

**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 ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW PLAINTIFF UNIVERSAL PROTECTION SERVICE, LP (“Plaintiff” or “Universal Protection”) complaining of Defendants Mark Thornburg, Mike Weatherl, and AgTac Services, LLC (collectively, “Defendants”) and files this Plaintiff’s Original Complaint (“Complaint”) and in support thereof, and in support thereof would respectfully show the Court as follows:

PARTIES

1. Universal Protection is a California limited partnership with its principal place of business in Santa Ana, California. Universal Protection is wholly owned by Universal Services of America, which also has its principal place of business in Santa Ana, California.

2. Mark Thornburg (“Thornburg”) is a former employee of Universal Protection and, upon information and belief, resided in Texas at all times relevant to this Complaint. Upon further information and belief, Thornburg resides at 619 Belmont Drive, Dumas, Texas 79029. Thornburg may be served with process by serving a copy of the Complaint at this address.

3. Mike Weatherl (“Weatherl”), upon information and belief, resided in Nebraska at all times relevant to this Complaint. Upon further information and belief, Weatherl resides at 6600 Marcus Rd., Lincoln, Nebraska 68516. Weatherl may be served with process by serving a copy of the Complaint at this address.

4. Upon information and belief, AgTac Services, LLC (“AgTac”) is a Nebraska limited liability company with its principal place of business at 8200 Cody Drive, Suite F, Lincoln, Nebraska 68516. This Defendant conducts business in Texas and its registered street address is listed as 5950 Monfort Rd., Cactus, Texas 79013. AgTac may be served with process by serving a copy of the Complaint at this address.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this district pursuant to 28 U.S.C. §§ 1331 and 1367 because Universal Protection asserts a cause of action under federal law pursuant to the Defend Trade Secrets Act (“DTSA”), Pub. L. No. 114-153, 130 Stat. 376, which was passed into law on May 11, 2016.¹

6. Jurisdiction is proper in this district pursuant to 28 U.S.C. § 1332. Universal Protection is not a resident or citizen of Texas or Nebraska. Defendant Thornburg is a citizen of Texas and AgTac is a citizen of Nebraska. The amount in controversy exceeds \$75,000, exclusive of interest, costs, and attorneys’ fees.

7. Venue is proper in this district under 28 U.S.C. § 1391 (b) and (c) based on the following:

- a. Defendant Thornburg is a resident of Texas;
- b. Defendant AgTac conducts, engages in, and carries on business within the State of Texas; and
- c. The alleged harm and breaches occurred, among other places, in Texas.

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).

FACTUAL BACKGROUND

I. Universal Protection's Business, Confidential Information, and Customer Relationships

8. Universal Protection, a division of Universal Services of America, is a national company that offers full-service security services and solutions to various property types including residential communities, office buildings, airports, corporate campuses, distribution and manufacturing facilities, and government facilities, including hiring, training, and staffing of security guards, operational oversight, vehicle patrols, implementation of proper technology, and complete assessment and design of proper security measures.

9. While Universal Protection is headquartered in California, it has offices across the country and services customers nationally, including throughout Texas, the Great Plains and the Southwest.

10. Universal Protection employs approximately 11,600 employees in the region that includes Texas, and nearly 80,000 employees across the country.

A. Universal Protection Has a Unique Relationship with Its Customers and Builds These Relationships Based on Specialized Pricing Methodologies and Security Plans

11. Over the course of many years, Universal Protection has developed a business plan for security solutions that is the primary key to its growth and success. Universal Protection has invested a great deal of time and money in the development of this specialized platform of training, service, and crafting solutions to customer needs and related marketing and referrals. As a result, Universal Protection has developed a reputation for high performance, reliability, and customer satisfaction.

12. Every customer has different security needs according to its business, user demographic, and requests of the owners and operators. Universal Protection assesses the needs of its customers and related properties, and designs individually crafted security platforms or operational plans suited to each customer, including unique pricing structures, employee staffing, and wage rates for each customer account. Managers, directors, and site supervisors for Universal

Protection are well versed in this methodology and utilize it to craft security proposals for new and existing customers.

13. Because Universal Protection places its own security guards on the premises of its customers, Universal Protection relies on its personnel to not only perform their job-specific duties, but also to act as the face of Universal Protection in marketing its services and maintaining its reputation.

14. Because of the personal nature of the industry, customer relationships and goodwill are critical components to Universal Protection's business and its success. When Universal Protection allows its managers and directors access to customers, Universal Protection trusts these persons with access to a highly cultivated customer relationship built on proprietary processes developed and utilized by Universal Protection in the regular course of business.

