities, Inc.*, 299 S.C. 23, 382 S.E.2d 16, 20 (S.C. Ct. App. 1989) (holding that a plaintiff’s claim based on the employer-employee relationship is not covered by the SCUTPA), *Davenport v. Island Ford, Lincoln, Mercury, Inc.*, 320 S.C. 424, 465 S.E.2d 737, 740 (S.C. Ct. App. 1995) (stating that the employer-employee relationship does not fall within the intended scope of the SCUTPA). SCUTPA “is not available to redress a private wrong because an unfair or deceptive act that affects only the parties to the transaction is beyond the scope of the SCUTPA.” *Woodson v. DLI Props., LLC*, 406 S.C. 517, 753 S.E.2d 428, 435 (S.C. 2014)). “In other words, ‘plaintiffs must allege and prove that the defendant’s actions adversely affected the public interest.’” *Id.* (quoting *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004)). Here Plaintiff attempts to address a private wrong between the parties under the SCUTPA. Plaintiff has failed to show that Mr. Israel’s alleged actions adversely affect the public interest.

2. Jennings-Dill Failed to Show Irreparable Harm.

Plaintiff failed to show it will suffer irreparable harm absent an injunction. “Irreparable injury is impending and threatening.” *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 64 119 S.E.2d 533 (S.C. 1961) (citation omitted). Plaintiff failed to show any impending or threatening harm absent issuance of an injunction. Plaintiff instead argues asks the Court to weigh the *potential* harm to Jennings-Dill against the *potential* harm to Mr. Israel. Plaintiff’s argument fails for several reasons.

First, an injunction is a drastic remedy, and Plaintiff must actually show it will suffer irreparable harm. *Poynter Invs. Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15, (S.C. 2010). Plaintiff has not submitted any evidence of misappropriation, and its

allegations of solicitation are wholly speculative. Defendant has submitted sworn statements that he has not misappropriated any trade secret or solicited any employee. It is well established that “(i)njunctions will not be issued merely to allay the fears and apprehensions or to soothe the anxieties of the parties. Nor will an injunction be issued 'to restrain one from doing what he is not attempting and does not intend to do.’” *Continental Group, Inc. v. Amoco Chemicals Corp.*, 614 F.2d 351 (3rd Cir. 1980) (quoting *Standard Brands, Inc. v. Zumpe*, 264 F.Supp. 254, 267-68 (E.D.La.1967)); *John Lemmon Films, Inc. v. Atlantic Releasing Corp.*, 617 F.Supp. 992, 227 USPQ 386 (W.D. N.C. 1985) (same); *Freedom Med. Inc. v. Whitman*, 343 F.Supp.3d 509 (E.D. Pa. 2018) (same). Plaintiff cannot seek an injunction based on its own fears without evidence to support its allegations or seeking to restrain Mr. Israel from doing something he has not attempted to do.

Next, Plaintiff’s argument fails because it relies only on the possibility of harm if its speculation is correct without showing any actual impending and threatening harm caused by Defendant. The fact that harm is possible *if* wrongdoing occurs is not a foundation upon which injunctive relief can stand. Injunctions are improper “where the anticipated [harm] is doubtful, contingent, or conjectural.” *Brading v. County of Georgetown*, 327 S.C. 107, 115 n.8, 490 S.E.2d 4, 8 n.8 (1997); *Welborn v. Page*, 247 S.C. 554, 566, 148 S.E.2d 375, 381 (1966) (“Equity will not interfere by the granting of the extraordinary remedy of injunction where the anticipated nuisance is doubtful, contingent or conjectural.”); *United States v. Emerson*, 270 F.3d 203, 262 (5th Cir.2001) (“[A] preliminary injunction will not be issued simply to prevent the possibility of some remote future injury.”).

