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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

BELRON US, INC.,	**CASE NO. 1:09-cv-5167 (RBK)**
Plaintiff,	**Judge Robert B. Kugler**
v.	
EUGENE CASOLE et al.,	**BRIEF OF DEFENDANT COAST TO COAST AUTO GLASS, LLC IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR INJUNCTIVE RELIEF**
Defendants.	**Hearing Date: October 16, 2009**
	Time: 10:30 a.m.

I. INTRODUCTION

Plaintiff Belron US, Inc., ("Belron" or "Plaintiff") is not entitled to injunctive relief against Defendant Coast to Coast Auto Glass, LLC, based upon asserted covenants not to compete, solicit or disclose contained in an employment contract of a former Belron employee. Belron has failed to demonstrate the factors

which would otherwise entitle it to injunctive relief and seeks an overly broad enforcement of the asserted covenants in a manner which would improperly restrain trade against public policy and not narrowly calculated to protect Plaintiff Belron's interests.

II. STATEMENT OF FACTS

Defendant Coast to Coast Auto Glass, LLC ("Coast to Coast") is an installer of glass used exclusively in automotive repairs. Coast to Coast's operations are located in the states of Arizona, New York, Florida, Massachusetts and South Carolina. All of Coast to Coast's marketing is conducted through independent unaffiliated third party entities, who sell sales leads to Coast to Coast by directly contacting businesses, such as service stations, and individuals, through neighborhood canvassing. Coast to Coast's marketing method characteristically targets its customer base, the ultimate consumer of services, in a face-to-face grassroots manner. Coast to Coast does not manufacture the glass for installation. It operates strictly on a mobile installation basis, often performed at the customer's home, and has no stores.

Plaintiff Belron US Inc ("Belron" or "Plaintiff"), on the other hand, utilizes traditional means of advertising, including television, internet and billboards, and serves as third party administrator ("TPA") for insurance companies who service

their insureds' claims for automotive and other glass repair. For its marketing base, Belron targets the insurance companies, who empower Belron, as TPA, to refer the insureds to itself to provide glass installation services. Unlike Coast to Coast, Belron operates in all fifty states, serves 40% - 50% of insurance companies as TPA and manufactures its own glass. In fact, Coast to Coast is a customer of Belron to the extent of $30,000 to $40,000 per month in glass purchases. Belron's business model is not proprietary, since other glass installation companies utilize insurance company referrals as a basis for generating customer repair revenue.

In August, Defendant Eugene Casole ("Casole" or "Mr. Casole") responded to an advertisement for a position with Coast to Coast. As a result of discussions between Casole and Dominic Riccobono, who was and is assisting in managing the operations of Coast to Coast on behalf of a prospective purchaser, Coast to Coast engaged Casole as a paid consultant. Coast to Coast sought Casole's services based upon Casole's skills acquired as a manager of his own independent automotive glass installment facility for twenty years, even before Casole's affiliation with Belron or its predecessor/assignor Safelite Group, Inc.

Coast to Coast assigned to Casole the primary function of ensuring the proper installation of glass for customers in the markets of Massachusetts, New York and South Carolina. Among Casole's responsibilities are ensuring that the

appropriate number of installers are assigned to warehouses owned by Coast to Coast and in the appropriate geographic proximity to service Coast to Coast customers in a timely manner. To ensure compliance with high service standards, Casole oversees Coast to Coast city managers, producing efficiency reports containing the results of Casole's sampling the work of installers serving under these managers. Since Belron's marketing model is inapposite to Coast to Coast, Casole spent the first several weeks with Coast to Coast, until mid-September 2009, merely observing Coast to Coast's operations. Casole's work for Belron, in developing its Boston market, by re-establishing physical store establishments, and in acquiring another glass company in the mid-Atlantic region, relate to non-proprietary business methods and have nothing to do with Casole's quality control functions with Coast to Coast.