15. While Universal Protection's customer base is broad, the identity of each of its customers is not publicly known or ascertainable. Moreover, Universal Protection has obtained particular leads for new customers through customer introductions, referrals and otherwise. Similarly, the identities of these prospective customers and other information related to a potential lead is not publicly known.

16. Universal Protection maintains comprehensive information regarding each existing customer in its WinTeam database. This database includes details of a customer's service contract with Universal Protection, including their pricing, assigned guards, chosen services, and billing practices. WinTeam also contains information regarding each individual guard's personal information, payroll information, benefits and wages, which may be unique pursuant to each customer site.

B. Universal Protection Acquired ABM Onsite Services, Inc., Including Its Goodwill, Confidential Information, and Employment Agreements

17. As Universal Protection has found success in its specialized knowledge, exclusive training, and unique approach to crafting security solutions, it has grown. Universal Protection has grown carefully and strategically, including in particular instances through the acquisition of

other key businesses and related goodwill. When Universal Protection acquires a company, much of the value of the purchase lies in the target company's goodwill, that is, in the relationships held by the acquiree company's employees and their knowledge of the inner workings of various properties. Universal Protection then implements its customer-focused methodology and training to leverage such goodwill with the customers of the businesses it has acquired.

18. Universal Protection identified ABM Onsite Services, Inc. ("ABM") as a target acquisition to grow its reputation and national presence. Universal Protection believed the goodwill engendered by ABM with its customers was valuable and would be a key component of Universal Protection's growth in the Southwest, Great Plains and throughout the country.

19. On October 26, 2015, Universal Protection acquired the entire security business of ABM. Per the Asset Purchase Agreement between Universal Protection and ABM ("APA"), the "security business" included, among other things, ABM's security contracts and all employment and restrictive covenant agreements.

20. Universal Protection purchased the goodwill of ABM with its customers and the particularized knowledge, trade secrets, confidential and proprietary information that ABM employees had acquired as a result of their employment with ABM.

21. Like Universal Protection, ABM developed its customer base and trade secret and confidential information over time, including customer lists, customer information such as contact information, specific needs, preferences, billing practices, and specialized pricing platforms, including bill rates and wage structures for guards, site supervisors, and other employees. These specialized pricing platforms were unique to each customer and not publicly known. In fact, customer information and pricing platforms are not publicly known, disseminated, or easily ascertainable even within ABM. Improper use or dissemination of such pricing and customer information would be devastating to ABM's business and competitive edge.

22. Universal Protection began operating legacy ABM sites and hiring employees in January 2016.

C. Universal Protection Maintains and Protects Confidential Information, Including the Confidential Information Acquired from ABM

23. Universal Protection protects the confidential customer and employee information stored in WinTeam by limiting access to the system through password protection and only offering passwords and log-in credentials to certain senior level employees. Only certain high level employees have passwords that enable them complete access to all of the information within WinTeam.

24. Universal Protection requires all management, administrative and sales employees to sign confidentiality agreements in which they promise that they will not disclose these trade secrets, including information about employees, customers, pricing, training and internal operating procedures, to Universal Protection competitors. Only employees of Universal Protection have access to the company's standard operating procedures and post-orders.

25. Universal Protection also takes additional steps to protect the confidentiality of its training programs, operational protocols, training and operational publications, and customer information. Each individual laptop issued to a company employee is password-protected and requires multiple log-ins in order to access the application and security software programs. Employees of Universal Protection have varying levels of access to this proprietary billing software, which is based on whether they have a legitimate business need to access that level of information.

26. Similarly, all mobile devices, including iPhones, Androids, and tablets, that are used to access Universal Protection information are also required to be password-protected.

27. Universal Protection keeps all of its offices locked at all times, 24/7. Employees who work in any Universal Protection office have a key code to access the alarm system, which secures the property. As a matter of company policy, Universal Protection re-keys its entire office building and sets a new alarm code for the security system after any employee is fired.

II. Defendant Thornburg's Role with ABM and Universal Protection

28. Thornburg served as Director of Security for ABM, and later Universal Protection, at the JBS USA ("JBS") beef processing facility in Dumas, Texas (also known as "JBS-Cactus").

29. Universal Protection officially hired Thornburg as a Universal Protection employee on or around January 22, 2016, following the acquisition of ABM.

30. In his role as Director of Security, Thornburg was responsible for managing and maintaining the customer relationship at the JBS-Cactus account. Most importantly, he was responsible for executing the security operational plan for the account, which was developed between JBS, the Director of Security, and the General Manager overseeing the account.

