IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

THE STANDARD REGISTER COMPANY, ET AL.,	CIV. NO. 14-00291 JMS-RLP
Plaintiffs,	ORDER DENYING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT, DOC. NOS. 93, 95
vs.	
LYNDEN KEALA, ET AL.,	
Defendants.	

ORDER DENYING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT, DOC. NOS. 93, 95

I. INTRODUCTION

Plaintiffs the Standard Register Company ("Standard Register") and WorkflowOne LLC (collectively, "Plaintiffs") filed this action against their former employees Lynden Keala ("Keala"), Jaxcine Kaulili-Guzon ("Kaulili-Guzon"), and Sharon Brown-Henry ("Brown-Henry") (collectively, the "Individual Defendants"), as well as against the Individual Defendants' current employer, American Business Forms, Inc., dba American Solutions for Business ("ASB"), based on diversity of citizenship under 28 U.S.C. § 1332.[1]

[1] The original June 25, 2014 Complaint named Standard Register, Relizon Company ("Relizon") and Workflow Solutions LLC as Plaintiffs. *See* Doc. No. 1, Compl. at 2. The July

(continued...)

Plaintiffs allege that the Individual Defendants violated non-solicitation and/or non-disclosure provisions of their employment agreements when, after leaving to work for Defendant ASB (a business competitor), they solicited and/or accepted business from Plaintiffs' clients and/or disclosed trade secrets. The Amended Complaint makes claims against the Individual Defendants for breach of contract, and against all Defendants for misappropriation of trade secrets and tortious interference with business relations.

Before the court are Motions for Summary Judgment filed by the Individual Defendants and Defendant ASB. Doc. Nos. 93, 95. On May 13, 2015, the court limited the scope of the Motions to whether the relevant provisions of the employment agreements are invalid for lack of sufficient consideration (the "consideration issue"). Doc. No. 105. A hearing was held on May 26, 2015. Based on the following, both Motions are DENIED.

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[1](...continued)
8, 2014 Amended Complaint names Standard Register and WorkflowOne LLC as Plaintiffs, and alleges that WorkflowOne LLC had previously purchased the assets of Relizon and Workflow Solutions LLC (which had both filed for bankruptcy). Doc. No. 32, Am. Compl. ¶ 2. It further states that Standard Register purchased WorkflowOne LLC, effective August 1, 2013, making Standard Register the sole member and owner of WorkflowOne LLC. *Id.* ¶ 3. And undisputed evidence indicates that Standard Register has formally merged with WorkflowOne LLC, effective December 31, 2014. *See* Doc. No. 100-10, Hermina Glaser Aff. ¶¶ 3, 4. Accordingly, the court proceeds with Standard Register and WorkflowOne LLC as Plaintiffs, although some of the pleadings have retained the original Plaintiffs in the caption.

II. PROCEDURAL AND FACTUAL BACKGROUND

A. Prior Proceedings

On July 11, 2014, the court denied Plaintiffs' Motion for Temporary Restraining Order ("TRO"), which had sought to prohibit Defendants from (1) breaching the non-solicitation and non-disclosure provisions of the Individual Defendants' employment agreements; (2) misappropriating WorkflowOne's trade secrets; and (3) tortiously interfering with WorkflowOne's valid business relationships. Doc. No. 44, Order at 2-3 ("July 11, 2014 Order"). The July 11, 2014 Order sets forth the basic allegations of the dispute, and the court need not reiterate the details regarding the alleged violations.

Rather, the instant Order focuses on the consideration issue -- whether the non-competition provisions of the Individual Defendants' employment agreements are unenforceable for lack of consideration.[2] *See, e.g.*, *Douglass v. Pflueger Haw., Inc.*, 110 Haw. 520, 534, 135 P.3d 129, 143 (2006) ("It is well-settled that consideration is an essential element of, and is necessary to the enforceability or validity of, a contract.") (quotations omitted). More

[2] The court accepts, for purposes of addressing the Motions, that the non-competition provisions are otherwise "reasonable." *See, e.g.*, *7's Enters., Inc. v. Del Rosario*, 111 Haw. 484, 493 & n.15, 143 P.3d 23, 32 & n.15 (2006) (indicating that non-competition covenants will be upheld if "reasonable," and are analyzed on a "case-by-case" basis). Any other challenges to the scope of the agreements are not presently before the court.

specifically, the question is whether non-competition agreements require *additional* consideration beyond continued at-will employment before binding agreements are formed (and if so, whether there is evidence of such consideration here). The issue arises if a current employee is required to sign such an agreement as a condition of continued employment, without any further benefits or consideration. (The parties agree that the issue does not arise if a prospective employee signs such an agreement at the beginning of employment.)

