STATE OF NORTH CAROLINA NEW HANOVER COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 25CV003575-640
EVERGREEN BUILDER SOLUTIONS, LLC, d/b/a EVERGREEN FOAM & INSULATION, a North Carolina limited liability company, Plaintiff, v. WESTON DEAN TAYLOR, an individual; MARK ERIC PRICE, an individual; REED CAMPBELL WESTRA, an individual; ASHLEY FIALA WESTRA, an individual; INTEGRITY BUILDING COMPANIES, LLC, d/b/a IBC ROOFING, a North Carolina limited liability company; INTEGRITY INSULATION SYSTEMS, LLC, a North Carolina limited liability company; IBC HOLDINGS, LLC, a North Carolina limited liability company; and IBC FRANCHISING, LLC, a North Carolina limited liability company, Defendants.	**ORDER ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

This matter is before the Court on Plaintiff's motion for a preliminary injunction, (ECF No. 5), on the return hearing following entry of a temporary restraining order by the Honorable R. Kent Harrell on 6 May 2025, (ECF No. 7), before this matter was designated to the North Carolina Business Court.

Having considered the motion, the verified complaint and affidavits, the competent evidence of record, the arguments of counsel, and applicable law, the Court in its discretion announced in open court that Plaintiff's motion would be **DENIED** and that the temporary restraining order would be permitted to **EXPIRE** and

DISSOLVE by its own terms. This Order documents the Court's oral ruling, and the Court makes the following **FINDINGS OF FACT** and **CONCLUSIONS OF LAW** with respect to its determination:

FINDINGS OF FACT[1]

1. Plaintiff is a spray foam and thermal insulation contractor with operations in North Carolina, (Compl. ¶¶ 1, 19, 20), and Defendants Taylor (hired in 2016) and Price (hired in 2023) are Plaintiff's former employees who were based and worked in Wilmington, North Carolina, (Complaint ¶¶ 23–24, 34, 36, 40–43, "**Compl.**," ECF No. 3).

2. As Plaintiff's employees, Price and Taylor agreed in relevant part not to disclose to third parties Plaintiff's purportedly confidential or proprietary information (such as client details, pricing information, and bidding processes and formulas) and agreed not to "compete" with Plaintiff either "directly or indirectly" for a period of at least three years after their employment with Plaintiff.[2] (Compl. ¶¶ 25–33, 40–44; Ex. A, ECF No. 25.1; Ex. B at 13–14, ECF No. 25.1; Exs. C, D, and E at 2, ECF No. 25.1; Price Agreement, Ex. F, ECF No. 25.1).

3. Further, without a limitation as to time, Taylor agreed not to solicit Plaintiff's "members, managers, employees, clients, vendors, supplier, operations or

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[1] These findings of fact are made solely to decide the motion and are not binding in any subsequent proceedings on the merits. *Lohrmann v. Iredell Mem'l Hosp., Inc.*, 174 N.C. App. 63, 75 (2005) ("It is well settled that findings of fact made during a preliminary injunction proceeding are not binding upon a court at a trial on the merits.").

[2] Taylor contends that the non-compete provisions in his agreements with Plaintiff ultimately subject him to a six-year limitation, (ECF No. 28 at 16–17), but the Court need not decide that issue at this stage.

affiliated companies." (Ex. E at 2, ECF No. 25.1). Price similarly agreed "not to solicit, work for, attempt to hire or hire any managers, employees or clients of Evergreen subsequent to [Price's] working with Evergreen without the prior written consent of Evergreen," with this provision limited to a period of at least three years after cessation of Price's employment, to the services and products that Plaintiff offers or might offer,[3] and to "any location within 150 miles of a Company location." (Ex. F at 2–3, ECF No. 25.1). Neither Taylor's nor Price's agreements define "clients" of Evergreen, nor do they limit the non-solicitation provisions to client contacts made during the period of Taylor's or Price's employment, respectively. (*See generally* Exs. E and F, ECF No. 25.1).