Casole is not engaged by Coast to Coast to contact, solicit or recruit potential customers, or employees, from Belron or anyone else, for that matter. Casole's work is to ensure that the installation processes adequately meet Coast to Coast's existing customers' expectations by monitoring installation quality. Auto glass installation is a skill not proprietary to Belron and was acquired by Casole years before he was employed by Belron or its predecessor. Coast to Coast establisht tas and in the Boston market at least two months before Coast to Coast

engaged Casole. Casole's work for Coast to Coast in that market has nothing to do with contacting or marketing to potential customers of Belron. Rather, Casole is engaged to ensure that existing customers of Coast to Coast in the Boston area are satisfied with non-proprietary installation processes.

Coast to Coast's working business model has not been adapted in any manner to that of Belron since Casole's engagement. Neither has Coast to Coast employed nor does it have knowledge of any trade secrets or other sensitive proprietary information belonging to Belron, nor has it or will it seek such information from Casole. Instead, Casole has had to conform his services to the pre-existing Coast to Coast model.[1]

III. ARGUMENT

Injunctive relief is an "extraordinary remedy, which should be granted only in limited circumstances." *Novartis Consumer Health v. Johnson & Johnson-Merck Consumer Pharms. Co.*, 290 F.3d 578, 586 (3d Cir.2002). To obtain such interim relief, the moving party must demonstrate both a likelihood of success on the merits and the probability of irreparable harm absent the injunction. *Frank's GMC Truck Ctr. v. Gen. Motors Corp.*, 847 F.2d 100, 102 (3d Cir.1988). Thus, in determining whether to issue a preliminary injunction, the Court must consider

[1] The above facts are set forth in the accompanying affidavit of Dominic

whether:

(1) the moving party has shown a reasonable probability of success on the merits;

(2) the moving party will be irreparably injured by denial of the relief;

(3) granting the preliminary relief will result in even greater harm to the nonmoving party; and

(4) granting the preliminary relief is in the public interest. *BP Chems. Ltd. v. Formosa Chem. & Fibre Corp.*, 229 F.3d 254, 263 (3d Cir.2000); *ACLU of N.J. v. Black Horse Pike Reg'l Bd. of Educ.*, 84 F.3d 1471, 1477 n. 2 (3d Cir.1996); *see The Nutrasweet Co. v. Vit-Mar Enter.*, 176 F.3d 151, 153 (3d Cir.1999).

The Court should issue an injunction "only if the plaintiff produces evidence sufficient to convince the district court that all four factors favor preliminary relief." *AT & T Co. v. Winback & Conserve Program*, 42 F.3d 1421, 1427 (3d Cir.1994); *see The Nutrasweet Co.*, 176 F.3d at 153 (noting that the moving party's failure to establish any one of the four elements renders a preliminary injunction inappropriate).

I. Plaintiff Cannot Demonstrate a Likelihood of Success on the Merits on its Breach of Contract Claims

The party seeking a preliminary injunction must demonstrate a "reasonable

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Riccobono.

probability of eventual success in the litigation." *Bennington Foods LLC v. St. Croix Renaissance, Group, LLP,* 528 F.3d 176, 179 (3d Cir.2008). The burden is on the party seeking relief to make a *prima facie* case showing a reasonable probability that it will prevail on the merits." *Oburn v. Shapp,* 521 F.2d 142, 148 (3d Cir.1975).

Under New Jersey law, the following elements are necessary in a breach of contract claim: (1) a contract; (2) a breach of that contract; (3) damages flowing therefrom; and (4) plaintiff performed its own contractual duties. *Hutchinson v. Del. Sav. Bank FSB,* 410 F.Supp.2d 374, 385 n. 21 (D.N.J.2006). To set forth a claim for breach of contract, the complaining party must prove the following elements by a preponderance of the evidence: (1) a contract existed, (2) the complaining party fulfilled its contractual obligations, (3) the opposing party failed to fulfill its obligations, and (4) the complaining party incurred damages as a result of this failure. *Farmers State Bank v. Followay,* 9th Dist. No. 07CA0011, 2007-Ohio-6399, 2007 WL 4225426, ¶ 13, citing *Lawrence v. Lorain Cty. Community College* (1998), 127 Ohio App.3d 546, 548-49, 713 N.E.2d 478.