31. A customer's security operational plan includes specialized post-orders, standard operating procedures, and other security parameters. Thornburg, as the Director of Security, was expected to ensure the plan was being executed, which may include training security guards, addressing and correcting issues or problems on behalf of either the guards or the customer, removing an officer if necessary, and managing the schedule and payroll for the guards onsite.

32. The JBS-Cactus account is a fairly remote site, located approximately one hour north of Amarillo, Texas. As a result, Thornburg's interaction with the customer was even more critical than a Director of Security's position at another less isolated site. Universal Protection relied heavily on not only Thornburg's expertise of the JBS-Cactus account, which was learned through his employment with ABM and Universal Protection, but also on his interpersonal communication developed with this customer over the same course of his employment to manage and foster this customer relationship.

33. Thornburg also had a close relationship with the Universal Protection security guard employees staffed onsite and interacted with them on a daily basis. Thornburg was responsible for scheduling and payroll for the guards, and was also involved in the hiring and firing process. Thornburg's opinion regarding staffing was highly valued based on his long-standing relationship with the customer and expertise in the area.

34. In his role as Director of Security, Thornburg had regular access to Universal Protection's proprietary program WinTeam, which included all customer contact information, pricing, employee wages, payroll, billing rates, and personal employee information for the JBS-Cactus location. Additionally, Thornburg had access to and knowledge of the competitive customer pricing methodologies and strategies employed by Universal Protection for competitive bids.

35. In addition to his role for the JBS-Cactus account, Thornburg worked with other Universal Protection customers in West Texas, including Cargill, Inc. and Tyson Foods, Inc. Throughout his employment, Thornburg had access to and knowledge of confidential customer contact information, pricing and contract details, employee information, and wages and payroll for various customer accounts throughout West Texas.

A. Defendant Thornburg Signed An Employment Agreement with Universal Protection

36. Because Universal Protection values its confidential customer, pricing, billing, employee and operational information, including such information acquired from ABM, and because Universal Protection provided Thornburg with access to such information, Universal Protection and Thornburg entered into an Employment Agreement to protect Universal Protection's trade secret and confidential information, customer and employee relationships, and legitimate business interests.

37. On January 22, 2016, Thornburg agreed to and signed the Universal Protection Employment and Non-Solicitation Agreement (the "Thornburg Agreement"). The Thornburg Agreement contains, among other things, reasonable confidentiality and non-disclosure, conflicts, non-interference, and non-raiding provisions. It does not contain a non-competition provision. *See* the Thornburg Agreement at App. 5-10.

38. As consideration for the Thornburg Agreement, Universal Protection promised to provide and, in fact provided, confidential information and specialized training to Thornburg:

Consideration. In exchange for Employee entering into this Agreement, the Company promises to hire Employee and to provide Employee access to confidential information and specialized training. Employee agrees that (a) Employee would not be eligible for employment with the Company, access to confidential information, and specialized training but for Employee signing this Agreement, and (b) this Agreement is supported by good and valuable consideration, to which Employee is not otherwise entitled.

39. The confidentiality and non-disclosure provision of the Thornburg Agreement provides, in pertinent part:

Confidential Information. Employee agrees and acknowledges that the Company has developed Confidential Information at great time and expense and further agrees that the Company has provided and/or will provide and will continue to provide Employee with access to Confidential Information and specialized training. Employee covenants and agrees that, except to the extent the use or disclosure of any Confidential Information is required to carry out Employee's assigned duties with the Company, during Employee's employment with the Company and for five (5) years thereafter: (a) Employee shall keep strictly confidential and not disclose to any person not employed by the Company any Confidential Information; and (b) Employee shall not use for Employee or for any other person or entity any Confidential Information. However, this provision shall not preclude Employee from: (i) the use or disclosure of information known generally to the public (other than information known generally to the public as a result of Employee's violation of this Section); or (ii) any disclosure required by law or court order so long as Employee provides the Company immediate written notice of any potential disclosure under this subsection and fully cooperates with the Company to lawfully prevent or limit such disclosure.

40. As it relates to conflicts, the Thornburg Agreement provides:

Conflicts. During Employee's employment with the Company, Employee shall not: (a) engage in any outside business activity without written authorization from the Company; (b) in any way compete with the Company; (c) solicit anyone to compete with or to prepare to compete with the Company; and/or (d) engage in any conduct intended to or reasonably expected to harm the interests of the Company or any affiliate.