This issue, with both a legal and a factual component, is one that Plaintiffs had failed to establish previously when attempting to meet the exacting standards necessary to obtain an "extraordinary" remedy of a TRO. *See* Doc. No. 44, July 11, 2014 Order at 9 (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) ("A [TRO] is an extraordinary and drastic remedy never awarded as of right.") (editorial marks omitted)). And it was discussed extensively during the July 11, 2014 hearing, where the parties agreed to consider structuring the litigation to focus first on the threshold consideration issue. *See* Doc. No. 53, Tr. at 28-32.

Consistent with that discussion, on October 18, 2014, Magistrate Judge Puglisi issued a Rule 16 Scheduling Order (based largely on a stipulation from the parties) that split the litigation into two phases, with the first phase

focused on the consideration issue. *See* Doc. No. 72, Order at 2-3. The Scheduling Order required substantive Motions regarding the consideration issue to be filed by February 27, 2015 -- as were the two Motions now before the court.[3] Under the Scheduling Order, the second phase proceeds only *after* a decision on the consideration issue. *Id.* at 5. But, despite this aspect of the Scheduling Order, Defendants' Motions seek summary judgment as to many *other* issues as well. Plaintiffs object to the scope of the Motions.

Accordingly, consistent with the Scheduling Order's phased approach, and to avoid any possible prejudice to Plaintiffs because of the Scheduling Order's limitations on discovery, the court limits the instant Order to the consideration issue only. If necessary, Defendants may renew their arguments on other issues in separate Motions at an appropriate time.

B. The Individual Defendants' Prior Employment With Plaintiffs, and the Non-Competition Provisions

WorkflowOne's business is "providing print, print-related, and promotional marketing solutions, including print and promotional marketing and

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[3] In pertinent part, the Scheduling Order provides: "If Defendants choose to file a motion regarding the consideration issue before the second phase of discovery, they must do so by February 27, 2015. No additional discovery will be permitted until the Court has resolved the consideration issue." Doc. No. 72, Order ¶ 9.I.A. The court substantially limited discovery to the consideration issue, although some limited discovery was permitted in other areas for purposes of efficiency. *See* Doc. No. 71, Order Granting Defendants' Motion for Sequenced Discovery.

distribution of promotional products." Doc. No. 32, Am. Compl. ¶ 10. ASB is a competitor of WorkflowOne in the same business. *Id.* ¶ 11. Each Individual Defendant now works for ASB, having previously been employed by WorkflowOne. *Id.* ¶¶ 12-17. Keala and Brown-Henry were employed as sales representatives, and Kaulili-Guzon as a customer service representative. *Id.* ¶¶ 12, 14, 16. They began working for ASB in 2014, when ASB opened an office in Honolulu. Doc. No. 24-1, Kathryn Hallstrom Decl. ¶ 4.

Each Individual Defendant has a different work history with Relizon, Workflow Solutions LLC, and/or WorkflowOne. WorkflowOne was formed as a "new company" in 2011, having purchased the assets of Relizon and Workflow Solutions LLC after they filed for bankruptcy in 2010. Doc. No. 32, Am. Compl. ¶¶ 2-3; Doc. No. 100-8, Pls.' Ex. E. In conjunction with that purchase, certain employment agreements were to be assigned to WorkflowOne.[4]

At different points during their employment, the Individual

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[4] Defendants contend that the agreements were never assigned to Plaintiffs, rendering Plaintiffs without standing to enforce them. But, as set forth below, evidence supports that WorkflowOne purchased the assets of Relizon and Workflow Solutions LLC, and that WorkflowOne later merged with Standard Register. Construing the evidence in favor of Plaintiffs (the non-moving parties), the court accepts for purposes of these Motions that the employment contracts entered into with Relizon or Workflow Solutions LLC may be enforced (if at all) by Plaintiffs. *See Posey v. Lake Pend Oreille Sch. Dist. No. 84*, 546 F.3d 1121, 1126 (9th Cir. 2008) ("[T]he evidence of [the nonmovant] is to be believed, and all justifiable inferences are to be drawn in his favor." (citations omitted)).

