IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

Case No. 13-9386(07)
Complex Litigation Unit

POINT BLANK HOLDING CORP., a Delaware corporation, and POINT BLANK ENTERPRISES, INC., a Delaware corporation,

Plaintiffs,

v.

SHORT BARK INDUSTRIES, INC., a Puerto Rico corporation, MICHAEL SLATE and JUAN MANTEIGA,

Defendants.

_____/

ORDER GRANTING PLAINTIFFS' MOTION FOR AN EMERGENCY TEMPORARY INJUNCTION

THIS MATTER came before the Court on the Motion for Emergency Temporary Injunction filed by Plaintiffs, Point Blank Holding Corp. and Point Blank Enterprises, Inc., on April 17, 2013. The Court, having carefully reviewed the Motion for Emergency Temporary Injunction, the court file, including the Second Amended Verified Complaint for Injunctive Relief and Damages, the parties' deposition designations, and having heard witnesses, taken evidence, and heard argument of the parties at an evidentiary hearing conducted on September 9 through September 12, 2013, finds as follows:

I. FINDINGS OF FACT

A. The Parties

1. Plaintiff Point Blank Holding Corp. is a Delaware corporation with its principal office located at 2100 Southwest 2nd Street, Building 6B, Pompano Beach, Florida 33069.

2. Plaintiff Point Blank Enterprises, Inc. ("Point Blank") is a Delaware corporation with its principal office located 2100 Southwest 2nd Street, Building 6B, Pompano Beach, Florida 33069. Point Blank Enterprises is a wholly owned subsidiary of Plaintiff Point Blank Holding Corp. (Plaintiffs' Ex. 33.)

3. Defendant Short bark Industries, Inc. ("Short Bark") is a Puerto Rico corporation with its principal office located at 139 Grand Vista Drive, Vonore, Tennessee 37885.

4. Defendant Michael Slate ("Slate") is a Florida citizen residing at 8837 Sandy Crest Lane, Boynton Beach, Florida 33473. Slate is an individual over the age of 18, who is *sui juris*.

5. Defendant Juan Manteiga ("Manteiga") is a Florida citizen residing at 3301 NE 1st Avenue, Apartment 2608, Miami, Florida 33473. Manteiga is an individual, over the age of 18, who is *sui juris.*

B. Plaintiffs' Business

6. Plaintiff Point Blank's core competency lies in the business of developing, manufacturing, and distributing soft ballistic inserts ("Ballistics"). Point Blank also designs and manufactures "carriers," the garments that accompany Ballistics. A substantial percentage of Point Blank's revenue comes from its Ballistics business as opposed to its carrier business.

7. Point Blank often bids on government contracts, either as a prime contractor or as a subcontractor. In bidding on such contracts, Point Blank will often partner with cut-and-sew operations that design and manufacture ballistic carriers.

8. For 2011 and 2012, Point Blank's largest customer was Carter Enterprises, LLC ("Carter Enterprises"), a Brooklyn, New York-based cut-and-sew operation that manufactures carriers, but not Ballistics.[1] Point Blank and Carter Enterprises would often partner as prime contractor and subcontractor on government contracts under which Point Blank would provide the Ballistics, while Carter would provide carriers. (Plaintiffs' Ex. 43.)

9. Success in the Ballistics business requires a significant investment in research and development. Such research and development involves an iterative process whereby various combinations of ballistic fibers (*e.g.*, Kevlar) are tested against various ballistic threats (*e.g.*, 9MM bullet) that must be met in order to obtain government certifications. A ballistic producer has an incentive to meet government requirements at the lowest cost possible so that it can win government contracts that are awarded on a lowest-cost basis.

10. The ballistic testing process can be costly. Point Blank has ballistic labs with firing ranges that it uses for product development (*i.e.*, developing low-cost designs that will make Point Blank competitive). Iterative rounds of ballistic testing are costly because of the employee time and materials involved. Moreover, the actual process involved in obtaining government certifications can also be quite costly.

C. Defendants Slate and Manteiga's Employment with Plaintiff

[1] Carter Enterprises is a HUBZone business. Plaintiffs' Vice President of Government Programs testified that HUBZone businesses are those located in historically underutilized business zones that receive preferential treatment when bidding on contracts with the federal government. Although Point Blank is not a HUBZone business, it has acted as a subcontractor and provided Ballistics to the federal government on HUBZone contracts through partners such as Carter.