41. As it pertains to non-interference with customer relationships, the Thornburg Agreement states:

Non-Interference. Employee covenants and agrees that, for a period of twelve (12) months following Employee's last day of employment with the Company, Employee shall not, directly or indirectly: (a) solicit, encourage, cause or attempt to cause any Restricted Customer (as defined below) to purchase any services or

products from any business other than the Company that are competitive with or a substitute for the services or products offered by the Company, (b) sell or provide any services or products to any Restricted Customer that are competitive with or a substitute for the Company's services or products; (c) solicit, encourage, cause or attempt to cause any supplier of goods or services to the Company not to do business with or to reduce any part of its business with the Company; or (d) make any disparaging remarks about the Company or its business, services, affiliates, officers, managers, directors or management employees, whether in writing, verbally, or on any online forum.

“Restricted Customer” means: (a) any customer of the Company with whom Employee had contact or communications at any time during Employee's last twelve (12) months as a Company employee; (b) any customer of the Company for whom Employee supervised the Company's account or dealings at any time during Employee's last twelve (12) months as a Company employee; and/or (c) any customer of the Company about whom Employee obtained any Confidential Information (as defined below) during Employee's last twelve (12) months as a Company employee.

42. As it relates to non-raiding of Universal Protection employees, the Thornburg Agreement provides:

Non-Raiding. Employee covenants and agrees that for a period of twelve (12) months following Employee's last day of employment with the Company, Employee shall not, directly or indirectly: (a) hire or engage as an employee or as an independent contractor any person employed by the Company, (b) recruit, solicit or encourage any employee or independent contractor to leave his or her employment or engagement with the Company; and/or (c) hire or engage any person employed by the Company at any point during Employee's last six (6) months with the Company.

43. Thornburg agreed to the reasonableness of these provisions and also acknowledged that any breach would result in “irreparable damage and continuing injury” to Universal Protection and, in such event, that Universal Protection “shall be entitled to an injunction from a court of competent jurisdiction enjoining [Thornburg] from committing any violation of those covenants.”

III. Defendant Weatherl's Role with ABM and His Post-Employment Obligations

44. Mike Weatherl is the prior owner of Silverhawk Security Specialists, Inc., (“Silverhawk”) which was acquired by SSA Security, Inc., a subsidiary of ABM, in March of 2004.

45. When ABM acquired Silverhawk, Weatherl was then hired by ABM as Regional Vice President. In this role, Weatherl was given access to trade secret and confidential information, and was required to enter into an employment agreement to protect ABM's legitimate business interests (the "Weatherl Agreement"). *See* the Weatherl Agreement at App. 11-18.

46. Weatherl voluntarily resigned from ABM on July 31, 2013.

47. Upon information and belief, ABM requested Weatherl to resign from his position as Regional Vice President after it discovered that Weatherl was using ABM employees to perform work for other companies he owned and operated. Upon information and belief, Weatherl was also using ABM resources for non-ABM business purposes.

48. Weatherl and ABM subsequently entered into a consulting relationship from August 1, 2013 through September 30, 2013, subject to the terms of a Confidential Consulting Agreement (the "Weatherl Consulting Agreement") between Weatherl and ABM. *See* the Weatherl Consulting at App. 19-26.

49. Upon information and belief, Weatherl and ABM's professional relationship permanently ended on September 30, 2013.

50. Per the terms of the Weatherl Agreement, Weatherl's non-competition restrictive covenant expired July 31, 2015, but he was still obligated to comply with the non-disclosure and confidentiality provisions of the Weatherl Agreement.

51. On January 6, 2016, Weatherl incorporated AgTac Services, LLC in the State of Nebraska.

52. According to the Texas Secretary of State website, Weatherl registered AgTac in the State of Texas on April 12, 2016 and is listed as its Registered Agent. *See* a true and accurate copy of this webpage at App. 27.

53. Weatherl registered AgTac with the Texas Department of Public Safety ("TDPS"), and listed himself and Thornburg co-owners. *See* a true and accurate copy of this webpage at App. 28-31.

IV. Defendant Thornburg Interfered with Universal Protection's Business and Customer Relationships and Acted In Bad Faith While Still Employed

54. On or around April 7, 2016, the JBS-Cactus site informed Universal Protection that it was "going out to bid" and requested new pricing from Universal Protection, specifically based on a reduction of hours. Accordingly, JBS asked Universal Protection to submit a proposed pricing structure and budget based on the new hours. This was unusual because there were no reported service issues or other reason to trigger a new bid.

55. Thornburg was intimately involved in the creation of the pricing and budget proposal for JBS. This process included access to and review of confidential pricing information, pricing platforms, employee information, wage rates, and employee benefits packages. Thornburg also worked with customer representatives to create the proposal.

