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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PYRO SPECTACULARS  
NORTH, INC. et al.,

Plaintiffs,

No. CIV S-12-0299 GGH

v.

STEVEN SOUZA,

Defendant.

ORDER

Presently pending before the court is plaintiffs Pyro Spectaculars, Inc.; Pyro Spectaculars North, Inc.; and Pyro Events, Inc.’s (“PSI”) motion for a preliminary injunction, which came on for hearing before the undersigned on March 15, 2012. (Dkt. Nos. 34, 35.)<sup>1</sup> Defendant Steven Souza filed an opposition (dkt. no. 47) and PSI filed a reply brief (dkt. no. 72). Both PSI and defendant also submitted copious declarations, exhibits, and supplemental briefing for the court’s review. At the hearing, Kurt Kappes and Jennifer Holly appeared on behalf of PSI and Susan Sheridan and Heather Messenger appeared on behalf of defendant Steven Souza. After considering the papers in support of and in opposition to the motion, the parties’ oral

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<sup>1</sup> All present parties have consented to proceed before the undersigned pursuant to 28 U.S.C. § 636(c), and the case has been referred to the undersigned for all further proceedings and entry of final judgment. (Dkt. Nos. 12, 13, 18.)

1 argument, and the applicable law, the court now issues the following order preliminarily  
2 enjoining defendant Souza and those acting in active concert or participating with him in the  
3 misdeeds detailed herein.

4 BACKGROUND FACTS<sup>2</sup>

5 PSI is a business originally started by the Souza family in the early 1900s and is  
6 currently one of the largest fireworks production companies in the United States. (Dkt. No. 36 at  
7 2.) Notwithstanding its size, PSI remains a tight-knit, family-operated and managed business.  
8 (Id.) PSI states that its success in the commercial market is highly dependent on its established  
9 relationships with customers, vendors, and pyrotechnic operators. (Id.) PSI employs  
10 commissioned sales executives to market and sell pyrotechnic displays and services to its  
11 customers, which are often ongoing customers that purchase fireworks displays regularly from  
12 PSI. (Id.)

13 According to Ian Gilfillan, PSI's Executive Vice President and husband of Nancy  
14 Souza, PSI has compiled its list of customers over the decades of its business from advertising,  
15 website contacts, publicity, customer referrals, and other sources of leads that have been gathered  
16 and forwarded to its account executives to make a sale for PSI. (Dkt. No. 36 at 3.) Customer  
17 lists include "the name, address, and phone number of the customer; the 'contact person'; the  
18 amount of money previously spent; line item budgets and breakdown of costs of the displays the  
19 client purchased; and a breakdown of the specific products used in the individual displays, and a  
20 listing of every pyrotechnic operator PSI used for different accounts." (Id.) It also includes  
21 "customer feedback, complaints and customer preferences, site surveys concerning the size of the  
22 fireworks that can be shot in the customer's area, notes about how to improve the customer's

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23  
24 <sup>2</sup> The court does not exhaustively set forth all the facts and evidence, disputed and  
25 undisputed, presented by the parties. Instead, the court only outlines some necessary background  
26 facts and summarizes evidence that the court finds most persuasive for purposes of adjudicating  
this motion. Any factual findings in this order are for purposes of the motion for preliminary  
injunction only and do not constitute ultimate findings of fact in the case.

1 shows in the future, as well as special requirements, preferences and procedures of the authorities  
2 that have jurisdiction over the displays.” (Id.) Furthermore, “PSI has compiled lists of  
3 pyrotechnic operators, their experience, training, qualifications and requirements, as well as a list  
4 of Hazardous Materials Drivers and their experience, training, qualifications and requirements,  
5 among other lists that it keeps confidential.” (Id.) These lists and information were stored in a  
6 program on PSI’s company database known as the “Booking Form” program. (Dkt. No. 37 at 2;  
7 see also Dkt. No. 45-6 at 37-38.)

8           On or about November 1, 1995, PSI hired defendant Steven Souza as an account  
9 executive. (Dkt. No. 3-2 at 2.) Defendant was hired both to serve PSI’s existing customers and  
10 accounts as well as to seek additional accounts. (Id.) His responsibilities included the marketing  
11 and sales of pyrotechnic displays and show production for Northern California and Hawaii. (Id.)  
12 Mr. Gilfillan passed this territory on to defendant when he moved up in position with PSI. (Dkt.  
13 No. 36 at 2.) PSI expended resources for defendant to visit and develop new and existing PSI  
14 clients, and throughout his career at PSI, defendant enjoyed access to PSI’s business information,  
15 data, and documents. (Id.) Indeed, defendant admitted that he learned all of his pyrotechnics  
16 customer contact information through his employment at PSI. (Deposition of Steven Souza  
17 [“Steven Souza Depo”] 30:5-19, 32:17-20, Dkt. No. 45-1 at 14-15.) Defendant’s access to the  
18 company database was limited to the “Booking Form” program. (Dkt. No. 37 at 2.)

19           Shortly after being hired, on November 8, 1995, defendant signed a document  
20 titled “Pyro Spectaculars, Inc. Account Executives Duties and Responsibilities - 1994” which  
21 provided in part:

22           Account executives agree that all account or customer lists, trade  
23 secrets, unique display designs or knowledge gained are the  
24 exclusive property of Pyro Spectaculars, Inc. and the Account  
25 Executive hereby waives any rights therein. Account Executives  
26 further agree that they will not divulge any knowledge, trade  
secrets, formulas, patents or unique display designs to anyone  
outside Pyro Spectaculars, Inc.

(Dkt. No. 46 at 26-30, ¶ 12.) During his employment, defendant also signed and acknowledged

1 multiple versions of PSI's employee handbook, including the PSI Employee Handbook issued  
2 November 2008, which plaintiff received on November 30, 2008 and signed on December 5,  
3 2008. (See e.g. dkt. nos. 45-2 at 9, 45-3 at 36.) Section One of the PSI Employee Handbook  
4 issued November 2008 provides, in part:

5           The protection of confidential business information and trade  
6           secrets is vital to the interests and the success of Company. Such  
7           confidential information includes, but is not limited to, the  
8           following examples:

- 9           • Computer processes
- 10          • Computer programs and codes
- 11          • Customer lists
- 12          • Customer preferences
- 13          • Financial information
- 14          • Marketing strategies
- 15          • New materials research
- 16          • Pending projects and proposals
- 17          • Proprietary production processes
- 18          • Scientific data
- 19          • Scientific formulae
- 20          • Technological data

21           All employees may be required to sign a non-disclosure agreement  
22           as a condition of employment. Employees who improperly use or  
23           disclose Company trade secrets or confidential operational  
24           business information will be subject to disciplinary action, up to  
25           and including termination of employment and legal action, even if  
26           they do not actually benefit from the disclosed information.

27 (Dkt. No. 45-4 at 2-3.) Section 7 of that handbook also states, in pertinent part, that:

28           Employees are responsible for all Company property, materials, or  
29           written information issued to them or in their possession or control.  
30           Employees must return all Company property immediately upon  
31           request or upon termination of employment. Company may take  
32           all action deemed appropriate under the law to recover or protect  
33           its property issued to employees.

34 (Dkt. No. 45-4 at 36.) By signing the acknowledgment of receipt of handbook form, defendant  
35 acknowledged that he read and understood all of its provisions. (Dkt. No. 45-3 at 36.)