11. Defendant Slate graduated Palm Beach Atlantic University in 2003 with a degree in organizational management. He had no technical background. Upon graduating, Slate worked for several years as a ballistic range technician for a predecessor of Point Blank. After several years, Slate was hired in 2007 by Protective Products International, Inc. ("PPI") to manage its ballistic testing range and soft armor development. There, Slate gained experience and responsibility for designing and developing Ballistics. Slate's responsibilities increased with time, such that he eventually became Director of Engineering Development for Protective Products Enterprises, Inc. (the successor to PPI), a position in which he oversaw numerous employees and the product design and development process. Slate ultimately approved many of Plaintiffs' Ballistic designs. (Plaintiffs' Ex. 52.)

12. Defendant Manteiga is a former United States Marine who joined PPI as an inventory manager after being honorably discharged in 2007. Prior to joining PPI, Manteiga, while being experienced dealing with government contracts, had no experience in working with ballistics contracts. Manteiga received on-the-job training in the ballistics contracting process, and writing proposals. With time, Manteiga's responsibilities gradually increased. By 2010, Manteiga's yearly performance review indicated that "Juan is the principle liaison with our company's largest customer [Carter]" and that "Juan is a key member of the PPE 'Senior Mgmt Staff.' He controls the lion share of PPE's business." (Plaintiffs' Ex. 17.)

13. Neither Slate nor Manteiga knew anyone at Carter Enterprises before working at Protective Product Enterprises.

14. Slate and Manteiga were key employees at PPE, and attended key executive meetings where the strategic direction of PPE was discussed. Confidential information concerning bids and pricing were discussed during these meetings as well.

15. Slate and Manteiga were two of only a handful of key PPE employees offered stock options.

D. Defendants Slate and Manteiga's Restrictive Covenants

16. Defendant Slate entered into a Confidentiality and Non-Solicitation Agreement with PPI on April 22, 2007 (Plaintiffs' Ex. 1):

a. Pursuant to Section A of the Confidentiality and Non-Solicitation Agreement, Slate agreed not to disclose or use any confidential information that he would obtain during his employment.

b. Pursuant to Section 2 of the Confidentiality and Non-Solicitation Agreement, Slate agreed not to directly or indirectly solicit customers of PPI for a period of two (2) years following the conclusion of his employment.

c. Pursuant to Section 3 of the Confidentiality and Non-Solicitation Agreement, Slate agreed not to directly or indirectly solicit employees of PPE for a period of two (2) years following the conclusion of his employment.

d. Pursuant to Section 1B of the Confidentiality and Non-Solicitation Agreement, Slate agreed that the Agreement would remain effective as to the successors of PPI.

17. Defendants Slate and Manteiga signed Option Grant Agreements dated as of February 10, 2011 whereby they were each granted options for shares in Protective Products Holding Corp. Indeed, Slate and Manteiga were two of only a handful of key PPE employees to receive such an option grant. Pursuant to their Option Grant Agreements, Slate and Manteiga specifically agreed to abide by the covenants and agreements set forth in Annex A to their Option Grant Agreements. Annex A is referenced in the annexed Option Grant Agreements,

including directly under each employee's signature line. (Plaintiffs' Exs. 2, 3) Annex A contains a series of restrictive covenants:

a. Pursuant to Section 1 of Annex A to their Option Grant Agreements, Slate and Manteiga agreed not to disclose or use any confidential information that he obtained during their employment.

b. Pursuant to Section 3 of Annex A to their Option Grant Agreements, Slate and Manteiga agreed not to directly or indirectly solicit customers of Protective Products Holding Corp. or its subsidiaries for a period of two (2) years following the conclusion of their employment.

c. Pursuant to Section 2 of Annex A to their Option Grant Agreements, Slate and Manteiga agreed not to directly or indirectly solicit employees of Protective Products Holding Corp. or its subsidiaries for a period of two (2) years following the conclusion of their employment.

d. Pursuant to Section 4 of Annex A to their Option Grant Agreements, Slate and Manteiga agreed not to directly or indirectly compete with Protective Products Holding Corp. or its subsidiaries or parents for a period of one (1) year following the conclusion of their employment.

e. Pursuant to Section 13 of Annex A to their Option Grant Agreements, Slate and Manteiga agreed that the covenants set forth in Annex A are "independent of any other provision in any other agreement" and "of any claim or cause of action."

E. Plaintiffs' Corporate Reorganizations

18. On February 19, 2010, Protective Products Enterprises, Inc. ("PPE") purchased substantially all of the assets of PPI. (Plaintiffs' Ex. 34.)

19. On April 30, 2012, PPE converted from a Delaware Corporation to a Delaware Limited Liability Company of the same name, Protective Products Enterprises, LLC. (Plaintiffs' Exs. 33, 35.)