4. Though Plaintiff and Price similarly agreed that Price's "non-compete, non-solicitation and non-hire provisions" would be governed by the geographical limitation of "any location within 150 miles of a Company location," (Ex. F at 3, ECF No. 25.1), Plaintiff and Taylor further entered into several agreements by which Taylor agreed at various times not to compete with Plaintiff "either directly or indirectly" within "a 350-mile radius of Raleigh, NC," (Ex. D at 2, ECF No. 25.1), "within a 250 mile radius of an operating or sales location of" Plaintiff's, (Ex. C at 2,

[3] These services broadly include "any design, bidding, consulting, installation, market development, general management, production management, financial management, sales management, client management, branch management, project management or supervision," while the products similarly broadly include "any spray foam products, thermal insulation products, unventilated crawl or attic assembly products, intumescent coating products, fluid-applied and/or solid-membrane air barrier, weathershield and/or vapor-resistant products." (*E.g.*, Ex. F at 2–3, ECF No. 25.1). These categories allegedly apply regardless of whether Price or Taylor ever worked in such areas on behalf of Plaintiff.

ECF No. 25.1), or "within a 150-mile radius of a Company operating location," (Ex. E at 2, ECF No. 25.1).

5. These geographic limitations purportedly apply from both Raleigh and Wilmington, North Carolina, reaching as far as Blacksburg, Charlottesville, and Virginia Beach, Virginia; Monroe, North Carolina; Camden, South Carolina; and a multitude of towns and cities in between—even though Price's and Taylor's "territories" were limited to eastern North Carolina and South Carolina, and they never worked for Plaintiff in those cities or anywhere in South Carolina. (Defs.' Br. Opp. Pl.'s P.I. Mot., Ex. 1, ¶¶ 5–8, "**Taylor Aff.**," ECF No. 29; Defs.' Br. Opp. Pl's P.I. Mot., Ex. 2, ¶¶ 5–8, "**Price Aff.**" ECF No. 29).

6. During its existence, Plaintiff has developed a substantial client list; certain bidding and estimation processes, programming, and formulas; and certain operations and installation methods for insulation materials that Plaintiff contends are confidential or proprietary. (Compl. ¶¶ 20–22). However, Plaintiff's representatives often travel to its job sites (i.e., its clients' locations) with branded vehicles and other identifiers, publicly identifying those job sites and clients, and its construction permits are often public and serve as identifiers of its clients. (Aff. Reed Campbell Westra ¶ 10 & Ex. A, "**Westra Aff.**," ECF No. 30).

7. While the parties disagree as to whether Defendants Price and Taylor had access to Plaintiff's bid calculation formulas and other financial formulas and details that Plaintiff purports to be confidential or proprietary, (Price Aff. ¶¶ 9–10; Taylor Aff. ¶¶ 9–10), the Court finds for purposes of only this motion that Plaintiff

has failed to provide convincing evidence that Price or Taylor had access to financial formulas, rather than simply having limited access to spreadsheets in which the formulas were integrated but not accessible. (Price Aff. ¶ 10; Taylor Aff. ¶¶ 10, 17).

8. In October 2023, Taylor resigned as Plaintiff's employee, and he began working as a sales representative for Defendant Integrity Insulation Systems, LLC, selling spray foam insulation, around 20 November 2023. (Taylor Aff. ¶¶ 15–17).

9. More than a year later, in January 2025, Price resigned from his employment with Plaintiff and was promptly employed by Defendant Integrity Insulation, working with Taylor. (Price Aff. ¶ 15).

10. In both instances, Plaintiff unilaterally reduced Price's and Taylor's agreed compensation before their resignations and even withheld Price's final paycheck. (Taylor Aff. ¶ 14; Price Aff. ¶¶ 14–15).