Lastly, Plaintiff’s argument fails because it improperly asks this Court to balance the equities between the parties. The Supreme Court of South Carolina has explicitly held that “balancing the equities” is “neither necessary nor appropriate in a preliminary injunction

case....” *Poynter Invs. Inc.*, 387 S.C. 583, 694 S.E.2d 15, 17. The Court held that “the balancing requirement is subsumed by the irreparable harm and inadequate remedy at law components of the three-part test.” *Id.* The case cited by Plaintiff, *Levine v. Spartanburg Reg. Serv. Dist., Inc.*, 367 S.C. 458, 626 S.E.2d 38 (Ct. App. 2005), was specifically modified by the Court in *Poynter Invs. Inc.* to remove balancing of equities. *Id.* At the hearing, Plaintiff argued that use of “subsumed” by the Court in *Poynter Invs. Inc.* allows this Court to still balance the relative harms to each Party. This argument fails because Plaintiff still must show it will suffer irreparable harm absent an injunction, not merely that an injunction will not harm the Defendant. *Poynter Invs. Inc.*, 387 S.C. 583, 694 S.E.2d 15, 17 (“A preliminary injunction should issue ... only upon a showing by the moving party that without such relief it will suffer irreparable harm...”). Plaintiff cannot obtain an injunction without meeting the required elements by asking this court to weight the equities between the parties.

Furthermore, Plaintiff cannot show irreparable harm because money damages are available to Plaintiff. Jennings-Dill has repeatedly alleged the amounts of revenue lost due to the lack of manpower. “[E]conomic loss does not, in and of itself, constitute irreparable harm....” *Peek v. Spartanburg Reg'l Healthcare System*, 367 S.C. 450, 456 n.2, 626 S.E.2d 34, 37 n.2 (S.C. App. 2005) (quoting *District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C.2000) Because money damages are available to make Plaintiff whole, Plaintiff cannot show irreparable harm.⁴

⁴ Further undercutting Plaintiff’s argument that irreparable harm is likely, Plaintiff delayed seeking an injunction despite acknowledging that it was aware of the downloads on June 25 2021. A delay in seeking an injunction weigh against Jennings-Dill’s allegation that they will suffer irreparable damage if the preliminary injunction does not issue. *Wasabi Japanese Rest., Inc. v. Chai, Inc.*, No. 6:05-1643-HMH, 2005 U.S. Dist. LEXIS 55021, at *7 (D.S.C. Sep. 21, 2005) (finding no irreparable harm where plaintiff waited to seek preliminary injunction) (citing *Comic Strip, Inc. v. Fox Television Stations, Inc.*, 710 F. Supp. 976, 981 (S.D.N.Y. 1989); *Citibank N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985) (stating that “delay in seeking

3. Plaintiff Has an Adequate Remedy at Law.

Plaintiff has an adequate remedy at law as it seeks money damages for their claims. “[E]quitable relief is unnecessary when an adequate remedy for money damages is available at law.” *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 8, 732 S.E.2d 876, 879 (2012). “An injunction is an equitable remedy; as such, it is available only where no remedy at law exists or where the legal remedy would fail to make the party whole.” *Mailsource, LLC v. MA Bailey & Assocs.*, 365 S.C. 363, 370-71, 588 S.E.2d 635 (Ct. App. 2003) (holding adequate legal remedy exists for loss of business). An “injury is irreparable where the damages are estimable only by conjecture, and not by any accurate standard.” (5A Corbin on Contracts § 1142; 42 Am. Jur. 2d Injunctions § 49 (1969)). Here, Plaintiff has pled to the dollar how much it alleges it is owed and submitted two affidavits from company executives stating the dollar amounts of lost revenue. Plaintiff has an adequate remedy at law and is not entitled to equitable relief because the alleged damages can be specifically calculated in some manner. *Milliken & Co. v. Morin*, 685 S.E.2d 828, 386 S.C. 1 (Ct. App. 2009). South Carolina courts have held that an adequate legal remedy exists for the loss of business. *MailSource, LLC*, 356 S.C. at 369-70, 588 S.E.2d at 639 (Ct. App. 2003). Plaintiff has an adequate remedy at law and is not entitled to an injunction.

CONCLUSION

Based on the foregoing, the Plaintiff’s Motion for Temporary Injunction is hereby
DENIED.

IT IS SO ORDERED.

enforcement of . . . rights [via a preliminary injunction] . . . tends to indicate at least a reduced need for such drastic, speedy action.”)). Plaintiff waited approximately one month to seek an injunction.