20. Protective Products Enterprises, LLC is a wholly owned subsidiary of Point Blank Enterprises, Inc. (Plaintiffs' Ex. 33.)

21. On April 30, 2012, Protective Products Holding Corp. merged into Plaintiff Point Blank Holding Corp. (Plaintiffs' Exs. 12, 31, 33.)

F. Slate and Manteiga Join Short Bark

22. Prior to March 2012, Defendant Manteiga had interacted with Short Bark's CEO, Lisa Janke, and her business development officer, Stuart Muladore, at industry trade shows that Manteiga was attending on PPE's behalf. Manteiga testified that Janke had told him, "if you ever decide to do anything different, then please make sure you call me first."

23. By March 2012, Defendant Manteiga had grown dissatisfied with his employment with Plaintiffs due, in part, to issues stemming from its corporate reorganizations. Manteiga thus agreed to meet with Ms. Janke in Puerto Rico. Manteiga testified that, by this time, Slate was also dissatisfied with his employment at PPE, such that Manteiga offered to bring Slate to Puerto Rico in order to meet Ms. Janke. According to Mr. Manteiga, "I wanted to give a buddy an opportunity."

24. Manteiga resigned from Point Blank on April 5, 2012.

25. The evidence shows that by April 16, 2012, Short Bark circulated term sheets followed by draft contracts regarding Slate and Manteiga's employment with Short Bark. (Plaintiffs' Exs. 22-25.) These draft employment agreements, which Defendants assert have not been finalized, provide that Slate and Manteiga will start "a new business line involving the

manufacture of body-armor products" for Short Bark. (Plaintiffs' Ex. 23.) One of the employment agreements states that

> Employee acknowledges that Company has no experience in the development, manufacture or sale of body-armor products and that Company is relying on Employee's knowledge and expertise in making an investment in the Armor Division.

(Plaintiffs' Ex. 23, § 2.5.3.) The draft employment agreements provide that Slate and Manteiga would receive $150,000 base salaries as well as an equity interest in, and bonuses based on the profits of, the new business line. (Plaintiffs' Exs. 22-25.) The new business unit would have its own separate financial statements. (Plaintiffs' Ex. 22.) While these agreements were not signed, and the financial terms have not been finalized, the parties have operated consistent with these drafts.

26. Slate resigned from Point Blank on April 18, 2012. (Plaintiffs'Ex 14.)

27. Prior to the hiring of Slate and Manteiga, Short Bark had never been awarded a Ballistics contract.

28. Short Bark's CEO, Lisa Janke, admitted at her deposition that Short Bark had not previously operated in South Florida and that one of Slate's first tasks upon joining Short Bark was to locate a design and production facility, which is now located at 3890 Pembroke Road in Hollywood. Slate testified at the hearing that he manages the Florida operation. Ms. Janke testified that Short Bark previously had no ballistic design expertise and that Slate was hired for this very purpose. Indeed, many witnesses testified that they had never even heard of Short Bark prior to the events giving rise to this action. Slate had never heard of Short Bark prior to his introduction to Short Bark by Manteiga. Prior to hiring Slate and Manteiga, Short Bark had never successfully developed a ballistic product, despite efforts to do so.

29. Manteiga admitted at the hearing that, almost immediately upon joining Short Bark, he was in contact with Carter regarding quotes for the improved outer tactical vest. The documentary evidence confirms that Manteiga provided quotes to Carter as early as June 11, 2012 and indicated that "Mike and I would like to meet with you at your office to discuss this pricing; as well as other options with regard to specific technical solutions, lead times, and required capacity. We feel that there are various solutions we can cater specific to your immediate and long term requirements."(Plaintiffs' Ex. 38.) None of this was known to Plaintiff at the time.

30. Slate and Manteiga gradually took steps toward developing Short Bark's ballistic business unit throughout 2012. By January 10, 2013, Short Bark filed a Notice of Fictitious Name Registration with the Florida Incorporation Service for "SBI Protection." (Plaintiffs' Ex. 10.) This evidence is consistent with the statements in Defendants' draft employment agreement that Short Bark would, unbeknownst to Point Blank, be starting a new Ballistics unit.

31. On February 17, 2013, Short Bark accepted a purchase order from Carter Enterprises to provide millions of dollars of Ballistics ("the Carter P.O."). (Plaintiffs' Ex. 44.) The documentary evidence shows that both Manteiga and Slate managed the Carter Enterprises relationship, though Manteiga was the primary point of contact. (Plaintiffs' Ex. 21 (SB - 7102). At her deposition, Lisa Janke testified that prior to the arrival of Slate and Manteiga, Short Bark had never before done business with Carter Enterprises. Point Blank's CEO, Daniel Gaston, testified that he learned of the Carter purchase order with Short Bark in or around late February or March 2013 and had not been previously aware that Short Bark was manufacturing its own ballistics.