56. Thornburg submitted the bid proposal to Universal Protection leadership for approval. Universal Protection believed that Thornburg worked to prepare the bid proposal in Universal Protection's best interests.

57. On or around May 2, 2016, JBS informed Universal Protection that it was canceling its Cactus/Dumas, Texas account and switching its security services to AgTac effective May 22, 2016. Further, the customer representative for this account informed Universal Protection that AgTac "significantly underbid" Universal Protection.

58. On May 6, 2016, Universal Protection learned that Thornburg was registered as an "Owner/Manager" as well as an "Employee" for AgTac Services, LLC on the TDPS website. *See* App. 28-31.

59. Universal Protection had even offered Thornburg a promotion to Branch Manager of the Amarillo branch, which he accepted orally and via email, prior to learning of his involvement with AgTac.

60. On the Texas Department of Public Safety company details webpage, Thornburg is listed as an "Owner/Manager," of AgTac in addition to Weatherl. App. 28-30. Further,

Thornburg's "Person Details" page on the TDPS website also lists Thornburg as the "Owner/Partner/Shareholder/Officer" for AgTac since February 15, 2016. *See* App. 32-34.

61. The Texas Department of Public Safety company details webpage also lists and additional twenty-six (26) AgTac employees, including Thornburg and Weatherl. Twenty-three (23) of the listed AgTac employees are current or former Universal Protection employees staffed at the JBS-Cactus site.

62. In short, while working for Universal Protection, Thornburg was also serving as an owner, manager and employee of AgTac, a direct competitor. Thornburg had direct access to Universal Protection's confidential customer and employee information, including pricing methodologies, and even designed a pricing proposal and budget for JBS, all while working with Weatherl on behalf of AgTac.

63. Thornburg also had direct access to Universal Protection's customer, JBS-Cactus, and its employees, while he was actively serving as an owner and/or manager of a competing entity.

64. By virtue of his role with AgTac, Thornburg disclosed confidential and trade secret pricing, customer account information, and employee information to Weatherl and AgTac so that they could build a competitive and "significantly" lower bid to poach the JBS-Cactus account. Thornburg, Weatherl and AgTac successfully used this information to steal a customer account, resulting in the loss of associated goodwill with JBS, the associated revenue attributable to this account, and over 20 Universal Protection employees.

65. On May 17, 2016, Universal Protection terminated Thornburg's employment.

66. Thornburg violated the "conflicts" and "non-disclosure" provisions of the Thornburg Agreement and will most assuredly violate the "non-interference" and "non-raiding" provisions of the Thornburg Agreement following the termination of his employment without injunctive relief.

V. AgTac Services, LLC

67. AgTac is a Nebraska limited liability corporation, and according to the Nebraska Secretary of State, was incorporated on January 6, 2016 by Weatherl.

68. AgTac is a security service company offering the same security services and solutions as Universal Protection in at least Nebraska and Texas, and likely elsewhere.

69. AgTac was registered with the Texas Secretary of State on April 12, 2016. *See* App. 27.

70. AgTac is also listed as “Active” on the Texas DPS website. *See* App. 28-31.

71. AgTac has already poached six (6) customer accounts from Universal Protection in Nebraska, Colorado, Iowa, and Texas.

72. AgTac is continuing to actively solicit existing Universal Protection customers it knows only through former Universal Protection/ABM employees like Thornburg, using trade secret and confidential information to underbid Universal Protection and to unfairly compete.

73. On March 21, 2016, Universal Protection filed a Complaint against Weatherl, AgTac, and others, for breach of contract, tortious interference with contract, misappropriation of trade secrets, civil conspiracy, among other causes of action, in the United States District Court for the District of Nebraska (the “Nebraska Complaint”). *See* a true and correct copy of the Nebraska Complaint, Universal Protection Service, LP v. AgTac Services, LLC, et al., No. 4:16-cv-03039 (D. Neb. filed Mar. 21, 2016) at App. 35-82. Despite this ongoing litigation, Weatherl, AgTac, and others, continue to unfairly compete with Universal Protection.

COUNT I

**Breach of Contract – Conflicts
(Injunctive Relief and Damages)
Against Thornburg**

74. Universal Protection realleges and incorporates by reference Paragraphs 1 through 73 as though fully set forth herein.

75. The Agreement executed by Thornburg is a valid and enforceable contract supported by valid consideration.

76. Among other obligations under the Thornburg Agreement, during the period of his employment with Universal Protection, Thornburg was obligated to refrain from engaging in outside business activity without written authorization from Universal Protection, from competing with Universal Protection, from soliciting anyone to compete with or to prepare to compete with Universal Protection and/or engaging in any conduct intended to or reasonably expected to harm the interests of Universal Protection.