36           Around the first week of December 2011, defendant decided in his own mind to  
resign from PSI. (Steven Souza Depo 77:2-9, Dkt. No. 45-1 at 38.) However, he must have been

1 seriously considering such a move as somewhat before that, in November 2011, defendant  
2 downloaded and printed 52 individual customer Booking Forms from the Booking Form  
3 program. (Dkt. Nos. 37 at 4 & 37-1.) In discussions with his then-prospective new employer  
4 and PSI competitor, J&M Displays/Hi-Tech FX, LLC, defendant projected that he could bring  
5 approximately \$500,000 - \$600,000 in client revenue to the table, 70-80% of which would be  
6 attributable to existing PSI customers. (Steven Souza Depo 139:5-10, 140:15-25, 145:10-20,  
7 147:22-148:5, Dkt. No. 46 at 9-10, 13-15.) Defendant later acknowledged that J&M  
8 Displays/Hi-Tech FX, LLC had only a few customers in Northern California prior to his  
9 resignation from PSI. (Steven Souza Depo 137:25-138:2, 138:22-24, 143:19-144:15, Dkt. No.  
10 46 at 7-8, 11-12.) He also stated that he had not heard of J&M Displays prior to J&M Displays  
11 recruiting him, was not aware of any advertising by J&M Displays in California, and that J&M  
12 Displays were not hiring any other sales people in California apart from defendant. (Steven  
13 Souza Depo 154:6-19, Dkt. No. 45-2 at 1.)

14 Defendant actually tendered his resignation on January 14, 2012, to be effective  
15 on January 16, 2012. (Dkt. No. 3-2 at 2.) On January 16, 2012, he allegedly informed PSI  
16 Assistant Office Manager, Cindy Allie, that he had no other employment lined up. (Dkt. No. 3-5  
17 at 2.) However, by that time defendant had already signed an employment contract with J&M  
18 Displays/Hi-Tech FX, LLC<sup>3</sup> on January 14, 2012, which actually overlapped his employment  
19 with PSI by two days. (Steven Souza Depo 173:14-175:4, Ex. 30, Dkt. Nos. 45-2 at 3-5 & 46 at  
20 31-34.) Defendant purportedly told Ms. Allie that she may not want to keep in touch with him  
21 after he takes business away from PSI. (Dkt. No. 3-5 at 2.) Defendant's wife, Sherry Souza, also  
22 informed a PSI employee that she hated defendant's family and that defendant and her would  
23 "take as many shows as we can." (Sherry Souza Depo 35:20-37:7, Ex. 36, Dkt. No. 45-6 at 11-

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25 <sup>3</sup> Defendant's employment agreement is technically with Hi-Tech FX, LLC. (Dkt. No. 46  
26 at 31-34.) However, J&M Displays is apparently the parent company of Hi-Tech FX, LLC and  
defendant is designated as the Vice President of the West Coast Region for J&M Displays West.  
(See Dkt. No. 36-1.) Accordingly, the court refers to both entities as defendant's employers.

1 13, 28.)

2 Furthermore, shortly after defendant's resignation, PSI started receiving reports  
3 from some of its customers that defendant had been contacting them and soliciting their business  
4 on behalf of his new employers. (Dkt. Nos. 3-1 at 2; 3-3 at 2-3; 3-7 at 2-3; 3-8 at 6-7; 36 at 3-4;  
5 36-1.) Mark Silveira, PSI's Madeira Facilities Manager, also reported that, around mid-  
6 December 2011, defendant had asked him who built PSI's fireworks racks, adding that he was  
7 starting his own company and looking for a supplier. (Dkt. No. 3-3 at 2.)

8 In light of this information, PSI retained a computer forensics expert to analyze  
9 defendant's former PSI-assigned laptop. The forensics report indicated that, on January 14, 2012  
10 (the date of his resignation), defendant transferred over 60 PSI files from his PSI-assigned laptop  
11 to a Western Digital external hard drive and to additional USB drives. (Dkt. Nos. 3-6 at 3-4; 24  
12 at 2-3.) Thereafter, a wiping software called "Disk Redactor" was used to delete and write over  
13 several computer files on the PSI-assigned laptop. (Dkt. No. 3-6 at 4-5.) It was later established  
14 that defendant retained the services of a computer expert to help him delete various files and  
15 folders from his PSI-assigned laptop. (Dkt. No. 45-6 at 44-55.) Despite the deletion, the  
16 computer forensics expert was able to recover the names of some of the files transferred, which  
17 were mostly concerning specific PSI clients and projects. (Dkt. No. 3-6 at 4-5.)

18 Additionally, it is undisputed that defendant retained an older version of PSI's  
19 Booking Form program and accessed it after his resignation. (Steven Souza Depo 108:1-109:8,  
20 Dkt. No. 45-1 at 46-47.) He kept a separate Excel database of PSI customer and show  
21 information that was derived from PSI documents and databases. (Steven Souza Depo 38:4-  
22 40:15, Dkt. No. 45-1 at 17-19.) Defendant also admitted that he accessed and funneled  
23 information from PSI Booking Forms to Mark Johnson at J&M Displays to prepare proposals to  
24 customers on behalf of J&M Displays, even though defendant was no longer a PSI employee and  
25 knew that it was something he was not permitted to do. (Steven Souza Depo 110:15-112:14,  
26 Dkt. No. 46 at 4-6.) Defendant further testified as follows:

1 Q. And how many proposals did you make in January after  
2 you left?

3 A. Probably 20.

4 Q. And how were you able to make so many proposals so  
5 quickly?

6 A. Get my information and – I didn't make the proposal. J&M  
7 – Mark at J&M made the proposal. I fed him the  
8 information. He could probably put out four or five, six a  
9 day out of their system.

10 (Steven Souza Depo 206:3-11, Dkt. No. 46 at 23.) This deposition testimony was further  
11 corroborated by PSI's computer forensics expert, whose analysis of one of defendant's personal  
12 computers revealed multiple contracts and proposals from J&M Displays to PSI customers  
13 within 2 weeks of defendant's resignation from PSI. (Dkt. No. 38 at 2.) Some of these proposals  
14 from J&M Displays had a similar format to PSI's previous proposals and offered slightly more  
15 product for the same budget. (Dkt. No. 45 at 3.)

16 Defendant also testified that he called, e-mailed, and visited several PSI customers  
17 in person since he resigned from PSI, using the above-mentioned Excel database of PSI customer  
18 information. (Steven Souza Depo 115:19-24, 116:14-117:2, Dkt. No. 45-1 at 48-50; Steven  
19 Souza Depo 155:2-16, Dkt. No. 45-2 at 2; Dkt. No. 45-5 at 51; Steven Souza Depo 200:17-  
20 201:5, Dkt. No. 46 at 19-20.) Defendant's wife, Sherry Souza, who is herself a pyrotechnics  
21 operator and has shot shows for PSI in the past, assisted defendant with addressing and mailing  
22 cards to customers. (Sherry Souza Depo 28:19-30:25, Dkt. No. 45-6 at 5-7; Dkt. No. 49 at 1, 3.)  
23 She also indicated that she had discussions with individuals at J&M, including Brian Panther and  
24 Mark Johnson, regarding expenses for a pyrotechnics show for a former PSI customer. (Sherry  
25 Souza Depo 32:2-33:25, Dkt. No. 45-6 at 8-9.)

26 PSI claims that, in the weeks since defendant's resignation, at least 6 of its  
customers have or may have signed contracts with J&M Displays. Moreover, J&M Displays is  
apparently offering a 5% increase in product for the same price if a customer is willing to sign a  
multi-year agreement. (Steven Souza Depo 204:4-23, Dkt. No. 46 at 22.) PSI contends that

1 unless defendant is enjoined, his conduct will continue to damage PSI's business, goodwill, and  
2 reputation.