11. The Court finds for purposes of this motion only that Plaintiff has failed to show that, on departing their employment with Plaintiff, Price or Taylor accessed, downloaded, or took with them any data, software, or hardware that they were not authorized to have or to take with them. Instead, the weight of the competent evidence suggests that neither Price nor Taylor did so. (Taylor Aff. ¶ 16; Price Aff. ¶ 16).[4]

[4] Indeed, though Plaintiff asserts a "computer trespass" claim, the only substantive references to a computer in the complaint are Plaintiff's conclusory allegations, made "[u]pon information and belief" that Price and Taylor "entered onto Plaintiff Evergreen's computer(s) and/or computer network without the authority of Evergreen" to copy Plaintiff's information—allegations for which Plaintiff has identified no factual basis, as Plaintiff's counsel acknowledged at the hearing, despite the relative ease of conducting a forensic audit of Plaintiff's computer systems.

12. Integrity Insulation is a nascent company. Though it sells foam insulation, a widely available construction product, Integrity Insulation does not install the product it sells and instead subcontracts installation to a third-party vendor. (Westra Aff. ¶¶ 4–6; Taylor Aff. ¶ 19).

13. Price and Taylor work for Integrity Insulation and do not work for Integrity Building Companies, LCC d/b/a IBC Roofing, IBC Holdings, LLC, IBC Franchising, LLC, Reed Campbell Westra, or Ashley Fiala Westra. (Westra Aff. ¶¶ 2–3).

14. Except to the extent of Reed Westra's role in hiring Price and Taylor on behalf of Integrity Insulation, the evidence at this stage indicates that none of those Defendants were materially involved in the hiring of Price and Taylor or any other alleged wrongdoing against Plaintiff. Instead, Price's and Taylor's employer, Integrity Insulation, "is a separate operating entity with its own employees, its own company books and records, and bank account." (Westra Aff. ¶¶ 2–3). Defendant Reed Westra is a member/manager of Defendant IBC Holdings, LLC, which is the sole member of Integrity Insulation (of which Reed Westra is an officer), and Defendant Ashley Westra is a manager of Integrity Insulation. (Westra Aff. ¶ 2).

15. After joining Integrity Insulation, Price and Taylor resumed working in the Wilmington, North Carolina market. Thereafter, based on the clients' dissatisfaction with Plaintiff's services, several of Plaintiff's former clients approached and contracted with Integrity Insulation to handle projects and provide insulation-related products and services within the scope of those offered by Plaintiff.

These products, services, and former clients were within the scope of the non-compete and non-solicitation provisions of Price's and Taylor's contracts with Plaintiff. (S*ee generally* Aff. Thomas Jason Smith, "**Smith Aff.**," ECF No. 31; Aff. Joseph Jones, "**Jones Aff.**," ECF No. 32; Taylor Aff. ¶¶ 20–21; *see also* Compl. ¶¶ 97–118).

16. Integrity Insulation and Reed Westra were aware of Price's and Taylor's restrictive covenants with Plaintiff when Integrity Insulation hired them, and they "specifically discussed not actively soliciting Evergreen customers and the need to build up [Integrity Insulation's] own new customer base" without using "any proprietary information of Evergreen." (Westra Aff. ¶ 8). Thus, though Taylor is involved in the bid-development process for Integrity Insulation's projects, Price is not involved in preparing its bids. (Price Aff. ¶ 17; Taylor Aff. ¶ 18).

17. In offering its services, while Integrity Insulation (like Plaintiff) necessarily uses formulas and other information in determining the amounts to bid on a project and otherwise determining the expected costs of a project, the weight of the evidence indicates, and the Court finds for purposes of the motion at issue, that Integrity Insulation developed those formulas and processes "through trial and error" because the process "is mostly common sense"—i.e., determining the square footage of the job, the amount of insulation necessary to cover that square footage, the amount charged by Integrity Insulation's subcontractor, and the profit margin needed and then returning the applicable number using commercially available pricing software. (Westra Aff. ¶¶ 9, 11; *see also* Taylor Aff. ¶ 18).