32. Manteiga testified that he had approximately five meetings, as well as phone calls and emails, with Carter Enterprises between when he joined Short Bark in June 2012 and when Short Bark entered into the February 17, 2013 purchase order with Carter Enterprises. Manteiga admitted that such meetings involved providing pricing quotes, describing Short Bark's capabilities, and expressing a willingness to work with Carter.

33. Slate admitted attending multiple meetings with Carter Enterprises during the same timeframe. Slate's calendar similarly shows numerous meetings with Carter Enterprises after his joining Short Bark. (Plaintiffs' Ex. 18.)

34. Both Manteiga and Slate were proactively involved in the solicitation of Ballistics business from Carter Enterprises for Short Bark.

G. Slate and Manteiga Utilize Point Blanks' Confidential Information

35. At the hearing, Manteiga admitted that he used specific knowledge of Point Blank's confidential information when negotiating with Carter Enterprises on behalf of Short Bark. Specifically, in a November 23, 2012 email, Manteiga wrote to Carter, "we already have a Teijin solution that is ready to go. . . . The pricing on the Teijin solution will be more price competitive than the current Fidelity solution and can position Carter favorably against KDH and/or Ibiley for future USMC opportunities." (Plaintiffs' Ex. 21 (SB - 7102). It is undisputed that Fidelity is a Point Blank ballistic solution, and Manteiga admitted at the hearing that he obtained knowledge of Fidelity's pricing through his employment by Plaintiffs.

36. At the hearing, Plaintiffs' introduced the configuration of PPE's Ballistics, which were designated "Highly Confidential" and received under seal. (Plaintiffs' Ex. 52.) Both Plaintiffs' Executive Vice President and Vice President of Government Relations testified that this information is proprietary. Defendant Manteiga agreed.

37. Plaintiffs' expert, Dr. Timothy Smith, Ph.D., P.E., testified that a manufacturer's ballistic designs are proprietary, as did Sam White, Slate's former supervisor at Point Blank. Dr. Smith testified that ballistic manufacturers like Point Blank would sometimes receive suggestions of ballistic configurations and combinations from companies that produce ballistic fibers, such as DuPont. Dr. Smith added that such suggestions are only a "starting point" and that the testing process "typically requires generating multiple prototypes, doing ballistic testing analyze [sic] validating that the design has enough margin in it, which is that it will meet the requirements NIJ certification or of requirements of FAT testing in the case of military operation." (Plaintiffs' Ex. 62.) The ballistic packages of both Plaintiff and Defendant are highly proprietary. Slate worked on and with the ballistic design packages of Plaintiffs while employed by Plaintiffs' and with Defendants while working at Defendants.

38. Dr. Smith indicated both in his testimony and in his report that one particular package developed by Slate at Short Bark is markedly similar to one of Plaintiffs' packages and used a low-cost fiber that Dr. Smith was not aware of any other manufacturers using to create a military package that obtained First Article Testing certification.

39. At the hearing, Defendant Slate conceded that ballistic design involves "conduct[ing] testing kind of a trial and error scenario. Slate added that "we would communicate with the suppliers to say what our need is, we would essentially try them and do a trial and error test until they would work or not work. And that dialogue with the suppliers would stay open until it was completed." Slate testified that designs would change as a result of this trial-and-error process. At his deposition, Slate confirmed that his approach to putting ballistic solutions together had been influenced by his years of experience at PPE.

40. Commercial body armor containing Ballistics is not generally marketable to law enforcement unless it has received certification from the National Institute of Justice ("NIJ"). Slate has been working on the design of Ballistics for commercial use while at Short Bark in an effort to receive NIJ certification.

41. Slate's calendar shows meetings with many of the same suppliers he worked with while employed by Plaintiffs, and Slate has admitted to meeting with many of the same suppliers with whom he'd done business while working at PPE. (Plaintiffs' Ex. 18.)

H. Recruitment of Point Blank Employees

42. Short Bark has hired several other Point Blank employees: Josephine Walters in July 2012; Alonzo Gomez in January 2013; and Grace de los Reyes in March 2013. Prior to Slate leaving Plaintiffs, Walters and de los Reyes worked under Slate's supervision in PPE's Research and Development Department. (Plaintiffs' Ex. 28-29.)

43. Slate's calendar indicates: "Josephine Visit" on June 5, 2012; "Prepare Josie employee paperwork" on July 9, 2012; and "Interview for Pattern / Marker Maker – Grace de los Reyes" on February 20, 2013.