At issue in this case are the provisions in the employment agreement relating to non-competition (para. 7a), non-solicitation (para. 7b) and dissemination of trade secrets or confidential information (para. 8). Plaintiff is unlikely to succeed

on the merits of its breach of contract claim with respect to all of these clauses.

To be enforceable under New Jersey law, a restrictive covenant must: (1) be reasonably necessary to protect the employer's legitimate business interests; (2) not cause undue hardship to the employee; and (3) not impair the public interest. *Solari Indus., Inc. v. Malady*, 55 N.J. 571, 264 A.2d 53, 59 (N.J., 1970); *Ingersoll-Rand Co. v. Ciavatta*, 110 N.J. 609, 542 A.2d 879, 888-89 (1988). In addition, "three additional factors should be considered in determining whether the restrictive covenant is overbroad: its duration, geographic limits, and the scope of the activities prohibited. Each of those factors must be narrowly tailored to ensure the covenant is no broader than necessary to protect the employer's interest." *Trading Partners Collaboration, LLC v. Kantor*, 2009 WL 1653130 (D.N.J.) at *5, citing *The Community Hospital Group v. Moore*, 183 N.J. 36, 869 A.2d 884, 897 (N.J. 2005). Non-solicitation covenants need not be geographically restricted, as it is the customer base or clientele that is protected, not their location. *Trico Equipment Inc. v. Manor*, 2009 WL 1687391 (D.N.J.) at *7. Confidentiality clauses that are designed to protect trade secrets are enforceable to the extent that they meet the same test as a non-compete clause, and act to prevent disclosure of trade secrets, customer lists and other proprietary information. *Trading Partners*, 2009 WL 1653130 at *5.

Ohio law recognizes essentially the same requirements, set out in *Raimonde v. Van Vlerah*, 42 Ohio St.2d 21, 325 N.E.2d 544, 547 (1975). To determine the reasonableness of a restriction under Ohio law, courts should consider the absence or presence of a long list of factors; the restriction is reasonable if it is no greater than is required for the protection of the employer, does not impose undue hardship on the employee, and is not injurious to the public. *Basicomputer Corporation v. Scott*, 973 F.2d 507 (6th Cir., 1992), citing *Raimonde v. Van Vlerah*, 42 Ohio St.2d 21, 325 N.E.2d 544, 547. These factors include: whether the covenant imposes temporal and spatial limitations, whether the employee had contact with customers, whether the employee possesses confidential information or trade secrets, whether the covenant bars only unfair competition, whether the covenant stifles the employee's inherent skill and experience, whether the benefit to the employer is disproportionate to the employee's detriment, whether the covenant destroys the employee's sole means of support, whether the employee's talent was developed during the employment, and whether the forbidden employment is merely incidental to the main employment. *Id*.

The non-compete clause at issue here is overly broad in scope, and Plaintiff has no legitimate interest in enforcing it as applied to Coast to Coast. Where a post-employment restrictive covenant is unreasonably broad, the court may enforce

it in part, to the extent that partial enforcement is possible without injury to the public and without injustice to the parties. *Solari*, 264 A.2d at 56, cited in *Trico Equipment v. Manor*, 2009 WL 1687391 (D.N.J.) "Even if a covenant is found enforceable, it may be limited in its application concerning its geographical area, its period of enforceability, and its scope of activity." *National Reprographics, Inc.*, 621 F.Supp.2d 204 at 223 (emphasis added), citing *Coskey's Television & Radio Sales & Serv. v. Foti*, 253 N.J.Super. 626, 602 A.2d 789, 793 (N.J.App.Div.1992).