The Honorable Alex Kinlaw, Jr.
Court of Common Pleas
Thirteenth Judicial Circuit

August____, 2021

Greenville, South Carolina

Proposed Order submitted by Respondent
on August 12, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jennings-Dill, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 2021-CP-23-03406
	)	
Eric Israel,	)	
	)	
Defendant.	)	
	)	

[PROPOSED] TEMPORARY INJUNCTION ORDER

This matter is before the Court on Plaintiff’s Motion for Temporary Injunction (the “Motion”). Based on Plaintiff’s Motion, the Complaint, the affidavits on file, the memoranda of law submitted by both parties, and the oral arguments presented to the Court at the hearing held on August 3, 2021, the record supports a finding that Plaintiff Jennings-Dill, Inc. (“Jennings-Dill” or the “Company”) has satisfied its burden of demonstrating entitlement to the relief it seeks.

Findings of Fact and Conclusions of Law

1. Jennings-Dill is a mechanical contractor providing services in heating, ventilation and air-conditioning (“HVAC”), plumbing and process piping primarily for industrial, commercial, school and hospital construction customers.
2. Defendant Eric Israel (“Israel”) was employed at Jennings-Dill as a Plumbing Superintendent.
3. As the Plumbing Superintendent, Israel oversaw the operations and personnel of Jennings-Dill’s Plumbing Division. In his role with Jennings-Dill, Israel had access to Jennings-Dill’s confidential information related to employee payroll and retention, and the bidding process. Jennings-Dill issued Israel an iPad, which allowed access to Jennings-Dill’s confidential

information through an application called ShareFile.

4. Jennings-Dill has numerous policies to protect its confidential business information. Israel was aware of these policies and signed an acknowledgement of such a policy directed to the use of the iPad he was issued.

5. On June 13, 2021, Israel resigned from his employment with Jennings-Dill. In his email to Andy Locklair, Jennings-Dill's Vice President of Operations, Israel stated that he had "...been given a good opportunity with another company for change and growth." From June 13 until June 24, 2021, Jennings-Dill management met with Israel to encourage him to stay with Jennings-Dill.

6. On June 24, 2021 at 6:38 pm, Locklair missed a call from Israel. Locklair called Israel back less than ten (10) minutes later. During the thirty-eight (38) minute call, Israel announced his resignation for the second time, offering to work a two-week notice. Locklair told him a two-week notice was not necessary, and directed him to return all of Jennings-Dill's property first thing the following morning. On June 25, 2021 at 6:20 am, Locklair sent Israel an email confirming the June 24, 2021 conversation.

7. Less than two hours after the conclusion of the call the evening of June 24, 2021, in which Israel made clear his resignation from employment, Israel accessed and downloaded documentation with the iPad Jennings-Dill had issued to him. The documentation was within Jennings-Dill's ShareFile and contains confidential information.

8. At 8:53 pm, Israel accessed and downloaded Jennings-Dill's document entitled "Personnel Report." Then, at 8:55 pm, Israel downloaded two documents, "Personnel Report Jan 2021 - Dec 2021" and "JD Employee List." Jennings-Dill did not authorize Israel to access, download, or use these three documents (collectively as "Electronic Property") after resigning

from the Company or for a competitor.

9. The Electronic Property contains Jennings-Dill's confidential information and is the property of the Company. The Electronic Property unlawfully downloaded by Israel contains monthly employee headcount information through July 2021, including hires and terminations, and personal contact information and pay rates for all Jennings-Dill employees, not just those in the Plumbing Division.

10. On the morning of June 25, 2021, Locklair discovered that Israel improperly accessed and downloaded the Electronic Property. It was not until July 13, 2021, however, that it became apparent to Jennings-Dill that Israel was using the stolen Electronic Property for his and that of his new employer, Place Services, Inc. ("PSI"), benefit.

11. Specifically, on July 13, 2021, Phillip Dobbins, former Jennings-Dill Superintendent and now employed by PSI, sent an email to Israel's Jennings-Dill email address by mistake. The email made clear Israel was now employed by PSI, a competitor of Jennings-Dill. The email from Dobbins to Israel directed Israel to communicate with another recently departed former Jennings-Dill employee, now employed at PSI, regarding a training issue.