44. At his deposition, Alonzo Gomez testified that he was interviewed by Slate prior to joining Short Bark.

45. Manteiga directly solicited Slate to leave Point Blank and join Short Bark when he brought Slate with him to Puerto Rico to meet with Short Bark's CEO, Lisa Janke, at a time when Slate was still employed by Point Blank.

46. Slate directly and/or indirectly solicited Point Blank employees to work at Short Bark.

II. CONCLUSIONS OF LAW

1. The Court finds that Slate and Protective Products International, Inc. entered into valid, binding restrictive covenants contained in his Confidentiality and Non-Solicitation Agreement dated April 22, 2007, which was entered into evidence as Exhibit 1. These restrictive covenants prohibit Slate from disclosing or using any confidential information obtained during his employment and from soliciting employees for a period of two (2) years following the conclusion of his employment.

2. The Court finds that Slate's Confidentiality and Non-Solicitation Agreement is enforceable by Protective Products Enterprises, LLC (previously named Protective Products Enterprises, Inc.), as the purchaser of Protective Products International, Inc. Pursuant to Paragraph 1B of the Confidentiality and Non-Solicitation Agreement, Slate agreed that "the rights and obligations of Protective Products hereunder may be transferred or assigned and will continue to be binding upon [Slate] and on the successors and assigns of Protective Products subsequent to any such transfer or assignment." Pursuant to §542.335(f), Fla. Stat., "[t]he court shall not refuse enforcement of a restrictive covenant on the ground that the person seeking enforcement . . . is an assignee or successor" if "the restrictive covenant expressly authorized enforcement by a party's assignee or successor." *Accord Corporate Express Office Prods., Inc. v. Phillips*, 847 So.2d 406, 413 (Fla. 2003) (approvingly citing *Pino v. Spanish Broad Sys. Of Fla., Inc.*, 564 So.2s 186, 189 (Fla. 3d DCA 1990)). Thus, the Court is compelled to find that Protective Products Enterprises, LLC may enforce the restrictive covenants in Slate's Confidentiality and Non-Solicitation Agreement. Protective Products Enterprises, LLC joined Plaintiffs' Motion for Emergency Temporary Injunction on September 9, 2013.

3. The Court finds that Slate and Protective Products Holding Corp. entered into valid, binding restrictive covenants, as contained in Annex A to his Option Agreement, dated as

of February 10, 2011, which was entered into evidence as Exhibit 2. These restrictive covenants prohibit Slate from: (a) disclosing or using any confidential information obtained during his employment; (b) directly or indirectly soliciting employees or customers of Protective Products Holding Corp. or its subsidiaries for a period of two (2) years following the conclusion of his employment; and (c) directly or indirectly competing with Protective Products Holding Corp. or its subsidiaries or parents for a period of one (1) year following the conclusion of his employment.

4. Manteiga and Protective Products Holding Corp. entered into valid, binding restrictive covenants, as contained in Annex A to his Option Agreement, dated as of February 10, 2011, which was entered into evidence as Exhibit 3. These restrictive covenants prohibit Manteiga from: (a) disclosing or using any confidential information obtained during his employment; (b) directly or indirectly soliciting employees or customers of Protective Products Holding Corp. or its subsidiaries for a period of two (2) years following the conclusion of his employment; and (c) directly or indirectly competing with Protective Products Holding Corp. or its subsidiaries or parents for a period of one (1) year following the conclusion of his employment.

5. Point Blank Holding Corp. has the right to enforce the restrictive covenants contained in Annex A to Slate and Manteiga's Option Grant Agreements with Protective Products Holding Corp., which subsequently merged into Point Blank Holding Corp. *See Corporate Express Office Prods., Inc. v. Phillips*, 847 So.2d 406, 414 (Fla. 2003) ("[T]he surviving corporation in a merger assumes the right to enforce a non-compete agreement entered into with an employee of the merged corporation by operation of law, and no assignment is necessary."); *see also Theyseenkrupp Elevator Corp. v. Hubbard,* No. 2:13-cv-202-FTM, 2013

WL 3242380 (M.D. Fla. June 25, 2013) (*Corporate Express* holding remains law after passage of Fla. Stat. §542.335(1)(f)); *Johnson Controls, Inc. v. Rumore*, No. 8:07-cv-1808, 2008 WL 203575, at *7 (M.D. Fla. Jan. 23, 2008) (same).