77. These restrictions reasonably protect Universal Protection's legitimate business interests, including its confidential information, goodwill among customers, and protected business relationships.

78. Universal Protection has fully performed its contractual obligations with Thornburg under the Thornburg Agreement.

79. Thornburg violated the Thornburg Agreement by engaging in the exact action from which he agreed to refrain, namely, that he directly provided services to or acted on behalf of a competing entity, AgTac, during his employment with Universal Protection.

80. Universal Protection has suffered and will continue to suffer damages and irreparable harm as a result of Thornburg's breach of contract, including loss of its business and contractual relationships, diminished value of its confidential information, harm to its goodwill and reputation, and loss of its employees.

81. If Thornburg's actions are not restrained, Universal Protection faces additional harm when Thornburg will inevitably violate the "non-interference" and "non-raiding" post-employment obligations set forth in the Thornburg agreement following the termination of his employment on May 17, 2016.

82. Universal Protection's damages cannot be adequately compensated through remedies at law alone, thereby requiring equitable relief in addition to compensatory and punitive relief.

83. Thornburg's actions will continue to cause harm to Universal Protection if not restrained.

COUNT II

Breach of Contract – Failure to Maintain Confidential Information (Injunctive Relief and Damages) Against Thornburg

84. Universal Protection realleges and incorporates by reference Paragraphs 1 through 83 as though fully set forth herein.

85. The Thornburg Agreement is a valid and enforceable contract supported by valid consideration.

86. Among other obligations under the Thornburg Agreement, Thornburg agreed and was obligated, during the period of his employ and following his last day of employment with Universal Protection, to maintain the confidentiality of all confidential information.

87. This covenant reasonably protects Universal Protection's legitimate business interests, including its confidential information, goodwill among customers, employee information, and protected business relationships, including those acquired from ABM.

88. Universal Protection has fully performed its contractual obligations with Thornburg under the Thornburg Agreement.

89. Thornburg has violated the Agreement by engaging in the exact action from which he agreed to refrain, namely, that during his employ with Universal Protection, he failed to maintain the confidentiality of all of Universal Protection's confidential information. Instead, Thornburg has used, disclosed and plans to use and disclose Universal Protection's confidential information to benefit a competing business, AgTac.

90. Universal Protection has already suffered and will continue to suffer damages and irreparable harm as a result of Thornburg's breach of contract, including loss of its business and contractual relationships, diminished value of its confidential information, harm to its goodwill and reputation, and loss of its employees.

91. Universal Protection's damages cannot be adequately compensated through remedies at law alone, thereby requiring equitable relief in addition to compensatory and punitive relief.

92. Thornburg's actions will continue to cause harm to Universal Protection if not restrained.

COUNT III

Breach of Duty of Loyalty (Injunctive Relief and Damages) Against Thornburg

93. Universal Protection realleges and incorporates by reference Paragraphs 1 through 92 as though fully set forth herein.

94. As a manager, Thornburg was placed in a position of trust and confidence with Universal Protection in which Universal Protection trusted Thornburg with its trade secret and confidential information, including direct access to customers, customer information and employee information. Thornburg had a fiduciary duty to Universal Protection.

95. Thornburg breached his duty of loyalty when he actively worked on behalf of a competing entity, AgTac, while still employed by Universal Protection.

96. Thornburg breached his duty of loyalty when utilizing Universal Protection's confidential and proprietary information to further a competing business while still employed by Universal Protection.

97. Thornburg further breached his duty when, by utilizing Universal Protection's confidential and proprietary information, he actively solicited Universal Protection's customers and employees for the benefit of AgTac while still employed by Universal Protection.

98. Universal Protection's damages cannot be adequately compensated through remedies at law alone, thereby requiring equitable relief in addition to compensatory and punitive relief.

99. Thornburg's actions will continue to cause irreparable harm and damages to Universal Protection if not restrained.

COUNT IV

Misappropriation of Trade Secrets (Injunctive Relief and Damages) Against Thornburg, Weatherl and AgTac

100. Universal Protection realleges and incorporates by reference Paragraphs 1 through 99 as though fully set forth herein.

101. The Texas Uniform Trade Secrets Act, Tex. Civ. Prac. & Rem. Code Ann. § 134A.001, *et seq.* ("TUTSA"), forbids the misappropriation of trade secrets. Under the TUTSA, a trade secret means "information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Tex. Civ. Prac. & Rem. Code Ann. § 134A.002(6).