18. More than a year after Taylor left and several months after Price left Plaintiff's employment, Plaintiff filed suit against Defendants on 2 May 2025, seeking injunctive relief and also asserting causes of action for (i) breach of non-compete, non-disclosure, and confidentiality agreements against Taylor and Price, (ii) computer trespass against Taylor and Price, (iii) conversion against Taylor and Price, (iv) tortious interference against the remaining Defendants, (v) imposition of a constructive trust and appointment of a receiver, (vi) alleged violations of Chapter 75 of the North Carolina General Statutes for unfair or deceptive acts or practices against all Defendants, and (vii) an award of punitive damages against all Defendants. (*See generally* Compl., ECF No. 3).

19. Many of the material allegations of Plaintiff's complaint, as verified by Plaintiff's office manager, are made upon information and belief, conjecture, and suspicion, as well as third-party hearsay of unidentified individuals. (*See generally* Compl.; Verification, ECF No. 4).

20. On 6 May 2025, Judge Harrell entered a temporary restraining order, (ECF No. 7), as extended to 22 May 2025 by agreement of the parties, at which point this Court held a hearing on a return of the temporary restraining order and Plaintiff's motion for a preliminary injunction. (ECF No. 14).

21. Plaintiff's claims are based largely on the contention that Price and Taylor misappropriated and disclosed to the other Defendants information that Plaintiff contends to be confidential or proprietary, such as its client list and its bid preparation formulas; that Price and Taylor violated their contractual obligations with Plaintiff by working in the same industry and providing the same services they

had provided for Plaintiff; that Price and Taylor have solicited Plaintiff's clients in violation of their contractual provisions; and that the remaining Defendants have facilitated and encouraged these wrongful acts. (*See generally* Compl.).

22. Based on the evidence of record, the Court finds that Plaintiff has failed to demonstrate with competent, non-conclusory evidence that Price or Taylor took or disclosed any of Plaintiff's purportedly confidential information, including its bid formulas; that either Price or Taylor actively and initially solicited any client of Plaintiff's on behalf of Integrity Insulation (though they have serviced and performed work on behalf of such clients or former clients); that Integrity Insulation (via Reed Westra) hired Price and Taylor for any reason other than legitimate and competitive business reasons; or that Defendants Integrity Building Companies, LCC d/b/a IBC Roofing, IBC Holdings, LLC, IBC Franchising, LLC, or Ashley Fiala Westra have any material involvement in the alleged conduct on which Plaintiff bases its claims.

23. The Court does find, however, that Price and Taylor are actively competing with Plaintiff by offering services within the geographic area and the subject matter encompassed by the parties' various agreements.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court makes the following conclusions of law:

24. The purpose of immediate injunctive relief "is ordinarily to preserve the status quo … [and i]ts issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities." *A.E.P. Indus., Inc. v.*

McClure, 308 N.C. 393, 400 (1983) (quoting *State ex rel. Edmisten v. Fayetteville St. Christian Sch.*, 299 N.C. 351, 357 (1980)).

25. Both preliminary injunctions and temporary restraining orders are extraordinary remedies. *La Mack v. Obeid*, 2014 NCBC LEXIS 38, at **1–3, **2 n.2 (N.C. Super. Ct. Aug. 29, 2014) (denying motion for temporary restraining order; noting drastic nature of such relief even in instances where the nonmovant has notice).

26. North Carolina courts have long held that immediate injunctive relief will generally issue only:

> (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff's rights during the course of litigation.

A.E.P. Indus., 308 N.C. at 401 (emphasis in original) (citations omitted). On the other hand, "[w]here there is a full, complete and adequate remedy at law, the equitable remedy of injunction will not lie." *Bd. of Light & Water Comm'rs v. Parkwood Sanitary Dist.*, 49 N.C. App. 421, 423 (1980) (citations omitted).