3 BRIEF PROCEDURAL HISTORY

4 PSI filed this action on February 3, 2012. (Dkt. No. 2.) The operative complaint  
5 asserts claims for violation of the Computer Fraud and Abuse Act (claim based on federal law);  
6 violation of California Penal Code section 502; breach of contract; breach of loyalty; breach of  
7 the implied covenant of good faith and fair dealing; misappropriation of trade secrets; tortious  
8 interference with prospective economic relationship and economic advantage; unfair business  
9 practices; and conversion. (Dkt. No. 2.) Several rounds of applications for expedited discovery  
10 followed. After the parties conducted expedited discovery, including computer forensic  
11 examinations and depositions, PSI filed the instant motion for a preliminary injunction which is  
12 focused upon the trade secrets state law claim.

13 On March 16, 2012, after the hearing on PSI's motion for a preliminary  
14 injunction, the court issued an interim injunctive order pending issuance of a final order on the  
15 motion for a preliminary injunction. (Dkt. No. 92.) That order essentially required defendant to  
16 collect all PSI documents, databases, and information in his actual or constructive possession, or  
17 the actual or constructive possession of those acting in concert with him or in active participation  
18 with him, and produce these to chambers. It also required defendant to certify in a declaration  
19 that no copies of PSI documents, databases, and information remain in his actual or constructive  
20 possession, or the actual or constructive possession of those acting in concert with him or in  
21 active participation with him, including but not limited to Sherry Souza, Mark Johnson, Brian  
22 Panther, J&M Displays and its officers and employees, and Hi-Tech FX, LLC and its officers and  
23 employees. (Id.)<sup>4</sup>

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26 <sup>4</sup> For the specific requirements imposed by that order, the parties shall reference the  
court's March 16, 2012 order. (See Dkt. No. 92.)



1           The court now proceeds to a complete analysis of the merits of PSI’s motion and  
2 the formulation of a final preliminary injunction.

3 DISCUSSION

4           Applicable Legal Standard

5           “A preliminary injunction is an extraordinary remedy never awarded as of right.”  
6 Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). Instead, it “may only be  
7 awarded upon a clear showing that the plaintiff is entitled to such relief.” Id. at 22. “The proper  
8 legal standard for preliminary injunctive relief requires a party to demonstrate ‘that he is likely to  
9 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
10 relief, that the balance of equities tips in his favor, and that an injunction is in the public  
11 interest.’” Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting Winter, 555  
12 U.S. at 20). “In each case, courts must balance the competing claims of injury and must consider  
13 the effect on each party of the granting or withholding of the requested relief.” Winter, 555 U.S.  
14 at 24 (internal quotations omitted).

15           A Ninth Circuit panel has found that post-Winter, this circuit’s sliding scale  
16 approach or “serious questions” test survives “when applied as part of the four-element *Winter*  
17 test.” Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-32 (9th Cir. 2011). “That  
18 is, ‘serious questions going to the merits’ and a balance of hardships that tips sharply towards the  
19 plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that  
20 there is a likelihood of irreparable injury and that the injunction is in the public interest.” Id. at  
21 1132, 1135.

22           Likelihood of Success on the Merits

23           PSI first argues that it is likely to succeed on the merits of its claim of  
24 misappropriation of trade secrets. Under the California Uniform Trade Secrets Act (“CUTSA”),  
25 “misappropriation” means:

- 26           (1) Acquisition of a trade secret of another by a person who knows

1 or has reason to know that the trade secret was acquired by  
2 improper means; or

3 (2) Disclosure or use of a trade secret of another without express or  
4 implied consent by a person who: (A) Used improper means to  
5 acquire knowledge of the trade secret; or (B) At the time of  
6 disclosure or use, knew or had reason to know that his or her  
7 knowledge of the trade secret was: (i) Derived from or through a  
8 person who had utilized improper means to acquire it; (ii)  
Acquired under circumstances giving rise to a duty to maintain its  
9 secrecy or limit its use; or (iii) Derived from or through a person  
10 who owed a duty to the person seeking relief to maintain its  
11 secrecy or limit its use; or (C) Before a material change of his or  
12 her position, knew or had reason to know that it was a trade secret  
13 and that knowledge of it had been acquired by accident or mistake.

14 Cal. Civ. Code § 3426.1(b). Either subsection (2)(B)(ii) or (iii) is applicable here. “‘Improper  
15 means’ includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to  
16 maintain secrecy, or espionage through electronic or other means.” Cal. Civ. Code § 3426.1(a).  
17 CUTSA authorizes courts to enjoin “[a]ctual or threatened misappropriation.” Cal. Civ. Code §  
18 3426.2(a).

19 Defendant’s briefing confirms there is no dispute that defendant downloaded and  
20 retained PSI documents and information after his resignation. Nor is there any dispute that he  
21 funneled PSI documents and information, including PSI Booking Forms, to his new employer to  
22 formulate proposals to PSI customers. Thus, assuming for the moment that the information  
23 constituted a trade secret, the element of misappropriation is satisfied, because defendant  
24 disclosed and used PSI documents and information without its consent, knowing that his  
25 acquisition of such information gave rise to a duty not to unduly disclose it, or was acquired by  
26 virtue of his former status as a PSI employee. Indeed, defendant’s counsel conceded at oral  
argument that the only issue is whether the information constitutes a trade secret.

For purposes of CUTSA, a trade secret is defined as follows:

[I]nformation, including a formula, pattern, *compilation*, program,  
device, method, technique, or process that:

(1) Derives independent economic value, actual or  
potential, from not being generally known to the public or to other

1 persons who can obtain economic value from its disclosure or use;  
2 and

3 (2) Is the subject of efforts that are reasonable under the  
4 circumstances to maintain its secrecy.

5 Cal. Civ. Code § 3426.1(d) (emphasis added).

6 Defendant argues that PSI's Booking Forms and Booking Form program contain  
7 information that is generally known to the public and not secret, and that PSI does not protect the  
8 information on its Booking Form program. Both contentions will be addressed separately below.

9 Secrecy of Information

10 Although PSI's Booking Form program also contains pyrotechnics operator and  
11 vendor information, the parties address most of their briefing to the secrecy of the specific  
12 customer information contained on individual Booking Forms and the program as a whole.

13 In Morlife, Inc. v. Perry, 56 Cal. App. 4th 1514 (1997), the California Court of  
14 Appeal for the First District extensively summarized California law with respect to when a  
15 customer list can be protected as a trade secret:

16 With respect to the general availability of customer information,  
17 courts are reluctant to protect customer lists to the extent they  
18 embody information which is readily ascertainable through public  
19 sources, such as business directories...On the other hand, where the  
20 employer has expended time and effort identifying customers with  
21 particular needs or characteristics, courts will prohibit former  
22 employees from using this information to capture a share of the  
23 market. Such lists are to be distinguished from mere identities and  
24 locations of customers where anyone could easily identify the  
25 entities as potential customers...As a general principle, the more  
26 difficult information is to obtain, and the more time and resources  
expended by an employer in gathering it, the more likely a court  
will find such information constitutes a trade secret...The  
requirement that a customer list must have economic value to  
qualify as a trade secret has been interpreted to mean that the  
secrecy of this information provides a business with a substantial  
business advantage...In this respect, a customer list can be found to  
have economic value because its disclosure would allow a  
competitor to direct its sales efforts to those customers who have  
already shown a willingness to use a unique type of service or  
product as opposed to a list of people who only might be

1 interested...Its use enables the former employee to solicit both  
2 more selectively and more effectively.