12. Since his departure, Israel has communicated with several Jennings-Dill employees for what appears to be the purpose of soliciting them to join him at his new place of employment, PSI. Possession of the Electronic Property would be of great benefit to Israel and PSI in connection with such solicitations. Israel has been successful in several instances. However, it remains unclear as to how far Israel's solicitations reach.

13. Concurrent with Israel's apparent use of Jennings-Dill's Electronic Property and reliance upon it to solicit Jennings-Dill's plumbing foremen, plumbers and plumber helpers, the Company has lost one-third of its Plumbing Division workforce in the last month. Because of this,

Jennings-Dill was only able to bid on five (5) projects last month compared to what Jennings-Dill ordinarily bids, an average of thirteen (13) projects each month, and none of these bids sought the plumbing work.

14. In addition, Jennings-Dill has had to withdraw from confirmed work for three (3) customers, resulting in roughly \$2.5 million in lost revenues. Jennings-Dill believes these withdrawals have affected its relationships with these customers. At least one of these customers has expressed frustration with the delays on another project caused by the lack of Jennings-Dill manpower.

15. Jennings-Dill's business relies on its success in bidding on projects. The bidding process involves the Company's evaluation of the proposed project and specifications, projecting the cost of materials, projecting the hours of labor necessary to complete the project, and assigning a blended hourly labor rate to the project. The wage information contained in the Electronic Property in the hands of a company in the business of providing mechanical contracting services would be of great value in recruiting Jennings-Dill's workforce and in submitting its own bids.

16. Without adequate manpower in its Plumbing Division, Jennings-Dill will be unable to bid on plumbing work until November 2021 or bid on work to commence before February 2022. Jennings-Dill believes that these limitations cause harm to its reputation to customers or prospective customers and may cause the customers and prospective customers to reject or turn down bids from Jennings-Dill in the future.

17. Jennings-Dill filed this action on July 20, 2021, and filed the Motion presently before the Court later that day.

18. The Court scheduled the hearing on this Motion to take place on August 3, 2021, which was the first available date after the filing of the action.

19. The Court concludes that Jennings-Dill has taken diligent steps to protect its interests in this matter and has not caused an unreasonable delay in filing.

20. Absent an Order from this Court, Israel's actions will cause Jennings-Dill to suffer irreparable damage to and loss of its business reputation, business opportunities, goodwill, market share, and relationships with existing and potential customers.

21. The injury to Jennings-Dill is irreparable in that:

- a. Its relationships with customers will likely be impaired and/or lost permanently;
- b. Its business opportunities with customers and prospective customers will likely be impaired and/or lost permanently;
- c. Its confidential information in the hands of and being used by a former employee now employed with a company performing the same kind of mechanical contracting services would likely lead to:
 - i. the loss of even more employees; and
 - ii. possible misuse in competitive bidding;
- d. As it seeks to hire replacements for those who have left Jennings-Dill to go to work for PSI, Jennings-Dill's newer plumbing employees will likely have less skill and efficiency for a period impacting Jennings-Dill's reputation and profitability; and
- e. Jennings-Dill likely will suffer a loss of goodwill, a loss of market share, and damage to its business reputation.

22. Jennings-Dill lacks an adequate remedy at law because damages for the injuries Jennings-Dill has suffered as a result of Israel's actions - particularly including, but not limited to, the loss of good will, loss of market share, damage to business reputation, and disclosure of confidential information - are inherently difficult, if not impossible to calculate.

23. Although this Court does not engage in a balancing test between the irreparable harm that Jennings-Dill would suffer in the absence of injunctive relief versus whatever harm Israel could suffer if the Court grants injunctive relief, it is appropriate for this Court, sitting in equity, to consider the impact on Israel. It appears that a grant of the relief Jennings-Dill seeks would have little impact on Israel.