44. A likelihood of success on the merits means a "reasonable likelihood." *See A.E.P Indus.*, 308 N.C. at 404.

45. An "irreparable injury" is not necessarily "beyond the possibility of repair or possible compensation in damages, but … is one to which the complainant should not be required to submit or the other party permitted to inflict, and is of such continuous and frequent recurrence that no reasonable redress can be had in a court

of law." *Id.* at 407 (quoting *Barrier v. Troutman*, 231 N.C. 47, 50 (1949), *superseded in part on other grounds by statute*).

46. "If irreparable injury is not shown, the preliminary injunction will be denied." *Unimin Corp. v. Gallo*, 2014 NCBC LEXIS 44, at **17 (N.C. Super. Ct. Sept. 4, 2014) (citations omitted).

47. Ultimately, "[t]he issuance of a preliminary injunction is a decision committed to a trial court's discretion." *State ex rel. Stein v. MV Realty PBC, LLC*, 2023 NCBC LEXIS 102, at **37–38 (N.C. Super. Ct. Aug. 30, 2023) (citing *State ex rel. Edmisten,* 299 N.C. at 357).

48. Moreover, the evidence in support of a preliminary injunction must consist of more than speculation and conclusory allegations made upon information and belief. *See Vanguard Grp., Inc. v. Snipes*, 2022 NCBC LEXIS 55, at *14 (N.C. Super. Ct. June 6, 2022) ("[C]onclusory assertions made 'upon information and belief' are not sufficient.").

49. The Court has balanced and weighed the potential harm to Plaintiff if an injunction is not issued against the potential harm to Defendants if an injunction is granted. *See, e.g., Wheeler v. Wheeler*, 2018 NCBC LEXIS 156, at **17 (N.C. Super. Ct. Nov. 15, 2018). After careful review and consideration of the parties' submissions, the arguments by counsel at the hearing on the motion, and the competent evidence of record, the Court concludes that the applicable factors weigh against issuance of a preliminary injunction or continuation of the temporary restraining order and that Plaintiff is not entitled to such relief.

50. Plaintiff has failed to meet its burden to demonstrate a reasonable likelihood of success on the merits of its claims that might otherwise justify issuance of a preliminary injunction and to demonstrate a likelihood of irreparable harm if injunctive relief is not granted.

51. With respect to its breach of contract claims concerning the non-compete and non-solicitation provisions, Plaintiff has failed at this stage to demonstrate that the agreements, or at least those underlying provisions, are reasonable, legal, and enforceable given:

a. their expansive geographic (at *least* one hundred fifty miles), temporal (at least three years, if not longer or indefinitely), and subject-matter breadth (effectively all services and products in any way offered at any time by Plaintiff as described above), *see, e.g.*, *Henley Paper Co. v. McAllister*, 253 N.C. 529, 535 (1960) (voiding restrictions); *CopyPro, Inc. v. Musgrove*, 232 N.C. App. 194, 204 (2014); *Sandhills Home Care, LLC v. Companion Home Care – Unimed, Inc.*, 2016 NCBC LEXIS 61, at **13–14, 18, 23 (N.C. Super. Ct. Aug. 1, 2006) (non-solicitation clauses must be reasonable in duration); *VisionAIR, Inc. v. James*, 167 N.C. App. 504, 509 (2004) (describing the limited scope of viable non-compete agreements);

b. the expansive scope of the clients and other persons and entities not to be solicited, *see Farr Assocs., Inc. v. Baskin*, 138 N.C. App. 276, 281 (2000); *Manpower of Guilford Cnty., Inc. v. Hedgecock*, 42 N.C. App. 515, 522–23 (1979) ("A restriction as to territory is reasonable only to the extent it protects the legitimate interests of the employer in maintaining his customers."); *Andy-Oxy Co., Inc. v.*