3 Id. at 1521-22.

4 Defendant asserts that PSI's customer identities are widely known throughout the  
5 industry and easily ascertainable. "A competitor can easily find very long lists of customers of  
6 PSI through a very simple and swift search on Google. A competitor certainly could contact the  
7 Fire Marshall's office, call customers and operators, contact local fire jurisdictions or agencies,  
8 but this is not necessary, as the Internet offers such a speedy method of learning the identities of  
9 such a large number of entities that have purchased shows from PSI." (Dkt. No. 47, Def.'s Opp.  
10 at 10-11.) In support of these assertions, defendant's and his wife's declarations attach numerous  
11 permit applications and related documentation for PSI pyrotechnics shows done for private and  
12 public entities in various counties obtained through public records requests. (See e.g. Dkt. No.  
13 48, Exs. B-G; Dkt. No. 49, Ex. G.) The permit applications show relatively detailed information  
14 regarding individual shows, including plot plans, customer names and contacts, as well as shell  
15 counts and descriptions. (Id.) Sherry Souza's declaration also attaches PSI proposals, contracts,  
16 and city council meeting minutes regarding shows put on for public entities found on the Internet,  
17 and these documents often include the prices PSI charged for these shows. (Dkt. No. 49, Ex. F.)  
18 Furthermore, defendant points out that PSI itself provides information about its shows and  
19 customers on its website. (Dkt. No. 49, Ex. H.)

20 To be sure, if the identities and contact information of PSI's customers, operators,  
21 and vendors were the only information at issue, the court would be inclined to agree with  
22 defendant. It is not very hard to determine which entities regularly have fireworks shows, and  
23 these shows are often widely publicized. It is also probably true that one can ascertain the names  
24 of all licensed pyrotechnics operators in California, and that the names and contact information  
25 for pyrotechnics vendors are available in public directories. However, the true value of PSI's  
26 Booking Form program lies in its comprehensive, if not encyclopedic, compilation of customer,

1 operator, and vendor information, both with respect to each individual customer Booking Form  
2 and in the aggregate.

3 As outlined above, it includes contact information for the “contact person” at each  
4 customer; detailed financial, costs, and budgeting information for shows; a breakdown of the  
5 specific products used in individual shows; customer special preferences and requirements; notes  
6 of customer complaints and how a customer’s shows can be improved; as well as information  
7 regarding operators and Hazardous Materials Drivers, including their experience, training,  
8 qualifications, and requirements. (See Dkt. No. 36 at 3.) PSI compiled this information “over  
9 the decades of its business from advertising, website contacts, publicity, customer referrals, and  
10 other sources of leads that have been gathered and forwarded to its account executives, including  
11 Defendant, to make a sale for PSI.” (Id.) It has been “developed at great expense and labor” and  
12 “gives PSI a competitive advantage in the industry.” (Id.)

13 While defendant persuasively argues that many of the individual pieces of  
14 information in the Booking Forms program can be ultimately ascertained by requesting and  
15 scouring public records, calling customers and operators, and reverse engineering videos and  
16 CDs, that misses the point. The Booking Forms program provides a virtual encyclopedia of  
17 specific PSI customer, operator, and vendor information at a competitor’s fingertips, allowing the  
18 competitor to solicit both more selectively and more effectively without having to expend the  
19 effort to compile the data. Morlife, Inc., 56 Cal. App. 4th at 1522. It is this type of compilation  
20 that may be entitled to trade secret protection. Another federal district court reached the same  
21 conclusion in a case involving remarkably similar facts and allegations:

22 Customer lists containing merely public information that can easily  
23 be compiled by third parties will not be protected as trade secrets;  
24 however, where the party compiling the customer lists, while using  
25 public information as a source,...expends a great deal of time,  
26 effort and expense in developing the lists and treats the lists as  
confidential in its business, the lists may be entitled to trade secret  
protection...While the information contained on the lists and the  
notes is ultimately ascertainable from public sources, it is not  
readily ascertainable from public sources: A third party wishing to

1 duplicate the information could not do so without investing a  
2 significant amount of time, effort, and expense....”

3 Fireworks Spectacular, Inc. v. Premier Pyrotechnics, Inc., 147 F. Supp. 2d 1057, 1062-63, 1066  
4 (D. Kansas 2001) (involving former employee of a pyrotechnics company who started his own  
5 competing business).<sup>5</sup>

6 Finally, defendant’s argument that all of the information on PSI’s Booking Forms  
7 is readily available to the public is undercut by his own actions in this case. If the information is  
8 truly that readily available to the public, it raises the question of why it was necessary for  
9 defendant to surreptitiously download, retain, and funnel the Booking Forms and other PSI  
10 information to his new employer in the first place.

11 Accordingly, the court finds that PSI’s Booking Forms and the Booking Forms  
12 program likely “derives independent economic value, actual or potential, from not being  
13 generally known to the public or to other persons who can obtain economic value from its  
14 disclosure or use.” Cal. Civ. Code § 3426.1(d).

15 *Efforts to Maintain Secrecy*

16 To establish that its Booking Forms and Booking Form program are trade secrets,  
17 PSI must also show that they are “the subject of efforts that are reasonable under the  
18 circumstances to maintain [their] secrecy.” Cal. Civ. Code § 3426.1(d).

19 PSI points out that it requires its employees to sign confidentiality agreements,  
20 maintains its confidential information remotely on secure network servers, requires employees to

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21  
22 <sup>5</sup> While not dispositive of the issue, the court observes that defendant’s employment  
23 agreement with his new employer also recognizes much of the above-mentioned information as  
24 confidential business information. (See Steven Souza Depo, Ex. 30, Dkt. No. 46 at 31-34  
25 (“*Confidential Business Information* includes (i) information related to the promotion, sale,  
26 design, production or manufacture of the Company’s products and services; (ii) information  
related to the Company’s processes, inventions and formulas (including inventions and formulas  
developed by the Employee during employment with the Company); (iii) information related to  
the Company’s customers, including customers’ special requirements; and (iv) any other  
proprietary information that gives the Company the opportunity to obtain a competitive  
advantage over competitors”).)

1 use passwords with minimum complexity requirements to access the company database, and  
2 compartmentalizes data and limits access by geographic region and job function. (Dkt. No. 37 at  
3 2-3.) PSI acknowledges that until March 2011, its older versions of the database software were  
4 housed directly on PSI computers, thereby allowing defendant and other employees to download  
5 and store Booking Form information directly on their computer hard drives. (Dkt. No. 37 at 3.)  
6 After recognizing the danger of this practice, PSI developed the new database system to house  
7 confidential information remotely. (Id.) The new software seeks older versions of the software  
8 and customer information on employee computers and removes it. (Id.)