6. Plaintiffs have proven the existence of legitimate business interests justifying the need for the entry of a temporary injunction, as follows:

a. Plaintiffs have demonstrated the existence of valuable confidential business and professional information including Plaintiffs' ballistics business, ballistic package recipes, testing processes, and pricing information, and bid information and methodology. Fla. Stat. §542.335(1)(b)(2).

b. Plaintiffs have demonstrated the existence of substantial relationships with specific prospective or existing customers, including Carter Enterprises, the United States Military. Fla. Stat. §542.335(1)(b)(3).

7. Plaintiffs have not, however, proven the existence of a legitimate business interest in connection with its carrier business, as opposed to its Ballistic business.

8. Pursuant to §542.335(1)(j), Fla. Stat., "the violation of an enforceable restrictive covenant creates a presumption of irreparable injury to the person seeking enforcement of a restrictive covenant." Where a party seeking enforcement of a restrictive covenant in a non-compete agreement establishes one or more legitimate business interests justifying the restriction, and a restrictive covenant is violated, "irreparable injury is presumed and does not have to be proven to obtain an injunction." *D'Agostino v. Lethal Performance, Inc.*, 958 So. 2d 605, 606 (Fla. 4th DCA 2007); *JonJuan Salon, Inc.*, 922 So. 2d at 1084 ("The violation of an enforceable restrictive covenant creates a presumption of irreparable injury to the person seeking

enforcement of a restrictive covenant."); *see also* Fla. Stat. § 542.335 (1)(j) ("The violation of an enforceable restrictive covenant creates a presumption of irreparable injury").

9. Plaintiffs have further met their burden of proving irreparable harm in light of the fact that: (a) Defendants Slate and Manteiga successfully solicited Plaintiffs' largest customer, Carter Enterprises, to work with Short Bark on a government contract under which Plaintiffs had previously been a provider; and (b) Defendant, Manteiga successfully solicited Slate to work with him at Short Bark; (c) Defendant Slate has successfully solicited employees whom he formerly worked with at Point Blank to join him at Short Bark; (d) Defendants have also indicated that they have continued to provide Carter Enterprises price quotes for Improved Outer Tactical Vest, in competition with Plaintiffs. (Plaintiffs' Ex. 20.)

10. Plaintiffs do not have an adequate remedy at law. The Florida Legislature has expressly recognized through the enactment of Fla. Stat. §542.335 that the violations of restrictive covenants or misappropriation of confidential customer information cannot be adequately remedied by money damages alone, and may be enforced through injunctive relief. *See Austin v. Mid-State Fire Equip. of Cent. Florida, Inc.*, 727 So. 2d 1097, 1098 (Fla. 5th DCA 1999) (injunction proper where it prevented disclosure of confidential customer and pricing information in violation of restrictive covenant).

11. Plaintiffs have established that there is a substantial likelihood of success on the merits in light of the restrictive covenants and the evidence before the Court: (a) Slate and Manteiga met with Short Bark regarding a potential business venture prior to leaving Point Blank and then joined Short Bark immediately upon leaving Point Blank; (b) Short Bark, through Manteiga and Slate, sought out business with Carter Enterprises almost immediately upon joining Short Bark; (c) Carter Enterprises had not previously engaged in business with Short

Bark; (d) Short Bark was not a known, established, or proven manufacturer of Ballistics prior to the arrival of Slate and Manteiga or thereafter and until the receipt of the purchase order from Carter Enterprises; (e) upon their joining Short Bark, Slate, Manteiga and Janke attended numerous business meetings with Carter, where the parties discussed Short Bark's pricing, capabilities, and desire to work with Carter; (f) Short Bark received a significant purchase order from Carter Enterprises in February 2013 despite the fact that Short Bark and Carter Enterprises never conducted business with one another; (g) Short Bark has provided pricing to Carter Enterprises for Improved Outer Tactical Vests in competition with Point Blank; (h) Slate has interviewed Point Blank Enterprises employees who subsequently joined Short Bark; (i) Short Bark, through Manteiga, has conceded using Plaintiffs' confidential information for use in negotiations with Carter Enterprises; and (j) Slate and Manteiga have been offered contracts of employment from Short Bark that are much more akin to that of stakeholders in a new business line than that of ordinary employees.

12. Short Bark has, through the hiring of Manteiga and Slate, aided and abetted Short Bark in violating their restrictive covenants and have substantially benefitted as a result. Under these circumstances, "Florida courts have not hesitated to enforce non-compete agreements against both the employee who signed the agreement as well as against the corporation through which the ex-employee conducted business even where the employee was the only signatory to the non-compete agreement." *North American Products Corp. v. Moore*, 196 F. Supp. 2d 1217, 1229 (M.D. Fla. 2002); *W. Shore Rest. Corp. v. Turk*, 101 So.2d 123, 129 (Fla. 1958) ("The rule that a stranger to a covenant may be enjoined from aiding and assisting the covenant is supported by an overwhelming weight of authority."). Short Bark/Ms. Janke were not aware of the restrictive covenants prior to March, 2013.