Harris, 268 N.C. App. 323, at *6 (2019) (unpublished) (noting that "client-based limitation cannot extend beyond contacts made during the period of the employee's employment" (citation omitted)); and

c. their prohibition on competition "directly or indirectly" with Plaintiff, *e.g.*, *Prometheus Grp. Enters., LLC v. Gibson*, 2023 NCBC LEXIS 42, at **13–15 (N.C. Super. Ct. Mar. 21, 2023); *Akzo Nobel Coatings Inc. v. Rogers*, 2011 NCBC LEXIS 42, at **32 (N.C. Super. Ct. Nov. 3, 2011); *see VisionAIR*, 167 N.C. App. at 509.

52. Even if the agreements, or the relevant provisions, ultimately are reasonable, legal, and enforceable, the current evidence of record does not provide a reasonable basis upon which to determine that Price or Taylor has ever disclosed Plaintiff's purportedly confidential information, and Plaintiff has failed to carry its burden to demonstrate that the information is, in fact, confidential or otherwise covered by the agreements at issue. Thus, while Plaintiff might succeed on its non-compete claims if the agreements were determined to be enforceable, Plaintiff has failed to demonstrate a likelihood of success on the other contract claims even under those circumstances.

53. On its claim against Price and Taylor for conversion, quite simply, Plaintiff has failed to provide any evidence from which the Court (or any fact finder) could reasonably conclude that Price and Taylor "converted" or otherwise unlawfully stole and used Plaintiff's purported confidential or "Proprietary Information." *Wake*

Cnty. v. Hotels.com, L.P., 235 N.C. App. 633, 652 (2014) ("[T]wo essential elements are necessary in a claim for conversion: (1) ownership in the plaintiff, and (2) a wrongful conversion by the defendant," defined as "an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of an owner's rights" (citations omitted)).

54. As to its claim for computer trespass, Plaintiff has presented no evidence that Price or Taylor accessed its computers or software at any time to download or use Plaintiff's information for an improper purpose, as Plaintiff's counsel conceded at the hearing, and Plaintiff has therefore failed to demonstrate a reasonable likelihood of success on the merits of that claim. *See* N.C. Gen. Stat. § 14-458 and § 1-539.2A (a private right of action for damages from crime of computer trespass requires use of "a computer or computer network without authority" for one of several specified wrongful acts).

55. Price's and Taylor's mere ability or opportunity to access allegedly confidential or proprietary information, without evidence that they actually accessed it or have used it, and without more than conclusory allegations and speculation, is not sufficient to support either a conversion or computer trespass claim. *Prometheus*, 2023 NCBC LEXIS 42, at **44 (determining that, to warrant injunctive relief, "more is needed" than prior "access to confidential information" and "speculation arising from" other circumstances without substantive evidence (citations omitted)).

56. Therefore, Plaintiff has not shown a reasonable likelihood of success on those claims.

57. Similarly, as to Plaintiff's tortious interference claim (and other claims) against the remaining Defendants, the complaint is again largely devoid of factual allegations against those parties beyond suspicions and conclusory allegations of wrongdoing based on the hiring of Price and Taylor. Plaintiff has failed to provide any substantive evidence other than that Integrity Insulation hired Price and Taylor and assigned them to develop its business in the same markets as Plaintiff, and the weight of the evidence reflects at this time that it was for legitimate business reasons—and likely not even contrary to Plaintiff's agreements with Price and Taylor if those agreements are unenforceable. *Peoples Sec. Life Ins. Co. v. Hooks*, 322 N.C. 216, 222 (1988) ("[T]he hiring and placing of the plaintiff's former employees by the defendant for the purpose of developing the territory assigned to him by a company competing with the plaintiff amounted to justifiable interference.").