The instant case is very similar to *Patio Enclosures, Inc. v. Mark W. Herbst*, 39 Fed.Appx. 964, 2002 U.S. App. LEXIS 14107 (6th Cir.). Patio Enclosures is an Ohio corporation whose former employee Herbst worked for it as a sunroom salesman in Boston. Herbst brought 18 years of experience in home improvement with him when he joined Patio Enclosures. Following termination of his employment from Patio Enclosures, defendant accepted a sales position with Patio Rooms of America, doing business as Better Living Patio Rooms. Better Living also sells sunrooms. Patio Enclosures sued to enforce the covenant not to compete and the prohibition on disclosure of trade secrets that were contained in defendant Herbst's employment agreement with Patio Enclosures.

In denying the injunctive relief, the district court found the plaintiff had

failed to show a strong likelihood of success on the merits of both claims, failed to show a threat of irreparable harm, and failed to show damage to the public interest. 39 Fed. Appx. at 967. In upholding the district court's denial of injunctive relief, the Sixth Circuit noted that under Ohio law, non-compete agreements are reasonable if the three conditions set out in *Raimonde* are met, and that each must be established by clear and convincing evidence. The court found the non-compete agreement, which barred employment with any direct competitor within fifty (50) miles of one of plaintiff's stores, to be more restrictive than necessary, and unduly burdensome to the defendant as enforcing it would require the defendant to move to another state. Significantly, the court noted that Better Living and the plaintiff rarely competed for the same customers and used different marketing techniques. In addition, defendant Herbst brought his own knowledge and "natural" sales abilities to the position. *Id*. at 968.

Mr. Casole owned and operated an auto glass installation business for over twenty years before going to work for Plaintiff. Any new skills he may have learned or developed while in Plaintiff's employ are those that any employee working in a market-driven, customer-service oriented business would have. There is nothing unique in such skills. There is no "secret formula" to glass installation that Mr. Casole is using in handling operations for Coast to Coast, nor has Plaintiff

alleged any specific trade secrets meriting protection. Moreover, the same skills are known throughout the auto glass industry. Many other auto glass companies also market to national insurance companies through the same means using the same strategies as Plaintiff. Even Plaintiff's targeted customers for its installation services – automobile insurance companies – are readily and publicly available through insurance industry trade groups and online compilations.

The non-compete clause in the employment agreement (Para. 7a) is not limited in geographical area and, as a result, does not meet the requirements of either New Jersey or Ohio law. (cite) In addition, the covenant causes undue hardship on Mr. Casole in that he is precluded from working at all in the automotive glass industry, which is his only training and experience. Finally, the covenant not to compete requires Mr. Casole not to compete with Plaintiff in any business in which it is engaged or in which it has planned to engage; this requirement is overly broad and requires Mr. Casole to anticipate the business plans of his former employer. This latter requirement was found unenforceable in *Trading Partners* where the former employer or one of its affiliates could have changed its business plan to encompass the defendant's chosen area of employment thus rendering him in violation of the agreement without having been able to anticipate it. 2009 WL 1653130 at *6.

Plaintiff's only legitimate reason for requiring non-compete and confidentiality clauses, particularly with respect to higher level employees, is to prevent its own proprietary or confidential information from being used against it by an employee who takes that information to a competitor. But here, Mr. Casole's job duties do not even approach the scope of his employment with Plaintiff. His responsibilities are completely different and he has no pre-sale contact with any customers; any customers with whom he does have contact are individuals when he follows up after Coast to Coast has provided installation services. Most of Mr. Casole's duties involve quality control checks on the installations before the vehicle is returned to the customer, in which cases he has no contact with the customer. His current duties do not breach the non-compete provision because he is not in any way using knowledge or customer lists acquired at or through Plaintiff in his current position. The only overlap is that Mr. Casole is working for a company that provides automobile glass installation services – services that are provided after Coast to Coast purchases auto glass from other suppliers, including Plaintiff. Plaintiff has no legitimate interest in enforcing the non-compete clause in this case and doing so would harm the public's interest in preventing unemployment and promoting competition in the market.