9           Defendant disputes that PSI protects the information on the Booking Form  
10 program. By reference to his own declaration and the declarations of several former PSI  
11 employees and operators, defendant points to alleged lax security practices by PSI. For example,  
12 defendant states that many employees used their first names as their login and password to the  
13 Booking Form program and that PSI did not instruct employees not to share passwords. The  
14 network servers were purportedly not kept behind locked doors. PSI allegedly did not  
15 sufficiently restrict access to the Booking Form program – printouts were sometimes left lying  
16 around or not shredded, receptionists and some temporary employees were allowed access, and  
17 on one occasion a receptionist allegedly provided several Booking Forms to an independent  
18 contractor. Additionally, PSI allegedly did not always ensure that electronic and paper copies of  
19 its confidential information were returned by departing employees. Furthermore, defendant  
20 argues that PSI provides most of the information in its Booking Forms to independent contractor  
21 pyrotechnic operators in their operator packets, with the exception of costs and financial  
22 information. An operator packet includes a work order, plot plan, permit application, customer  
23 contact information, cue sheets, show music, fire jurisdiction information, a route plan for  
24 transportation, an equipment list, the bill of lading, and the material safety data sheet. Operators  
25 do not sign a confidentiality agreement, share the operator packet information with their crew  
26 members (who are not hired or approved by PSI), and often do not return these materials. (See

1 Dkt. Nos. 48-49, 51-52, 54-61.)

2           While PSI’s security practices are not perfect and these issues can certainly be  
3 explored further in discovery and at trial, the court finds for purposes of this motion that PSI has  
4 made reasonable efforts to maintain the secrecy of the information in its Booking Form program.  
5 As an initial matter, many of the statements in the former employees’ declarations regarding  
6 PSI’s internal practices were conclusory and of doubtful probative value given that most of these  
7 former employees had not worked for PSI for several years or after PSI upgraded its software. In  
8 fact, several now work for PSI competitors.

9           Moreover, even if the court were to unquestioningly accept the facts proffered by  
10 defendant and these former employees, a business is not required to turn itself into an  
11 “impenetrable fortress” to protect its trade secrets. E.I. duPont deNemours & Co. v. Christopher,  
12 431 F.2d 1012, 1017 (5th Cir. 1970); MAI Systems Corp. v. Peak Computer, Inc., 991 F.2d 511,  
13 521 (9th Cir. 1993) (finding that entity took reasonable steps to insure the secrecy of information  
14 by requiring its employees to sign confidentiality agreements regarding trade secrets). PSI  
15 required defendant and other PSI employees to sign confidentiality agreements as well as  
16 acknowledgments that they had received and read PSI’s employee handbook, which outlines the  
17 employee’s obligations with respect to trade secret and confidential business information. (Dkt.  
18 No. 45-2 at 9; Dkt. No. 45-3 at 36; Dkt. No. 46 at 26-30, ¶ 12; Dkt. No. 86, Exs. A-F.) The  
19 unauthorized actions by some employees do not negate reasonable efforts to maintain the  
20 confidentiality of its proprietary information. See E.I. duPont deNemours & Co., 431 F.2d at  
21 1017 (“We should not require a person or corporation to take unreasonable precautions to  
22 prevent another from doing that which he ought not do in the first place.”)

23           Additionally, although defendant makes much of the information provided to  
24 operators in the operator packets, he concedes that operators were not provided costs, budgeting,  
25 and other financial information regarding the customer, which here arguably constitutes the most  
26 dangerous information to fall into the hands of a competitor. Moreover, an operator’s access to



1 information regarding a particular show is not comparable to having access to the entire Booking  
2 Form program database (or at least for Northern California and Hawaii customers).

3           Therefore, the court finds, for purposes of this motion, that there is substantial  
4 evidence that defendant misappropriated PSI's trade secrets, including PSI Booking Forms and  
5 other proprietary information. Accordingly, the court concludes that PSI is likely to succeed on  
6 the merits of its misappropriation of trade secrets claim. In light of this conclusion, it is  
7 unnecessary for the court to consider at this junction whether PSI is likely to succeed on any of  
8 its other claims in this litigation.

9           Likelihood of Irreparable Harm

10           The court also finds that PSI has demonstrated that it is likely to suffer irreparable  
11 harm in the absence of a preliminary injunction. Ordinarily, economic injury is not considered  
12 irreparable, because monetary damages are available as an adequate remedy. Rent-A-Center, Inc.  
13 v. Canyon Television & Appliance Rental, Inc., 944 F.2d 597, 603 (9th Cir. 1991). However,  
14 "intangible injuries, such as damage to ongoing recruitment efforts and goodwill, qualify as  
15 irreparable harm." Id.; see also Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832,  
16 841 (9th Cir. 2001) (holding that evidence of threatened loss of prospective customers or  
17 goodwill supports a finding of irreparable harm).

18           Here, defendant admitted that he funneled PSI documents and information,  
19 including PSI Booking Forms, to his new employer to formulate proposals to PSI customers.  
20 This conduct explicitly targets PSI's goodwill, and therefore supports the existence of irreparable  
21 harm. According to PSI, at least 6 customers have already transferred their accounts to J&M  
22 Displays and/or Hi-Tech FX, LLC. Furthermore, damage to a business's goodwill is often very  
23 difficult to calculate. MySpace, Inc. v. Wallace, 498 F. Supp. 2d 1293, 1305 (C.D. Cal. 2007).  
24 Therefore, the court finds that PSI will likely suffer irreparable harm in the absence of a  
25 preliminary injunction.

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1                   Balance of the Equities

2                   The court has already found that PSI is likely to suffer irreparable harm if  
3 injunctive relief is not awarded. As discussed in greater detail below, in light of the restrictions  
4 of Cal. Bus. & Prof. Code § 16600, any injunction issued would be focused on preventing  
5 defendant from unlawfully using PSI's trade secrets to solicit PSI's customers. Such an order  
6 would not cause any significant hardship to defendant, because it would essentially only require  
7 him to abide by existing law regarding the unauthorized use of another's trade secrets. Subject to  
8 certain restrictions discussed below, defendant and his new employer will be allowed to lawfully  
9 compete with PSI. In any event, whatever harm defendant may suffer by such a narrow  
10 injunction is slight when compared to the intangible harm PSI would suffer in losing the  
11 goodwill of its customers built up with great effort over many years. Accordingly, the court finds  
12 that the equities tip significantly in favor of PSI.

13                   Public Interest

14                   “In exercising their sound discretion, courts of equity should pay particular regard  
15 for the public consequences in employing the extraordinary remedy of injunction.” Winter, 555  
16 U.S. at 24. There are two competing public interests at issue in this case. On the one hand,  
17 California has a “settled legislative policy in favor of open competition and employee mobility,”  
18 protecting “the important legal right of persons to engage in businesses and occupations of their  
19 choosing.” Edwards v. Arthur Andersen LLP, 44 Cal. 4th 937, 946 (2008). On the other hand,  
20 the state also has a strong policy in favor of protecting trade secrets. Retirement Group v.  
21 Galante, 176 Cal. App. 4th 1226, 1237 (2009) (“An equally lengthy line of cases has consistently  
22 held former employees may not misappropriate the former employer's trade secrets to unfairly  
23 compete with the former employer”). As one California Court of Appeal put it, “[t]o be sure, we  
24 acknowledge the important legal right of persons to engage in businesses and occupations of their  
25 choosing...Yet also fundamental to the preservation of our free market economic system is the  
26 concomitant right to have the ingenuity and industry one invests in the success of the business or

1 occupation protected from the gratuitous use of that ‘sweat-of-the-brow’ by others.” Morlife,  
2 Inc., 56 Cal. App. 4th at 1520.

3           Although an overbroad injunction would interfere with California’s policy in  
4 favor of open competition, employee mobility, and the right to pursue a business or occupation,  
5 the court finds that an injunction specifically focused on preventing misuse of PSI’s trade secrets  
6 to solicit PSI’s customers would serve the policy of protecting trade secrets while simultaneously  
7 allowing lawful competition.