102. Under the TUTSA, misappropriation means "(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or (B) disclosure or use of a trade secret of another without express or implied consent by a person who: (i) used improper means to acquire knowledge of the trade secret; or (ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: (a) derived from or through a person who had utilized improper means to acquire it; (b) acquired by mistake or under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or (iii) before a material change of his position, knew or had

reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.” Tex. Civ. Prac. & Rem. Code Ann. § 134A.002(3).

103. Certain confidential and proprietary information of Universal Protection constitutes trade secrets, under the TUTSA, including, but not limited to, its customer lists developed over time after the expenditure of significant effort, specialized customer pricing platforms and structures, security operational plans, security solutions, customer bill rates and billing practices, wages for security guards at customer sites, employee training materials, employee information skill sets, customer contact information, customer employee data, customer preferences, likes and dislikes, customer proposal materials, marketing materials, and future business development plans.

104. Universal Protection derives economic benefit from the fact that its trade secrets, including its customer lists, specialized customer pricing platforms and structures, security operations plans, security solutions, customer bill rates and billing practices, wages for security guards at customer sites, customer contact information, customer employee data, customer preferences, likes and dislikes, customer proposal materials, marketing materials, employee training materials, employee information skill sets, and future business development plans, are not generally known to individuals or entities outside of Universal Protection.

105. Universal Protection (and ABM prior to the acquisition) takes reasonable measures to protect its trade secrets. These measures include password-protected databases, confidentiality and non-disclosure agreements, and limitations on dissemination of information on a need-to-know basis.

106. Thornburg knew he had a duty to maintain the secrecy of Universal Protection’s trade secrets due, in part, to his acknowledgement of such under the Thornburg Agreement.

107. AgTac and Weatherl are under a duty to not accept any misappropriated trade secrets, including Universal Protection’s trade secrets, and AgTac and Weatherl are also under a duty not to disclose or utilize misappropriated trade secrets for the purpose of gaining a competitive advantage in the marketplace.

108. Defendants have improperly acquired, disclosed, and utilized Universal Protection's trade secrets without consent of any kind for their own financial gain.

109. Thornburg will continue to disclose and utilize Universal Protection's trade secrets in the course of his employment with AgTac by using this information to unfairly underbid Universal Protection's customers, among other things.

110. AgTac and Weatherl accepted and utilized Universal Protection's trade secrets for the purpose of poaching Universal Protection's customers and diverting business away from Universal Protection. AgTac and Weatherl continue to do so and pose a continuing threat to further misappropriate such trade secrets.

111. Defendants' actions constitute misappropriation in violation of the TUTSA, and also constitute willful misappropriation.

112. Universal Protection has suffered damages and irreparable harm as a result of Defendants' breach of the TUTSA, including loss of customers and employees, harm to its goodwill and reputation, and an unfair reduction in its competitive advantage.

113. Universal Protection is entitled to actual damages from Defendants, jointly and severally, and for attorneys' fees.

114. Universal Protection's damages cannot be adequately compensated through remedies at law alone, thereby requiring equitable relief in addition to compensatory relief.

115. Defendants' actions will continue to cause irreparable harm and damages to Universal Protection and its trade secret information if not restrained.

COUNT V

**Violation of the Defend Trade Secrets Act, 18 U.S.C. §1836
(Injunctive Relief and Damages)
Against Thornburg, Weatherl and AgTac**

116. Universal Protection realleges and incorporates by reference Paragraphs 1 through 115 as though fully set forth herein.

117. The Defend Trade Secrets Act (“DTSA”) of 2016, Pub. L. No. 114-153, 130 Stat. 376, which was passed into law on May 11, 2016 and amends chapter 90 of Title 18 of the U.S. Code, forbids threatened and actual misappropriation of trade secrets “if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.” 18 U.S.C. § 1836(b)(1) (as amended).

118. Under the DTSA, “trade secret” means “all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if, (A) the owner thereof has taken reasonable measures to keep such information secret, and (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.” 18 U.S.C. § 1839(3) (as amended).

119. Under the DTSA, “misappropriation” means “(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or (B) disclosure or use of a trade secret of another without express or implied consent by a person who: (i) used improper means to acquire knowledge of the trade secret; or (ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was: (I) derived from or through a person who had used improper means to acquire the trade secret; (II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret; or (iii) before a material change of the position of the person, knew or had reason to know

that (I) the trade secret was a trade secret and (II) knowledge of the trade secret had been acquired by accident or mistake.” 18 U.S.C. § 1839(5) (as amended).