24. First, all Jennings-Dill is requesting with respect to Jennings-Dill's Electronic Property is that Israel not possess or use the information and that he return or destroy it. Second, Jennings-Dill is asking that Israel not solicit its employees to work for a competitor, new to the upstate region, given that doing so would inevitably involve the use of the confidential information that Israel is able to retain even after a return of paper copies of the confidential information or the destruction of electronic versions. Third, these limitations do not in any way prevent Israel from working as a plumber at PSI. In his Memorandum in Opposition, Israel asserts that he is just a plumber working at PSI. If so, restricting his ability to solicit Jennings-Dill employees by using Jennings-Dill Electronic Property should not in any way inhibit his ability to perform the functions of a plumber.

25. Jennings-Dill has demonstrated a likelihood of success of the merits, as the Court finds as follows:

- a. Jennings-Dill's Electronic Property appears to amount to a trade secret under the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-1 *et seq.* and the record reflects that it has been misappropriated:
 - i. Jennings-Dill's Electronic Property appears to derive value from not generally known to or readily ascertainable to the public or its competitors, and the Company engages reasonable efforts in maintaining the secrecy of

that information.

- ii. Israel misappropriated the data when he took the data in secret, and began using the data to systematically raid Jennings-Dill's Plumbing Division. Israel did not have permission to take the Electronic Property, and has conferred a benefit by doing so.

- b. Israel's conduct also rises to an unfair trade practice under the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.* ("SCUPTA"), that is offensive to the public interest.

- i. Israel's deception has allowed an out of state company to unfairly compete for employee talent in the mechanical contracting field in the upstate South Carolina by the use of a formerly highly placed employee in possession of confidential information owned by an existing in-state company to raid its employees.

- ii. The fact that Israel misappropriated the Electronic Property at the end of his last day of employment does not convert this into a workplace dispute outside the scope of the SCUTPA.

- c. Israel's conduct also rises to conversion. Here, Israel took the Electronic Property for no lawful reason, with the full intention of using the information to raid the Company for a competitor. Jennings-Dill has policies in place that safeguard against this, to which Israel has agreed to abide by. Israel is now using the Electronic Property to benefit himself and PSI at a detriment to Jennings-Dill.
- d. Jennings-Dill has also shown its likelihood of success as it pertains to unjust enrichment - quantum meruit. Israel inappropriately took the Electronic Property

and realized a benefit by raiding the Jennings-Dill's Plumbing Division for his new employer, PSI. No one at Jennings-Dill gave Israel permission to engage in such use of the Electronic Property.

Temporary Injunction

In consideration of the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:

1. Israel is enjoined and restrained from using any of Jennings-Dill's Electronic Property (as defined above) or the confidential information therein.

2. Israel is enjoined and restrained from bidding on any projects on behalf of PSI by using information found within Jennings-Dill's Electronic Property.

3. Israel is enjoined and restrained from soliciting any Jennings-Dill employees by using information found within Jennings-Dill's Electronic Property.

4. Within 14 days of the entry of this Order, Israel will identify all Jennings-Dill's current and former employees who he has directly or indirectly solicited for his own benefit or on behalf of any third party other than Jennings-Dill since June 24, 2021.

5. Within 14 days of the entry of this Order, Israel will identify all third parties who have received paper or electronic copies of the Electronic Property. Israel also will request such third parties return all paper copies of the Electronic Property to him and destroy all electronic versions of the Electronic Property. Israel will mail to Jennings-Dill any paper copies he has or receives from any third parties.

6. Within 14 days of requesting originals and copies of the Electronic Property and mailing such documents back to Plaintiff, Israel will provide a Sworn Affidavit:

- a. Confirming that he has returned all paper copies and destroyed all electronic versions of the Electronic Property in his possession; and
- b. List who he requested returned paper copies and destroyed electronic copies of the Electronic Property, and stating when such Electronic Property was returned or

confirmed as destroyed.

7. This Temporary Injunction shall remain in full force and in effect until a trial can be had on the merits.

8. A bond in the amount of \$_____ (Amount Spelled Out) is sufficient to pay Israel's costs and damages in the event Israel is found to have been wrongfully enjoined. Jennings-Dill shall post a bond in this amount by [time] on [date].

IT IS SO ORDERED ON THIS THE __ DAY OF _____, 2021.

The Honorable Alex Kinlaw, Jr.
South Carolina Circuit Judge
Thirteenth Judicial Circuit

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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 7, 2021

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