8           In sum, PSI has shown a likelihood of success on the merits, that irreparable harm  
9 is likely in the absence of an injunction, that the balance of equities tips significantly in PSI’s  
10 favor, and that the public interest favors issuing injunctive relief. What remains to be decided is  
11 who will be bound by the injunction, the scope of the injunctive relief, and whether a bond  
12 should be posted.

#### 13           Persons to be Bound by the Injunction

14           Under Fed. R. Civ. P. 65(d)(2), an injunction may bind “only the following who  
15 receive actual notice of it by personal service or otherwise: (A) the parties; (B) the parties’  
16 officers, agents, servants, employees, and attorneys; and (C) other persons who are in active  
17 concert or participation with anyone described in Rule 65(d)(2)(A) or (B).” Defendant may  
18 obviously be bound by any injunction as a party to the action. However, although PSI has filed  
19 an application to amend its complaint to add J&M Displays, Hi-Tech FX, LLC, Mark Johnson,  
20 and Brian Panther as defendants (dkt. no. 68), that application is still under submission, and these  
21 entities and individuals cannot presently be bound as parties.<sup>6</sup>

22           Nevertheless, as outlined above, the court finds that substantial evidence exists  
23 that defendant’s new employers, Hi-Tech FX, LLC and J&M Displays were acting in concert and  
24 in active participation with defendant in accessing, obtaining, and/or using information from PSI

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25           <sup>6</sup> Indeed, all involved with Souza, and Souza himself, almost appear to be flaunting their  
26 misappropriation.

1 documents and databases, including PSI's Booking Form Program. (See e.g. Steven Souza Depo  
2 110:15-112:14, Dkt. No. 46 at 4-6; Deposition of Mark Johnson, 86:11-94:15, Dkt. No. 66-1 at  
3 15-23.) Accordingly, Hi-Tech FX, LLC and J&M Displays and their officers and employees,  
4 including but not limited to Mark Johnson and Brian Panther, may be enjoined.

5           The court further finds that defendant's wife, Sherry Souza, was acting in concert  
6 and in active participation with defendant. She is a pyrotechnics operator who has shot shows for  
7 PSI in the past, and she admitted that she assisted defendant with soliciting customers after his  
8 resignation from PSI. (Sherry Souza Depo 28:19-30:25, Dkt. No. 45-6 at 5-7; Dkt. No. 49 at 1,  
9 3.) She also indicated that she had discussions with individuals at J&M, including Brian Panther  
10 and Mark Johnson, regarding expenses for a pyrotechnics show for a former PSI customer.  
11 (Sherry Souza Depo 32:2-33:25, Dkt. No. 45-6 at 8-9.) As such, Sherry Souza may also be  
12 enjoined.

#### 13           Scope of Injunctive Relief

14           As noted above, the court already issued an interim injunctive order essentially  
15 requiring collection, production, and the subsequent destruction of any remnants of all PSI  
16 documents, databases, and information in defendant's actual or constructive possession, or in the  
17 actual or constructive possession of those acting in concert or active participation with defendant  
18 (including Sherry Souza, Mark Johnson, Brian Panther, J&M Displays and its officers and  
19 employees, and Hi-Tech FX, LLC and its officers and employees), as well as requiring a  
20 certifying declaration to that effect. (See Dkt. No. 92.) That interim injunctive order will be  
21 incorporated in the court's final injunctive order and will remain in full force and effect.

22           PSI further requests that the court enjoin defendant from doing business with any  
23 PSI customer he learned of through his employment at PSI. (See Dkt. No. 97 at 2.) In light of  
24 this request, the court specifically invited the parties to submit supplemental briefing with respect

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1 to the import of Cal. Bus. & Prof. Code § 16600<sup>7</sup> and Retirement Group v. Galante, 176 Cal.  
2 App. 4th 1226 (2009).

3 In Galante, the plaintiff TRG, an investment firm, sued the defendants, some of its  
4 former affiliate advisors, who had established a competing business, for misappropriation of  
5 trade secrets, which the defendants allegedly used to solicit the plaintiff’s customers. Id. at 1229.  
6 TRG obtained a preliminary injunction enjoining numerous categories of conduct. Id. at 1232.  
7 Category 3 of the injunction enjoined defendants from “using in any manner TRG information  
8 found solely and exclusively on TRG databases. However, similar information found on servers,  
9 databases and other resources owned and operated by other entities or businesses is excluded  
10 from the injunction.” Id. at 1232. Category 4 of the injunction prohibited the defendants from  
11 “directly or indirectly soliciting any current TRG customers to transfer any securities account or  
12 relationship from TRG to [defendants] or any broker-dealer or registered investment advisor  
13 other than TRG.” Id. On appeal, the defendants challenged only the injunctive relief granted by  
14 Category 4, asserting that it violated Edwards v. Arthur Andersen LLP, 44 Cal. 4th 937 (2008).

15 The Galante court considered the two “competing strands of legal principles” in  
16 California involving competitive conduct by a former employee. Id. at 1233. First, the court  
17 examined Cal. Bus. & Prof. Code § 16600 and the California Supreme Court’s relatively recent  
18 Edwards decision. Galante, 176 Cal. App. 4th at 1233-36. It noted that Edwards had rejected the  
19 “rule of reasonableness” in evaluating competitive restraints utilized in other jurisdictions, i.e.  
20 the principle that only broad agreements that prevent a person from engaging entirely in his  
21 chosen business, trade, or profession violate Cal. Bus. & Prof. Code § 16600. Id. at 1235 (citing  
22 Edwards, 44 Cal. 4th at 947-48). It further noted that Edwards had declined to adopt the related  
23 “narrow-restraint” exception discussed by the Ninth Circuit in Campbell v. Board of Trustees of  
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25 <sup>7</sup> Cal. Bus. & Prof. Code § 16600 provides that “[e]xcept as provided in this chapter,  
26 every contract by which anyone is restrained from engaging in a lawful profession, trade, or  
business of any kind is to that extent void.”

1 Leland Stanford Junior University, 817 F.2d 499 (9th Cir. 1987). Galante, 176 Cal. App. 4th at  
2 1235 (citing Edwards, 44 Cal. 4th at 948). Edwards had observed that, by concluding that  
3 California courts have excepted from Cal. Bus. & Prof. Code § 16600 agreements that bar one  
4 from pursuing only a small or limited part of the profession, the Campbell court had confused the  
5 import of California case law. Id. at 1236 (citing Edwards, 44 Cal. 4th at 949-50). The Galante  
6 court acknowledged that “[a]lthough Edwards reaffirmed the broad California rule that  
7 invalidates noncompetition agreements falling outside the statutorily-prescribed exceptions,  
8 Edwards expressly stated it was not addressing the applicability of the so-called trade secret  
9 exception to section 16600.” Id. (citing Edwards, 44 Cal. 4th at 946 n.4.)

10           Second, the Galante court stated that “[a]n equally lengthy line of cases has  
11 consistently held former employees may not misappropriate the former employer’s trade secrets  
12 to unfairly compete with the former employer. Galante, 176 Cal. App. 4th at 1237. However, it  
13 emphasized that “a former employee may be barred from soliciting existing customers to redirect  
14 their business away from the former employer and to the employee’s new business *if the*  
15 *employee is utilizing trade secret information to solicit those customers...* Thus it is not the  
16 *solicitation* of the former employer’s customers, but is instead the *misuse of trade secret*  
17 *information*, that may be enjoined.” Id. (emphasis in original)

18           The Galante court then synthesized the “competing strands” as follows:

19           We distill from the foregoing cases that section 16600 bars a court  
20 from specifically enforcing (by way of injunctive relief) a  
21 *contractual* clause purporting to ban a former employee from  
22 soliciting former customers to transfer their business away from the  
23 former employer to the employee’s new business, but a court may  
24 enjoin *tortious* conduct (as violative of either the Uniform Trade  
25 Secrets Act and/or the Unfair Competition Law) by banning the  
26 former employee from using trade secret information to identify  
existing customers, to facilitate the solicitation of such customers,  
or to otherwise unfairly compete with the former employer.  
Viewed in this light, therefore, the conduct is enjoinable *not*  
because it falls within a judicially-created “exception” to section  
16600’s ban on contractual nonsolicitation clauses, but is instead  
enjoinable because it is wrongful independent of any contractual  
undertaking.

