

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

**UNIVERSAL PROTECTION SERVICE, LP, §
A California Limited Partnership §**

Plaintiff, §

v. § 2:16-CV-00097

**MARK THORNBURG, an individual, §
MIKE WEATHERL, an individual, and §
AGTAC SERVICES, LLC, a Nebraska §
Limited Liability Company §**

Defendants. §

**PLAINTIFF’S EMERGENCY MOTION FOR TEMPORARY RESTRAINING
ORDER AND REQUEST FOR IMMEDIATE EX PARTE HEARING**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW PLAINTIFF UNIVERSAL PROTECTION SERVICE, LP (“Plaintiff” or “Universal Protection”) and files this Plaintiff’s Emergency Motion for Temporary Restraining Order and Request for Immediate Ex Parte Hearing (“TRO”) complaining of Defendants Mark Thornburg, Mike Weatherl, and AgTac Services, LLC (collectively, “Defendants”) and respectfully requests that the Court immediately enjoin them from violating certain contractual obligations and from continuing to engage in certain acts in violation of Universal Protection’s rights pursuant to Texas’s Uniform Trade Secrets Act (“TUTSA”), Tex. Civ. Prac. & Rem. Code § 134A.001, et seq., the Defend Trade Secrets Act of 2016 (“DTSA”), Pub. L. No. 114-153, 130 Stat. 376, and the common law. In support thereof, Universal Protection respectfully states as follows:

1. On May 19, 2016, Universal Protection filed an eight-count Complaint alleging, inter alia, misappropriation of trade secrets by all Defendants and breaches by Defendant Thornburg of his contractual obligations to Universal Protection. Specifically, in brazen violation of contractual, statutory and common law duties to protect trade secret information and goodwill,

Defendants have actively misappropriated confidential pricing, employee and other proprietary information for the purpose of poaching Universal Protection's customers on behalf of a new security company based in Lincoln, Nebraska, and actively operating in Texas, known as AgTac.

2. To enjoin Defendants' ongoing illegal activities, the issuance of a Temporary Restraining Order ("TRO") is proper pursuant to Federal Rule of Civil Procedure 65 and the Texas Uniform Trade Secrets Act ("TUTSA"), Tex. Civ. Prac. & Rem. Code § 134A.001, which provides that "[a]ctual or threatened misappropriation may be enjoined." Tex. Civ. Prac. & Rem. Code § 134A.003(a). Issuance of a TRO is also proper under the Defend Trade Secrets Act ("DTSA"), Pub. L. No. 114-153, 130 Stat. 376, which was passed into law on May 11, 2016.¹ The DTSA empowers courts to grant an injunction "to prevent any actual or threatened misappropriation" of any trade secret that is "related to a product or service used in, or intended for use in, interstate or foreign commerce." *See* 130 Stat. 376 at 376, 379-380 (to be codified at 18 U.S.C. § 1836(b)(1), (b)(3)(A)(i)).

3. In determining whether to issue a TRO, courts in the Fifth Circuit apply a four-factor test: (1) substantial likelihood of success on the merits; (2) a substantial threat of immediate and irreparable harm for which it has no adequate remedy at law; (3) that greater injury will result in denying the temporary restraining order than from its being granted; and (4) that a temporary restraining order will not disserve the public interest. *Clark v. Princhard*, 812 F.2d 991, 993 (5th Cir. 1987); *Canal Auth. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974) (en banc). Here, Universal Protection is entitled to a TRO under all four of these factors.

4. First, the sworn affidavits accompanying the Brief in Support of Plaintiff's Emergency Motion for Temporary Restraining Order and Request for Immediate Ex Parte Hearing demonstrate a strong likelihood that Universal Protection will succeed on the merits of its claims for trade-secrets misappropriation and for breach of contract.

¹ The DTSA amended chapter 90 of Title 18 of the U.S. Code (the Economic Espionage Act of 1996) to provide federal jurisdiction for the theft and misappropriation of trade secrets. *See* 18 U.S.C. §§ 1831, *et seq.* (as amended).

5. Second, the actual and threatened misappropriation of Universal Protection's trade secrets by all Defendants, coupled with Defendant Thornburg's continued breaches of his contractual obligations, present a clear and present threat of irreparable harm. Universal Protection has no adequate remedy at law and is at risk of losing intangible assets such as reputation and goodwill if Defendants' conduct is not immediately enjoined.