Defendants signed documents agreeing (1) not to disclose the confidential trade secrets of their employer, and (2) for a period of twelve months after their last day of employment, not to solicit business from any customers whom they solicited or accepted business from during the final twelve months of their employment. *See, e.g.*, Doc. Nos. 32-1 to 32-3, Pls.' Exs. A-C. Kaulili-Guzon's and Brown-Henry's agreements include the further restriction that they not only refrain from soliciting, but also refrain from accepting, business from WorkflowOne customers. *See* Doc. Nos. 32-2, -3, Pls.' Exs. B, C. Plaintiffs allege that the Individual Defendants have been violating these provisions on behalf of ASB. Doc. No. 32, Am. Compl. ¶¶ 32-52. The court details each Individual Defendant's work history separately.

1. Lynden Keala

Keala began working for Vanier Graphics in 1986, and "sometime after that" became employed by Relizon through a series of corporate buyouts. Doc. No. 28-1, Keala Decl. ¶ 1. Keala left Relizon in "about 2000" and then returned for a term of new employment in January of 2005. *Id.* His offer letter from Relizon is dated January 4, 2005, and it indicates a starting date of January 10, 2005. Doc. No. 100-7, Ryan Green Decl. Ex. D. Although the exact date is

unclear, Keala signed a January 10, 2005[5] "Relizon Company Agreement with Sales Representatives" that includes the following clauses regarding trade secrets:

> 3. Trade Secret Policy
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> Employee acknowledges that the business of Relizon involves valuable, confidential and proprietary data and information of various kinds. Such data and confidential information, called "Relizon Trade Secrets," concern, among other things:
>
> (a) the names and contact information of Relizon's customer and the nature of Relizon's relationships (including types and amount of products acquired from Relizon) with such customers and in addition sales, marketing and product development plans, price lists (non-public), market forecasts and sales volumes;
>
> . . . .
>
> 4. Non-Disclosure.
>
> Employee will not, during or after his or her employment with Relizon, use for his or her own benefit or for the

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[5] Given the six-day difference between the offer letter and Keala's starting date, the Individual Defendants argue that Keala was already employed with Relizon when he entered into the agreement, pointing to Plaintiffs' admission in discovery that Keala signed it after his employment had "commenced" with Relizon. Doc. No. 96-8, Individual Defs.' Ex. G at 3. They also cite Keala's deposition testimony where he indicated he thought his first day with Relizon was January 4, 2005. Doc. No. 96-15, Individual Defs.' Ex. H at 16. (The January 10, 2005 agreement bears Keala's signature, but appears have been actually signed on January 1, 2005. Doc. No. 32-1, Pls.' Ex. A at 3).

A reasonable finder of fact, however, could certainly conclude that Keala signed the agreement in conjunction with beginning new employment with Relizon. And if so, the consideration issue is moot as to Keala. That is, Keala would not have been required to sign the agreement in exchange for continued employment. In any event, the court need not resolve this question because the consideration issue is squarely presented with the other two Individual Defendants.

> benefit of any other person, or without the prior written consent of Relizon disclose to any person, (other than in the ordinary conduct of Relizon's business) any Relizon Trade secrets. In like manner, Employee will not disclose to or for the benefit of Relizon any trade secrets of any person other than Relizon.

Doc. No. 32-1, Am. Compl. Ex. A at 1. The agreement also provided the following non-solicitation clause:

> 8. Non Solicitation
>
> Because of and in consideration of, among other things, the extensive knowledge of Relizon Trade Secrets provided to and possessed by Employee during employment with Relizon . . . Employee agrees that, for a period of twelve (12) months after the termination (for any reason) of Employee's employment with Relizon, Employee shall not directly or indirectly . . . solicit business from any Relizon customer or prospective Relizon customer which employee contacted (in writing, by phone or in person) during Employee's final twelve (12) months of employment with Relizon, wherever such customers or prospective customers may be located.

Id. at 2.