1 Galante, 176 Cal. App. 4th at 1238 (emphasis in original).

2           In light of these principles, the Galante court concluded that the injunctive  
3 provisions of Category 4 “on its face violate Edwards and when viewed in counterpoise with the  
4 injunctive provisions of Category 3, cannot rationally be upheld as an injunction limited in scope  
5 to the only legitimate protection (i.e., enjoining the misappropriation of TRG’s trade secrets) for  
6 which injunctive relief may be issued.” Galante, 176 Cal. App. 4th at 1238. It noted that,  
7 “absent the provisions of Category 4, [the defendants] could compete with TRG for the business  
8 of TRG’s existing customers by employing all available resources and information *except* for  
9 those materials (because it is found ‘solely and exclusively on TRG’s databases’) constituting  
10 protectable trade secrets. Accordingly, Category 4 adds nothing to further the legitimate scope of  
11 protections (e.g. protection of TRG’s trade secrets) to which TRG is entitled, and can only  
12 operate to preclude the precise type of competition *Edwards* declares is otherwise permissible.”  
13 Id. at 1239.

14           In its supplemental briefing, PSI contends that Galante is distinguishable, because  
15 it only considered whether a preliminary injunction could be entered in the context of specifically  
16 enforcing a non-solicitation agreement in a contract. PSI argues that Cal. Bus. & Prof. Code §  
17 16600 is not even triggered here, because PSI is not seeking to enforce a contractual non-  
18 solicitation agreement, but instead seeks a remedy for defendant’s likely violation of CUTSA,  
19 and that Cal. Bus. & Prof. Code § 16600 does not constrain a court in equity from fashioning an  
20 appropriate remedy for tortious conduct. (See Dkt. No. 96.)

21           While Category 4 of the injunction in Galante may have been at least partially  
22 based on a contractual non-solicitation agreement,<sup>8</sup> the court declines to adopt such a narrow  
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24           <sup>8</sup> Although the Galante court focused its analysis on the language of the injunction and  
25 never extensively discussed the underlying non-solicitation agreement, it did refer to it when  
26 comparing it to the agreement at issue in Edwards. See Galante, 176 Cal. App. 4th at 1234  
27 (“There, the employee (Edwards) signed a nonsolicitation agreement, substantively  
indistinguishable from the non-solicitation agreement in this case....”)

1 reading of Galante. Galante extensively discussed law concerning misappropriation of trade  
2 secrets by an employee and emphasized that the protection afforded in such cases should focus  
3 on preventing the *misuse of trade secret information*, not the *solicitation* of former customers.  
4 Galante, 176 Cal. App. 4th at 1237. The opinion centered around how a court might provide  
5 appropriate relief via an injunction, and the Galante court never stated that injunctions not based  
6 on contractual clauses are entirely exempt from the policies embodied in Cal. Bus. & Prof. Code  
7 § 16600. While Cal. Bus. & Prof. Code § 16600 does not constrain a court in equity from  
8 fashioning an appropriate remedy focused on the misappropriation of trade secrets, Galante  
9 nevertheless stands for the proposition that a court should be highly cognizant of the important  
10 policies embodied in Cal. Bus. & Prof. Code § 16600 when crafting an injunction.<sup>9</sup>

11           Accordingly, the court will not impose the overbroad restriction proposed by PSI,  
12 enjoining defendant “from doing business with any PSI customer he learned of through his  
13 employment at PSI.” (Dkt. No. 97 at 2.) This is not a case involving a secret recipe or formula,  
14 where the mere use of that recipe or formula in competition with a former employer in itself  
15 would constitute misappropriation of a trade secret. Instead, as discussed above, the identities  
16 and contact information of PSI’s customers are, in most cases, ultimately available to the public  
17 or a competitor. Thus, the court cannot grant the broad relief requested. Nevertheless, for the  
18 reasons discussed below, the court concludes that a narrow, time-limited non-solicitation  
19 restriction is necessary to prevent defendant’s misuse of PSI trade secret information in  
20 competing with PSI.

21           First, given defendant’s past conduct, the court has some concern that defendant  
22 will not return all PSI trade secret and proprietary material pursuant to this court’s order. On

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23           <sup>9</sup> PSI also argues that Cal. Bus. & Prof. Code § 16600 by its terms only applies to  
24 contracts. While this is true, the California Supreme Court has also indicated that “California  
25 settled public policy in favor of open competition, and rejected the common law rule of  
26 reasonableness, when the Legislature enacted the Civil Code.” Edwards, 44 Cal. 4th at 945. PSI  
has cited no authority for the proposition that this court may ignore established California policy  
in fashioning an injunction premised on California law.



1 February 8, 2012, the court ordered defendant to produce all of defendant's and defendant's  
2 wife's computers and other electronic storage media (including, without limitation, external hard  
3 drives, thumb drives, iPhones, Blackberrys, etc.) for forensic examination no later than February  
4 14, 2012. (Dkt. No. 15 at 6.) The court further ordered defendant to file a declaration stating  
5 that all applicable devices were turned over and made available for forensic examination  
6 pursuant to the court's order and that there are no other applicable electronic storage media in  
7 their possession, custody, or control. (Id.)

8           However, to this day, defendant has failed to account for several thumb drives  
9 onto which (the forensic examination revealed) he transferred information from his PSI-assigned  
10 computer. (See Dkt. No. 24.) At his deposition, defendant also admitted that he had not turned  
11 over all computers that he had in his possession as of February 14, 2012. (Steven Souza Depo  
12 61:2-65:2, Dkt. No. 45-1 at 26-30.) In particular, he testified that although he had sold a  
13 computer to a Jeff Shin, Mr. Shin had returned the computer to him in September-October, 2011  
14 to have a "worm" on the computer fixed and that he had used it to go online, do e-mail, and "do a  
15 little bit of work." (Id. at 62:2-63:9.) However, in his most recent declaration, defendant  
16 curiously asserts that he retrieved that computer from Mr. Shin after February 9, 2012 and turned  
17 it over to his counsel on February 24, 2012. (Dkt. No. 80 at 1.) These discrepancies, along with  
18 plaintiff's surreptitious downloading of PSI documents and files, use of wiping software, and  
19 subsequent destruction of electronic storage media cause the court to be skeptical that an  
20 injunction requiring defendant to return all PSI documents, databases, and information will be  
21 sufficient to protect against misuse of PSI's trade secrets. This skepticism is reinforced by the  
22 fact that defendant's probable misappropriation thus far has so tainted defendant's base of  
23 knowledge that it would be very difficult, at least over the next several months, for defendant to  
24 separate his general pyrotechnics information and skills from PSI's legitimate trade secrets when  
25 competing with PSI.