13. Plaintiffs have established a substantial likelihood of success on its claim of tortious interference with advantageous business relationships, and, in particular, Carter Enterprises. *Insurance Field Services, Inc. v. White & White Inspection & Audit Services, Inc.*, 384 So. 2d 303, 307-08 (Fla. 5 DCA 1980) (solicitation of customers may constitute actionable tortious interference). Moreover, irreparable harm may be presumed in cases of tortious interference. *Dotolo v. Schouten*, 426, So. 2d 1013 (Fla. 2d DCA 1983) *pet. review denied*, 434 So.2d 888 (Fla. 1983).

14. Here, the Court finds that entry of a temporary injunction serves the public good as intended by the Florida legislature. Plaintiffs have presented evidence that they invest millions of dollars each year in research and development of ballistic packages. (Plaintiffs' Ex. 7.) Plaintiffs have a legitimate interest in protecting the confidential information and processes that go into developing such ballistic packages. Moreover, the military and law enforcement have an interest in seeing that the confidential information of their providers are protected such that providers will have an incentive to continue developing body armor that is lighter and more cost-effective.

15. Pursuant to Fla. Stat. §542.335(1)(i), "no court may refuse enforcement of an otherwise enforceable restrictive covenant on the ground that the contract violates public policy unless such public policy is articulated specifically by the court and the court finds that the specified public policy requirements substantially outweigh the need to protect the legitimate business interest or interests established by the person seeking enforcement of the restraint." While Defendants have presented several countervailing public policy considerations, none of these considerations substantially outweigh the need to protect Plaintiffs' legitimate business interests.

16. Defendants argued numerous defenses to the motion, most notably waiver and prior material breach by Plaintiffs.

17. With respect to the equitable defense of waiver, however, Florida courts have made clear that "should have known" allegations are not enough; rather, "in the context of restrictive covenants, there must be a 'long-continued waiver or acquiescence in the violation of a restrictive covenant' and 'conscious acquiescence in persistent, obvious and widespread violations for waiver or abandonment to occur.'" *Mizell v. Deal*, 654 So. 2d 659, 663 (Fla. 5th DCA 1995); *Kirschner v. Baldwin,* 988 So. 2d 1138, 1142 (Fla. 5th DCA 2008) (same). Although Plaintiffs' partnered with Short Bark after the departure of Slate and Manteiga, the partnership called for Point Blank Enterprises to provide soft ballistic inserts (its core competency) while Short Bark would provide ballistic carriers. At the hearing, there was extensive evidence that Point Blank Enterprises often partners with other suppliers, such as Carter, in this manner. Although Defendants presented evidence that Point Blank was aware that Defendants may have approached Carter in the summer of 2012, there is not enough evidence to support a conclusion that there was "conscious acquiescence in persistent, obvious and widespread violations." Plaintiff was further aware of Short Bark's competition in the fall of 2012; the Court chooses to consider this delay on putting Defendants on notice when determining the duration of the Injunction.

18. With respect to Defendants' claim of prior material breach of Defendants' Option Grant Agreements, the Court finds that there was no breach. Slate's and Manteiga's options were underwater at the time of their departure from Plaintiffs. Loss of value of stock options does not equate to a material breach of an option agreement. Defendants had the right to exercise these options. They chose not to exercise OR enforce that right. There is simply no merit to Defendants' arguments that the Options

Grant Agreements were breached or that all employees in an option plan must receive the same exact option grants.

19. Manteiga raises the defense that he was released from his restrictive covenants as a result of executing an Agreement and Release ("Severance") with Protective Products Enterprises, Inc. on April 12, 2012.(Plaintiffs' Ex. 8). Pursuant to the Severance, Manteiga received substantial payments in the amount of sixteen weeks' pay, payment of COBRA for sixteen weeks and a bonus of $9,750.00, an amount that exceeds $50,000. Manteiga failed to disclose material facts to Plaintiffs prior to executing the Severance, in which he represented that he had not and would not engage in any conduct injurious to Plaintiffs' interest. Plaintiffs justifiably relied on these material omissions and have been damaged as a result. Specifically, Manteiga induced Point Blank to enter the Severance by failing to disclose that he had recruited Slate, a key employee of Point Blank, to join Short Bark, and that he and Slate were going to be starting a ballistics business for Short Bark. In fact, a mere four days after executing the Severance, Manteiga and Slate were given a proposal to obtain an ownership interest in a separate business unit of Short Bark to be formed. Under these circumstances, the Severance is of no force and effect.(Plaintiffs' Ex. 22), as to this Injunction.