58. Therefore, Plaintiff has failed to provide sufficient evidence upon which the Court might reasonably conclude that Plaintiff is likely to prevail on a tortious interference claim, and the Court concludes that Plaintiff is not likely to meet this burden at trial. *See White v. Cross Sales & Eng'g Co.*, 177 N.C. App. 765, 768–69 (2006) ("To establish a claim for tortious interference with contract, a plaintiff must show: (1) a valid contract between the plaintiff and a third person which confers upon the plaintiff a contractual right against a third person; (2) the defendant knows of the contract; (3) the defendant intentionally induces the third person not to perform the

contract; (4) and in doing so acts without justification; (5) resulting in actual damage to plaintiff." (citation and internal punctuation omitted)).

59. Plaintiff has demonstrated only a *possibility* of success on its claim against Price and Taylor for non-compete violations,[5] and there is scant evidence for its claims of other wrongdoing by Defendants. Plaintiff has thus failed to show a likelihood of success on the merits of its Chapter 75 claim against any Defendants for alleged unfair or deceptive acts or practices. *See McKinnon v. CV Indus., Inc.*, 213 N.C. App. 328, 340 (2011) ("To prevail on a claim of unfair and deceptive trade practices, a plaintiff must show: (1) defendants committed an unfair or deceptive act or practice; (2) in or affecting commerce; and (3) that plaintiff was injured thereby." (citations and internal punctuation omitted)); *Boyd v. Drum*, 129 N.C. App. 586, 593 (1998) ("[I]t is well-recognized that actions for unfair or deceptive trade practices are distinct from actions for breach of contract," such that "[a] mere breach of contract, even if intentional, is not sufficiently unfair or deceptive to sustain an action under N.C.G.S. § 75-1.1," and instead "[s]ubstantial aggravating circumstances attendant to the breach must be shown." (citations omitted)).

60. And finally, Plaintiff's remaining causes of action for a constructive trust/receiver and for punitive damages are requests to impose remedies—not independent causes of action warranting injunctive relief, particularly where

[5] As counsel for Price and Taylor conceded at the hearing, if the agreements with Plaintiff are valid, Plaintiff is likely to succeed on the merits of its claim for breach of the non-compete provisions. However, as set forth above, Plaintiff has failed to meet its burden at this stage to show even a reasonable likelihood that the agreements and provisions will be valid and enforceable.

Plaintiff has failed to meet its burden to demonstrate a likelihood of success on the underlying claims. *See Londry v. Stream Realty Partners*, 2023 NCBC LEXIS 174, at *10–11 (N.C. Super. Ct. Dec. 28, 2023) (no preliminary injunction where there are no underlying claims supporting the relief requested in the motion); *e.g.*, *Collier v. Bryant*, 216 N.C. App. 419, 434 (2011) ("Punitive damages are available, not as an individual cause of action, but as incidental damages to a cause of action." (citation omitted)); *W&W Partners, Inc. v. Ferrell Land Co., LLC*, 2019 NCBC LEXIS *45*, at *26 (N.C. Super. Ct. July 25, 2019) ("[A] constructive trust is not a standalone claim for relief or cause of action." (citation omitted)).

61. In short, other than as to its claim for breach of the non-compete provisions (which may nonetheless be unenforceable), there is a dearth of evidence in the record to support Plaintiff's claims. *Digit. Recorders, Inc. v. McFarland*, 2007 NCBC LEXIS 23, at *20 (N.C. Super. Ct. June 29, 2007) (denying preliminary injunction where there was a "dearth of evidence" suggesting use of confidential information). While Plaintiff relies upon unattributed statements of third parties and allegations made on information and belief by its office manager to support its claims, Plaintiff fails "to present any specific evidence to bolster its suspicion" of disclosure of confidential information. *Aeroflow Inc. v. Arias*, 2011 NCBC LEXIS 21, at *20 (N.C. Super. Ct. July 5, 2011) (denying preliminary injunction).