Plaintiff's has also alleged that Coast to Coast and Mr. Casole are violating

the confidentiality provision. Plaintiff has not alleged, nor can it prove, any "confidential information" or "trade secrets" that Mr. Casole possesses that could be used to benefit Coast to Coast. Confidential information is protectable when it is unique and not generally known throughout the industry. *National Reprographics, Inc.* 621 F.Supp.2d at 226, citing *Ingersoll-Rand Co.*, 542 A.2d at 889. Information is not protectable when it is merely the knowledge, skill, or expertise learned or developed over an employee's career or tenure with the employer. *Id*.; see also *Coskey's*, 253 N.J.Super. at 636, 602 A.2d at 794 ("[a]n employer may not prevent an employee from using the general skills in an industry which have been built up over the employee's tenure with the employer" (citation omitted).

Where other courts have found a former employee's high level placement in the organization rendered him privy to confidential, proprietary information through which the former employer had a legitimate interest in enforcing a non-compete agreement under New Jersey law, there were other factors weighing in the former employer's favor that are not present in this case. For instance, evidence showed the former employees had removed confidential customer lists from the plaintiff-employer's records before leaving their employ, and had taken steps to contact and market their new employer's products or services to those same

customers. *Trico*, 2009 WL 1687391 at *9; *Esquire Deposition Services, LLC v. Boutot*, 2009 WL 1812411 at *6 (D.N.J.); *Basicomputer*, 973 F.2d 507, 512. Plaintiff has not alleged a single fact, nor can it prove, that Mr. Casole left Plaintiff's employ with secret customer lists, or that he has contacted any of Plaintiff's national insurance company customers on Coast to Coast's behalf. He has not brought confidential marketing plans or secret formulas for auto glass installation to Coast to Coast for its benefit.

In this case, Coast to Coast and Plaintiff's markets and customers are completely different with respect to their installation services. Plaintiff targets automobile insurance companies, Conversely, Coast to Coast markets to individual consumers. Coast to Coast does not even compete in the auto glass supply or distribution business; rather, it secures its auto glass from outside suppliers, including Plaintiff. In other cases, New Jersey courts have enforced non-compete agreements where the plaintiff-employer faced loss of goodwill due to the former employee's actions, specifically contacting the plaintiff-employer's customers. Again, Coast to Coast's customers are drawn from an entirely different segment of the population and Mr. Casole's job duties require minimal, post-sale contact with those customers.

The agreement's restrictive covenants as applied to Mr. Casole constitute an

undue hardship, and is therefore unenforceable. While, "an employee must show more than mere "personal hardship" for the court to find an undue hardship would exist if a particular non-competition restriction is enforced." *National Reprographics*, 621 F.Supp.2d at 228, citing *Karlin v. Weinberg,* 77 N.J. 408, 390 A.2d 1161, 1169 (N.J. 1978). The inquiry should look to the "likelihood of the employee finding work in his field elsewhere." *Id.* Under the non-compete provision at issue here, Mr. Casole cannot work in any position in the automobile glass industry *anywhere*. This industry is the only one he knows and he has not worked in other fields.

The *National Reprographics* court also noted that courts should consider the circumstances under which the former employee left employment, noting "where the breach results from the desire of an employee to end his relationship with his employer rather than from any wrongdoing by the employer, a court should be hesitant to find undue hardship on [the employee]." *Id*. In this case, Mr. Casole's employment with Plaintiff was terminated by Plaintiff, again favoring Mr. Casole.

Finally, if a restrictive employment agreement will be injurious to the public, it will not be enforced. *NRI* at 229, citing *Karlin,* 390 A.2d at 1168. "The public has a clear interest in safeguarding fair commercial practices and in protecting employers from theft or piracy of trade secrets, confidential information, or, more

generally, knowledge and technique in which employer may be said to have a proprietary interest." *Id.*, citing *Ingersoll-Rand Co.*, 542 A.2d at 894. As noted above, Plaintiff has no protectable proprietary interest in the general knowledge Mr. Casole possesses with respect to automobile glass installation. Coast to Coast does not solicit the same pool of customers as Plaintiff. Coast to Coast is not using knowledge or skills that Mr. Casole developed while working with Plaintiff or information gleaned from confidential sources or trade secrets. As a result, the restrictive covenants are unenforceable as against public policy in New Jersey.