6. Third, greater harm will result to Universal Protection in the same form of loss as a result of the Court denying Universal Protection's request than would occur if the TRO is granted, as evidenced by the fact that Universal Protection has already lost one customer account and many employees due to Defendants' conduct. Universal Protection risks losing additional business with each passing day.

7. Finally, the grant of the TRO will not disserve the public interest as it is in the public interest to uphold valid agreements and prevent the misappropriation of trade secrets pending a trial on the merits. The law favors only *lawful* competition. And as a general matter, enforcement of contracts—including valid restrictive covenants—is in the public interest.

8. In order to obtain necessary and immediate relief, Universal Protection respectfully requests expedited oral argument on this Motion for Temporary Restraining Order at the earliest possible time this Motion can be heard. This matter presents an emergency need for immediate relief as Universal Protection continues to lose customers and employees, and the value of its trade secrets and confidential information and customer goodwill continues to diminish daily. As such, Universal Protection respectfully requests this Court set this matter for expedited oral argument.

WHEREFORE, Universal Protection Service, LP respectfully requests the Court grant this Plaintiff's Emergency Motion for Temporary Restraining Order and Request for Immediate Ex Parte Hearing and order the following:

A. All Defendants must, at all times henceforth, maintain the confidentiality of all Confidential Information, as defined in the Thornburg Agreement, and never disclose such Confidential Information to any third party for any reason whatsoever;

B. Thornburg shall not, directly or indirectly, solicit or attempt to solicit, on behalf of any person or entity, any Universal Protection customer, including those acquired from ABM, with whom he had contact or communications at any time during his last twelve (12) months of employment, any customer for whom he supervised Universal Protection's account or dealings at any time during his last twelve (12) months of employment, and/or any customer about whom he obtained any Confidential Information, for a period of twelve (12) months from issuance of this Court's Order;

C. Thornburg shall not, directly or indirectly, sell or provide any services or products that are competitive with or substitute for the services or products offered by Universal Protection to any Universal Protection customer, including those acquired from ABM, with whom he had contact or communications at any time during his last twelve (12) months of employment, any customer for whom he supervised Universal Protection's account or dealings at any time during his last twelve (12) months of employment, and/or any customer about whom he obtained any Confidential Information, for a period of twelve (12) months from issuance of this Court's Order;

D. Thornburg shall not, directly or indirectly, recruit, solicit or attempt to solicit, hire or engage, on behalf of any person or entity, any person currently employed by Universal Protection or employed at any point during Thornburg's last six (6) months of employment with Universal Protection for a period of twelve (12) months from issuance of this Court's Order;

E. Defendants shall not use, disclose or misappropriate any of Universal Protection's trade secrets pursuant to the Texas Uniform Trade Secrets Act and the Defend Trade Secrets Act;

F. AgTac shall not solicit, sell to, pitch or service any Universal Protection customer serviced by or about whom Thornburg had confidential information or trade secrets;

G. Thornburg must turn over for inspection and review all personal and business computers, laptops, external hard drives, flash drives, external devices and phones for forensic review by a computer forensic expert of Universal Protection's choosing; and

H. Any additional relief this Court deems equitable and just.

Respectfully submitted,

Bradley W. Howard
State Bar No. 00786452
Allison L. Davis
State Bar No. 24058474
BROWN & FORTUNATO, P.C.
905 S. Fillmore Street, Suite 400
P. O. Box 9418
Amarillo, Texas 79105-9418
(806) 345-6300 Telephone
(806) 345-6863 Facsimile
bhoward@bf-law.com Email
astephens@bf-law.com Email

By: /s/ Bradley W. Howard
Bradley W. Howard

Kevin M Cloutier
State Bar No. 24081712
SHEPPARD MULLIN RICHTER
& HAMPTON LLP
70 West Madison Street, 48th Floor
Chicago, Illinois 60602
(312) 499-6300 Telephone
(313) 499-6301 Facsimile
kcloutier@sheppardmullin.com Email

**ATTORNEYS FOR PLAINTIFF
UNIVERSAL PROTECTION SERVICE, LP**

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document and that a true and correct copy was served on the parties listed below through the electronic case filing system if the Notice of Electronic Filing indicated that the parties received it or otherwise by mailing a copy by Certified Mail, Return Receipt Requested, to the parties this 19th day of May, 2016.

Robert B. Evnen
Woods & Aitken, LLP
301 South 13th Street
Lincoln, NE 68508
Counsel for Defendants Mike Weatherl and AgTac Services, LLC

Mark Thornburg
619 Belmont Drive
Dumas, TX 79029

/s/ Bradley W. Howard
Bradley W. Howard