62. With Plaintiff largely having failed to demonstrate a reasonable likelihood of success on the merits of its claims, this is a sufficient basis on which the

Court determines that Plaintiff is not entitled to a preliminary injunction or continuation of the temporary restraining order.

63. Further, however, in analyzing the likelihood of irreparable harm to Plaintiff, the Court notes that Taylor left his employment with Plaintiff in 2023, nearly two years ago, and Price left approximately five months ago in January 2025. By itself, Plaintiff's delay in seeking injunctive relief weighs against a determination of irreparable harm. *Glob. Textile All., Inc. v. TDI Worldwide, LLC*, 2017 NCBC LEXIS 108, at *30 (N.C. Super. Ct. Nov. 21, 2017) ("One significant measure of … immediate and irreparable harm is the haste with which the moving party seeks injunctive relief." (citations omitted)); *see N. Iredell Neighbors for Rural Life v. Iredell Cnty.*, 196 N.C. App. 68, 79 (2009) (affirming denial of injunction pending appeal where "some two months" passed "without any contention … of an urgent threat of irreparable harm"); *W&W Partners, Inc. v. Ferrell Land Co.*, 2018 NCBC LEXIS 210, at *12 (N.C. Super. Ct. Mar. 8, 2018) (plaintiffs waited eight months after learning of underlying dispute before filing suit); *Am. Air Filter Co. v. Price*, 2017 NCBC LEXIS 9, at *13–15 (N.C. Super. Ct. Feb. 3, 2017) (denying preliminary injunction after several delays of three to six months after Plaintiff learned of certain events).

64. Even if it did not, however, during the nearly two years since Taylor's departure and nearly five months since Price's departure, Plaintiff has compiled almost no material evidence to suggest wrongdoing by Defendants (other than competition by Price and Taylor) and has identified no tangible or irreparable harm that Plaintiff is likely to suffer based on the current circumstances.

65. Though Plaintiff has failed to meet its burden to obtain a preliminary injunction, the Court notes that, if Plaintiff had even a modicum of evidence to support its claims, the equities might well favor Plaintiff—at least as between Plaintiff, Price, and Taylor. Price and Taylor have undisputedly violated the non-compete limitations to which they agreed, and they have flaunted that fact with no apparent remorse, instead suggesting that the agreements are not worth the paper on which they are written.

66. However, the record also suggests that Plaintiff unilaterally cut Price's and Taylor's compensation prior to their departure and that it withheld a final paycheck due to Price. These facts do not help Plaintiff overcome the deficiencies of its evidentiary showing, and the Court determines under the circumstances that the limited possibility (rather than likelihood) of harm to Plaintiff is far outweighed by the deficiencies of its evidentiary showing, Plaintiff's delay, and the potential harm to Defendants if a preliminary injunction were to issue. *See, e.g.*, *Digit. Realty Tr., Inc. v. Sprygada*, 2022 NCBC LEXIS 71, at **19 (N.C. Super. Ct. July 1, 2022) ("[T]he Court must balance the equities by weighing the potential harm [the plaintiff] will suffer if no injunction is entered against the potential harm to Defendant if an injunction is entered." (citations omitted)).

67. Accordingly, as announced in open court, the Court determines that Plaintiff has failed to meet its burden to obtain a preliminary injunction, that Plaintiff's motion for a preliminary injunction should be denied, and that the

temporary restraining order entered by Judge Harrell should dissolve and expire by its terms and have no further force or effect.

68. It is just, equitable, and reasonable to enter this Order denying Plaintiff's requested relief.

CONCLUSION

Accordingly, the Court orders in the exercise of its discretion that Plaintiff's motion for a preliminary injunction is **DENIED**, and the temporary restraining order entered on 6 May 2025 is **DISSOLVED** and has **EXPIRED** by its terms, with no further force or effect.

SO ORDERED, this 5th day of June 2025.

/s/ Matthew T. Houston
Matthew T. Houston
Special Superior Court Judge
for Complex Business Cases