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1           Accordingly, the court will enjoin defendant, for a period of six months from the  
2 date of this order, from directly or indirectly *initiating* contact with any current Northern  
3 California and Hawaii PSI customers with whom he had contact or for whose accounts he had  
4 responsibility while employed by PSI, for the purpose of encouraging, inviting, suggesting, or  
5 requesting transfer of their business from PSI. Notwithstanding the foregoing, if a PSI customer  
6 initiates contact with defendant, defendant shall be permitted to respond to and accept business  
7 from the customer. Defendant shall also be permitted to continue dealings with former PSI  
8 customers with whom defendant, J&M Displays, and/or Hi-Tech FX, LLC already have an  
9 existing contract for services. Defendant shall further be permitted to engage in marketing  
10 efforts directed at the pyrotechnics show market as a whole, such as attending trade shows and  
11 posting general advertisements.

12           Furthermore, these non-solicitation restrictions shall not apply to defendant's new  
13 employers *provided that defendant has no direct or indirect involvement or input in the*  
14 *solicitation of any PSI customers covered by this order.* It is defendant – not his new employers  
15 – who allegedly has significant relationships with PSI's customers and is best positioned to  
16 misuse PSI's trade secrets. Thus far, J&M Displays and Hi-Tech FX, LLC have not  
17 demonstrated that they are unwilling to obey the court's orders. Given that these employers have  
18 been required to produce all PSI documents, databases, and information in their actual or  
19 constructive possession that can potentially be misused, the court finds it unnecessary to further  
20 limit their competitive efforts. To the extent that proposals from J&M Displays and Hi-Tech FX,  
21 LLC have already been actually communicated to PSI customers covered by this order with  
22 defendant's input or assistance, but no agreement has yet been finalized, J&M Displays and Hi-

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1 Tech FX, LLC may conclude those deals without any further involvement or assistance by  
2 defendant.<sup>10</sup>

3           The court emphasizes that it is not imposing the non-solicitation component of the  
4 injunction as an exception to the principles outlined in Galante – instead it is entirely consistent  
5 with those principles. Galante and Edwards have both acknowledged that non-solicitation  
6 restrictions may sometimes be necessary as long as it is focused on protecting against the misuse  
7 of trade secrets. See Galante, 176 Cal. App. 4th at 1240; Edwards, 44 Cal. 4th at 946. The  
8 necessity of such a restriction necessarily turns on the facts of an individual case. The court  
9 notes that other federal district courts, with due regard for Galante and Cal. Bus. & Prof. Code §  
10 16600, have sometimes found such narrow non-solicitation clauses appropriate to prevent the  
11 misuse of trade secrets. See e.g. Richmond Technologies, Inc. v. Aumtech Business Solutions,  
12 2011 WL 2607158 (N.D. Cal. July 1, 2011); Fidelity Brokerage Services LLC v. McNamara,  
13 2011 WL 2117546 (S.D. Cal. May 27, 2011).

14           Finally, the court notes that PSI also requests the appointment of a special master  
15 or monitor to ensure compliance with this court’s injunction. Although PSI at the hearing  
16 discussed the possibility of requiring defendant to somehow report his daily competitive  
17 activities to the court, PSI first raised the issue of appointment of a special master or monitor in  
18 its supplemental briefing. It also suggests that defendant should be responsible for the costs  
19 involved with such an appointment. Defendant has had no opportunity to respond to PSI’s  
20 proposal. In any event, the court finds that such an appointment would be unnecessarily  
21 expensive and is not warranted at this stage of the litigation. The discovery process in civil  
22 litigation is quite often a sufficient way to monitor non-compliance with preliminary injunctions.

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26 <sup>10</sup> Of course, PSI may seek damages from Souza, and/or added defendants, if use of PSI trade secrets were improperly part of the solicitation process.

1                   Propriety of a Bond

2                   Fed. R. Civ. P. 65(c) provides, in part, that “[t]he court may issue a preliminary  
3 injunction...only if the movant gives security in an amount the court considers proper to pay the  
4 costs and damages sustained by any party found to have been wrongfully enjoined or restrained.”  
5 In this case, the narrow injunction to be entered will not preclude defendant from working in his  
6 chosen occupation. With respect to the six-month non-solicitation restriction, defendant will be  
7 permitted to work with J&M Displays or Hi-Tech FX, LLC customers and potential customers  
8 that are not covered by the terms of the injunction during that period. J&M Displays and Hi-  
9 Tech FX, LLC will even be permitted to solicit PSI customers covered by the non-solicitation  
10 restriction without defendant’s involvement. There is also no present evidence that defendant  
11 has been terminated, or will be terminated, from J&M Displays or Hi-Tech FX, LLC.  
12 Accordingly, no bond will be required. However, should defendant’s employment circumstances  
13 change, defendant will be permitted to return to the court to request the imposition of an  
14 appropriate bond.

15                   CONCLUSION

16                   Accordingly, for the reasons outlined above, IT IS HEREBY ORDERED THAT:

- 17                   1. PSI’s motion for a preliminary injunction (dkt. no. 34) is granted in part.  
18                   2. The court’s interim injunctive order issued March 16, 2012 (dkt. no. 92) is  
19 hereby incorporated and remains in full force and effect, except as supplemented and/or modified  
20 by this order.  
21                   3. Defendant Steven Souza and those who have been identified as working in  
22 active participation or in concert with him (including Sherry Souza, Mark Johnson, Brian  
23 Panther, J&M Displays and its officers and employees, and Hi-Tech FX, LLC and its officers and  
24 employees) are enjoined from possessing, using, disclosing, or transmitting any PSI trade secrets  
25 or proprietary information, including but not limited to the contents of PSI’s Booking Forms and  
26 Booking Form program. This does not include any information or documentation that defendant

1 and those acting in active participation or in concert with him have acquired entirely independent  
2 of PSI documentation and databases utilized by defendant Steven Souza, or funneled by  
3 defendant Steven Souza, to the above-mentioned persons or entities.

4           4. Defendant Steven Souza is enjoined, for a period of six months from the date  
5 of this order, from directly or indirectly *initiating* contact with any current Northern California  
6 and Hawaii PSI customers with whom he had contact or for whose accounts he had responsibility  
7 while employed by PSI, for the purpose of encouraging, inviting, suggesting, or requesting  
8 transfer of their business from PSI. Notwithstanding the foregoing, if a PSI customer initiates  
9 contact with defendant, defendant shall be permitted to respond to and accept business from the  
10 customer. Defendant shall also be permitted to continue dealings with former PSI customers  
11 with whom defendant, J&M Displays, and/or Hi-Tech FX, LLC already have an existing contract  
12 for services. Defendant shall further be permitted to engage in marketing efforts directed at the  
13 pyrotechnics market as a whole, such as attending trade shows and posting general  
14 advertisements.

15           5. The non-solicitation restrictions identified in paragraph 4 above shall not  
16 apply to J&M Displays, Hi-Tech FX, LLC, and their officers and employees *provided that*  
17 *defendant has no direct or indirect involvement or input in the solicitation of any PSI customers*  
18 *covered by this order.* To the extent that proposals from J&M Displays and Hi-Tech FX, LLC  
19 have already been actually communicated to PSI customers covered by this order with  
20 defendant's input or assistance, but no agreement has yet been finalized, J&M Displays and Hi-  
21 Tech FX, LLC may conclude those deals without any further involvement or assistance by  
22 defendant.

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6. PSI's counsel shall immediately provide notice of this order and injunction to all those found by the court to be in active concert with, or in active participation with, defendant Souza.

IT IS SO ORDERED.

DATED: March 21, 2012

/s/ Gregory G. Hollows  
UNITED STATES MAGISTRATE JUDGE

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