II. Plaintiff Cannot Establish Imminent Irreparable Injury

Plaintiff's request for injunctive relief should not be granted as Plaintiff has failed to demonstrate actual risk of irreparable injury. The burden of establishing irreparable harm is on the Plaintiff. *Campbell Soup Co. v. ConAgra, Inc.*, 977 F.2d 86, 91 (3d Cir. 1992). In order to demonstrate irreparable harm, Plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial. *Instant Air Freight Co. v. C.F. Air Freight, Inc*., 882 F.2d 797, 801 (3d Cir. 1989). The claimed injury cannot merely be possible, speculative, or remote. *Acierno v. New Castle County*, 40 F.3d 645, 653 (3d Cir. 1994). The harm necessary to warrant an injunction must be a "clear showing of immediate irreparable injury" or a "presently existing actual threat; an injunction

may not be used simply to eliminate a possibility of a remote future injury." *Id*., (quoting *Cont'l Group, Inc. v. Amoco Chems. Corp.*, 614 F.2d 351, 358 (3d Cir. 1980)).

Plaintiff claims loss of business and goodwill from Coast to Coast's employment of Mr. Casole. However, as set out above, Mr. Casole is not bringing confidential information or trade secrets to Coast to Coast. Even if he had such knowledge, in Mr. Casole's capacity with Coast to Coast, there is no risk of his using any unique knowledge acquired while working for Plaintiff. Even if some general knowledge he possesses about auto glass installation is deemed to have been learned through Plaintiff, his use of that knowledge for Coast to Coast's benefit is not injurious as they do not compete for the same customers. There is no loss of goodwill, as Mr. Casole will not be contacting clients of Plaintiff and seeking their business. *Cf. Trico*, 2009 WL 1687391 at *8 (citing *Laidlaw, Inc. v. Student Transp. of America, Inc.*, 20 F.Supp.2d 727, 766 (D.N.J. 1998): "where an employee solicits customers of his former employer on behalf of his new employer there is irreparable harm.") There is no loss of Plaintiff's control of its reputation, as the court found in *Esquire Deposition Services, LLC v. Boutot*, 2009 WL 1812411 (D.N.J.) at *9.

In *Esquire*, the defendant company hired the defendant employee away from

the plaintiff, solely to create and develop a new business avenue. The defendant company had operated for nearly thirty (30) years without providing legal transcription services, but hired the defendant employee to start up such an area, market it and manage it. In this case, Plaintiff terminated Mr. Casole's employment. His operations management position with Coast to Coast will in no way step on Plaintiff's toes; he has no contact with customers before any sale occurs, he does not develop new markets or strategies. He will not be looked to by Plaintiff's auto insurance company customers, nor will Plaintiff's reputation be damaged with them by Mr. Casole's employment with Coast to Coast. Any loss Plaintiff might demonstrate is purely economic through increased competition from Coast to Coast, and economic loss does not constitute irreparable harm. *Acierno*, F.3d at 653 (quoting *Instant Air Freight Co.*, 882 F.2d at 801).

Plaintiff's own actions demonstrate the lack of any immediate or actual threat of injury. Plaintiff learned that Coast to Coast had offered a position to Mr. Casole in August. Mr. Casole began working for Coast to Coast in August. Plaintiff has waited over two (2) months following the start of his employment to seek injunctive relief. Any harm that is immediate and irreparable surely would have warranted sooner action. *NASC Services, Inc. v. Jervis*, 2008 WL 2115111 (D.N.J.) at *6 ("Plaintiffs cannot demonstrate imminent harm because they

inordinately delayed filing suit" when they waited two (2) months after learning of defendants' new employer.)