WorkflowOne's purchase of the assets of Relizon and Workflow Solutions, LLC included purchasing Keala's employment agreement. *See* Doc. No. 100-9, Pls.' Ex. F at 4. Accordingly, on February 22, 2011, WorkflowOne sent a letter to Keala (and other employees) "offer[ing] you employment with WorkflowOne LLC, effective upon the date of the asset transfer under our chapter

11 Plan of Reorganization." *Id.* The letter indicated that if Keala accepted he "will become a new employee in the new company." *Id.* The letter also informed Keala that "[i]f you have signed any agreements providing for (among other things) restrictions on soliciting WorkflowOne customers . . . these agreements are being assigned to WorkflowOne LLC and the terms of any such applicable agreement shall continue to apply to you in your employment with WorkflowOne LLC." *Id.* Keala signed it on February 23, 2011. *Id.* at 2.

Keala was "an Account Executive" or "Account Manager" at WorkflowOne. Doc. No. 28-1, Keala Decl. ¶ 8. He resigned from WorkflowOne on January 31, 2014. Doc. No. 96-15, Individual Defs.' Ex. N at 7. He began working as a Sales Associate for ASB on February 11, 2014. *Id.* at 4.

2. Sharon Brown-Henry

Brown-Henry was employed by WorkflowOne or its related predecessor entities for over twenty five years. Doc. No. 28-3, Brown-Henry Decl. ¶ 1. She began in 1989 with Vanier Graphics, Doc. No. 100-13, Pls.' Ex. J, which, as described above, was a predecessor of Relizon. On July 1, 2009, while she was employed as a sales representative with Relizon, Brown-Henry entered into a "WorkflowOne Agreement with Sales Representative" that contains the following clause:

> 4. Non-Piracy
>
> Because of and in consideration of, among other things, the customer relationship and good will developed by Employee during employment with WorkflowOne [Relizon and Workflow Solutions LLC], as well as Employee's extensive access to and development of WorkflowOne's confidential information and trade secrets, Employee agrees that, for a period of twelve (12) months after Employee's last day of employment with WorkflowOne (for any reason), Employee shall not, directly or indirectly, on behalf of himself or herself or any other person or entity: a) solicit or accept business competitive to WorkflowOne from any customer(s) from whom Employee solicited or accepted business on behalf of WorkflowOne during Employee's final twelve (12) months of employment with WorkflowOne, wherever such customer(s) may be located[.]

Doc. No. 32-3, Am. Compl. Ex. C at 1. Brown-Henry attests that, after she signed the agreement, her job remained the same -- she "did not get a raise, increased benefits, or any job security," and was not given increased responsibilities or a promotion. Doc. No. 28-3, Brown-Henry Decl. ¶ 5.

As with Keala's, Brown-Henry's employment contract was purchased by WorkflowOne when it acquired the assets of Relizon and Workflow Solutions LLC. Doc. No. 100-9, Pls.' Ex. F at 2. And, as with Keala, on February 22, 2011, WorkflowOne sent Brown-Henry a letter offering employment with WorkflowOne that also informed her that "[i]f you have signed any agreements providing for

(among other things) restrictions on soliciting WorkflowOne customers . . . these agreements are being assigned to WorkflowOne LLC and the terms of any such applicable agreement shall continue to apply to you in your employment with WorkflowOne LLC." Doc. No. 100-14, Pls.' Ex. K at 1. Brown-Henry signed the letter on February 23, 2011. *Id.* at 2.

WorkflowOne terminated Brown-Henry's employment, effective January 27, 2014. Doc. No. 28-3, Brown-Henry Decl. ¶ 4. She then began working for ASB as a sales associate in April 2014. Doc. No. 96-4, Individual Defs.' Ex. M at 4.

3. Jaxcine Kaulili-Guzon

Kaulili-Guzon started working for Plaintiffs in August 2010 as a "customer service representative." Doc. No. 28-2, Kaulili-Guzon Decl. ¶ 1. Her actual duties (and the extent and type of contact she had with Plaintiffs' customers) is disputed. She asserts that her duties were "clerical" such that she "could derive no personal benefit from an increase in sales." Doc. No. 96, Individual Defs.' Concise Statement of Facts ("CSF") ¶ 10. Plaintiffs, however, contend that she had constant contact with customers and pricing information, and engaged in "soliciting and selling" activities. Doc. No. 101, Pls.' Responsive CSF ¶ 10. In any event, on February 22, 2011 (while she was employed with