20. The Court has considered the remaining defenses raised by Defendants and finds that they are not supported by the evidence presented.

21. The Restrictive Covenant period will run from the date of the entry of this injunction, to enable Plaintiffs to receive the full benefit of such covenants. *Capelouto v. Orkin Exterminating Co.,* 183 So. 2d 532, 534-35 (Fla.1966). This period shall be shortened by seven and one-half months, in light of the delay in providing notice to the Defendants of the alleged violations.

Therefore, in light of and in consideration of the above findings of fact and conclusions of law by the Court, pursuant to §542.335, Fla. Stat., it is hereby **ORDERED AND ADJUDGED**:

Plaintiffs' Motion for Emergency Temporary Injunction against Defendants Slate, Manteiga, and Short Bark is **GRANTED**.

1. Defendants, Slate and Manteiga are enjoined for a period of one year, four and one-half months from:

a. Divulging, communicating or using to the detriment of Plaintiffs, confidential information or trade secrets relating to Plaintiffs, including, without limitation, business strategies, operating plans, acquisition strategies (including the identities of (and any other information concerning) possible acquisition candidates), financial information, market analyses, acquisition terms and conditions, personnel information, know-how, customer lists and relationships, supplier lists and relationships, or other non-public proprietary and confidential information relating to Plaintiffs.

b. Directly or indirectly, for themselves or on behalf of any other person, firm or entity, including Short Bark Industries, Inc., employing, engaging, retaining, soliciting, recruiting, or entering into a business affiliation with any person who is an employee of the Plaintiffs, or attempting to persuade any such person to terminate such person's employment with Plaintiffs, whether or not such person is a full-time employee or whether or not such employment is pursuant to a written agreement or at-will.

c. Directly or indirectly, for themselves or on behalf of any other person, firm or entity, including Short Bark Industries, Inc., soliciting or otherwise attempting to take away any supplier, vendor, or customer of Plaintiffs, including Carter Enterprises, whom Slate or

Manteiga solicited or did business with on behalf of the Plaintiffs, or with whom Slate or Manteiga otherwise became acquainted as a result of their employment with Plaintiffs.

2. Defendants Slate and Manteiga are hereby enjoined for a period of four and one-half months from:

a. Directly or indirectly engaging in or serving as a principal, partner, joint venture, member, manager, trustee, agent, stockholder, director, officer or employee of, or advisor to, or in any other capacity, or in any manner, owning, controlling, managing, operating, or otherwise participating, investing, or having any interest in, or being connect with, any person, firm or entity that engages in any activity which competes directly or indirectly with Plaintiffs in the ballistics business, i.e., soft body armor, anywhere in the United States of America or in any other country in which the Plaintiffs conducted business during the preceding two years.

3. Defendant Short Bark Industries is hereby enjoined from:

a. Defendant Short Bark is hereby enjoyed from directly or indirectly taking any action to interfere with any restrictive covenants between Slate, Manteiga and Plaintiffs.

b. Notwithstanding the foregoing, Short Bark may fulfill the Carter P.O., as it would be against the public interest to preclude Short Bark from fulfilling such an existing purchase order under which substantial production has already commenced. Short Bark may also continue to employ Grace de los Reyes, Josephine Walters, and Alonzo Gomez, as they have already departed Plaintiffs and are working for Short Bark. Defendants may continue to operate in the carrier business.

4. The Court, having considered the testimony and evidence, orders that as security for this temporary injunction, in accordance with Rule 1.610, Florida Rules of Civil Procedure, Plaintiffs shall deposit into the Court's Registry, a bond in the amount of $500,000.00, which

sums the Court deems proper for the payment of such costs and damages sustained by the Defendants if the Defendants are later found to have been wrongfully enjoined. This injunction shall not be effective until the bond has been posted.

5. Pursuant to Rule 1.610(d) Fla. R. Civ. P., this injunction against Defendants is binding upon them as well as their officers, agents, servants, employees, and attorneys as well as those persons in active concert or participation with them who receive actual notice of the injunction.

DONE AND ORDERED, in Chambers at Broward County, Florida this 17th day of October 2013.

Hon. Jeffrey E. Streitfeld
Circuit Court Judge

Conformed Copies to:
Leonard K. Samuels, Esq.
Aliza Herzberg, Esq.
Devand Sukhdeo, Esq.
TerRance Woodard, Esq.