Finally, Plaintiff's contention that Mr. Casole's agreement that any breach of the covenants constitutes irreparable harm is misplaced. (Plaintiff's Memorandum of Law, page 14.) Plaintiff has cited *Trico* in support of its position, noting in its Memorandum of Law that "contractual acknowledgement that breach would lead to irreparable harm is evidence of irreparable harm." (*Id*.) Plaintiff's has mischaracterized the law on this point in an attempt to make its position seem stronger than it is. This Court in *Trico* cited *Dice v. Clinicorp*'s holding that "contractual provision may constitute evidence of irreparable harm but is not dispositive" (2009 WL 1687391 at *9, citing Dice, 887 F.Supp. 803, 810 (W.D.Pa.1995)). In this case, the provision at issue should not be considered at all, much less as the dispositive evidence Plaintiff seeks to present it as to this Court, because there is no substantial risk of any harm to Plaintiff by Coast to Coast employing Mr. Casole in an entirely different capacity where he has no involvement with customers, nor any participation in marketing, business, sales or distribution strategy.

III. Defendants Would Suffer Greater Harm from the Issuance of Injunction than Plaintiffs Would Suffer Without the Injunction

Injunctive relief should not be granted when doing so would harm the non-moving party more than the party seeking the relief. (CITE) Here, Coast to Coast and Mr. Casole would be harmed more seriously if an injunction is issued than Plaintiff will be if the injunction is not granted. As noted above, the information and skills Mr. Casole brings to Coast to Coast are general knowledge based on his vast prior experience before working for Plaintiff. Coast to Coast's business is significantly more limited than Plaintiff's, both geographically and in the services it provides. Coast to Coast is solely an auto glass installer and operates in only five (5) states. It does not supply or distribute auto glass. It markets its installation services to an entirely different pool of potential customers than Plaintiff. Mr. Casole's duties at Coast to Coast are unrelated to the duties he held when employed by Plaintiff. No harm will result to Plaintiff beyond than the general economic competition that already existed when Coast to Coast undertook operations. It is this free market competition that Plaintiff seeks to restrain through this action.

In addition to stifling Coast to Coast's ability to compete in a free market, granting injunctive relief will harm Mr. Casole. While Plaintiffs have taken pains to note the generous payments Mr. Casole received from Plaintiff in 2009, it fails to disclose that the figure paid to him results from adding the bonus he earned on

sales in 2008 to his salary for only six (6) months. In exchange, Plaintiff is demanding that he remain unemployed for an entire year, or permanently out of the industry in respect to the trade secrets claim The balance of harms clearly hurts defendants more and, as a result, granting injunctive relief is not warranted.

IV. The Public Interest Would Be Harmed by Granting the Injunction

Both the granting of injunctive relief and the enforcement of restrictive covenants must be in the public interest to stand. *See, e.g., BP Chems. Ltd. v. Formosa Chem. & Fibre Corp.*, 229 F.3d 254, 263 (3d Cir.2000) on injunctive relief; *Solari*, 55 N.J. 571, 264 A.2d at 59 on restrictive covenants under New Jersey law; *Raimonde*, 42 Ohio St.2d, 21, 325 N.E.2d at 547 on restrictive covenants under Ohio law.

Plaintiff seeks to enforce the non-compete, non-solicitation and confidentiality / trade secrets protection clauses of the employment agreement Mr. Casole signed with Safelite. As Coast to Coast's employment of Mr. Casole in operations management does not breach any of these provisions, enforcing them serves only to stifle competition. For Plaintiff to go to such lengths to stifle competition from a regional auto glass installer active in only five (5) states is clearly not in the public interest. Moreover, enforcement of the confidentiality clause, in particular, effectively prevents Mr. Casole from working in any business

in the United States.

In this case, the only purpose served in granting injunctive relief to enforce the covenants in the employment agreement are to restrain free trade and add another person to the unemployment rolls. Neither can be deemed to be in the public interest.

Respectfully submitted,

WHITEMAN, BANKES & CHEBOT, LLC

Dated: October 15, 2009

By: /s/ Jeffrey M. Chebot
Jeffrey M. Chebot
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Coast to Coast Auto Glass, LLC