120. Under the DTSA, “improper means” “(A) includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means; and (B) does not include reverse engineering, independent derivation, or any other lawful means of acquisition.” 18 U.S.C. § 1839(6) (as amended).

121. Certain confidential and proprietary information of Universal Protection constitutes trade secrets related to a product or service used in, or intended for use in, interstate commerce, including, but not limited to, its customer lists developed over time after the expenditure of significant effort, specialized customer pricing platforms and structures, security operational plans, security solutions, customer bill rates and billing practices, wages for security guards at customer sites, employee training materials, employee information skill sets, customer contact information, customer employee data, customer preferences, likes and dislikes, customer proposal materials, marketing materials, and future business development plans.

122. Universal Protection derives economic value from the fact that its trade secrets, including its customer lists, specialized customer pricing platforms and structures, security operational plans, security solutions, customer bill rates and billing practices, wages for security guards at customer sites, employee training materials, employee information skill sets, customer contact information, customer employee data, customer preferences, likes and dislikes, customer proposal materials, marketing materials, and future business development plans, are not generally known to individuals or entities outside of Universal Protection.

123. Universal Protection (and ABM prior to the acquisition) takes reasonable measures to protect the secrecy of such information. These measures include password-protected databases, confidentiality and non-disclosure agreements, and limitations on dissemination of information on a need-to-know basis.

124. Thornburg knew he had a duty to maintain the secrecy of Universal Protection's trade secrets due, in part, to his acknowledgement of such under the Thornburg Agreement.

125. AgTac and Weatherl are under a duty to not accept any misappropriated trade secrets, including Universal Protection's trade secrets, and AgTac and Weatherl are also under a duty not to disclose or use misappropriated trade secrets for the purpose of gaining a competitive advantage in the marketplace.

126. Defendants have already and will improperly acquire, disclose, and use Universal Protection's trade secrets without consent of any kind for their own financial gain.

127. Thornburg will continue to disclose and utilize Universal Protection's trade secrets in the course of his employment with AgTac by using this information to unfairly underbid Universal Protection's customers, among other things.

128. Defendants' actions constitute threatened misappropriation in violation of the DTSA.

129. Universal Protection has suffered damages and irreparable as a result of Defendants' threatened breach of the DTSA, including loss of customers and employees, harm to its goodwill and reputation, and an unfair reduction in its competitive advantage.

130. Universal Protection is entitled to actual damages from Defendants, jointly and severally, and for attorneys' fees.

131. Universal Protection's damages cannot be adequately compensated through remedies at law alone, thereby requiring equitable relief in addition to compensatory relief.

132. Defendants' actions will continue to cause irreparable harm and damages to Universal Protection and its trade secret information if not restrained.

COUNT VI

**Tortious Interference with Contractual Relations
(Injunctive Relief and Damages)
Against Weatherl and AgTac**

133. Universal Protection realleges and incorporates by reference Paragraphs 1 through 132 as though fully set forth herein.

134. Thornburg signed a valid and enforceable contract, the Thornburg Agreement, with Universal Protection, in which Thornburg promised not to compete, not to solicit customers or employees, and not to divert business from Universal Protection while employed by Universal Protection. Thornburg further promised not to disclose the Universal Protection's confidential information.

135. Weatherl and AgTac had knowledge of the Thornburg Agreement and Thornburg's contractual obligations.

136. AgTac and Weatherl interfered with the contractual relationship between Universal Protection and Thornburg by inducing him to breach his contract by disclosing confidential company and customer information and soliciting current company customers and joining a competitive business while still employed by Universal Protection.

137. The Defendants' actions, jointly and severally, were malicious and in reckless disregard for Universal Protection's rights, entitling Universal Protection to actual and punitive damages.

138. Universal Protection has suffered and will continue to suffer damages and irreparable harm as a direct result of Defendants' tortious interference with contractual relations, including loss of its business and contractual relationships, diminished value of its confidential information, harm to its goodwill and reputation, and loss of its employees.

139. Universal Protection's damages cannot be adequately compensated through remedies at law alone, thereby requiring equitable relief in addition to compensatory and punitive relief.

140. Defendants' actions will continue to cause irreparable harm and damages to Universal Protection if not restrained.

COUNT VII

Tortious Interference with Prospective Business Relationship (Injunctive Relief and Damages) Against Thornburg, Weatherl, and AgTac

141. Universal Protection realleges and incorporates by reference Paragraphs 1 through 140 as though fully set forth herein.

142. In his role as Director of Security, Thornburg had knowledge of Universal Protection's customer relationships and potential business leads.

143. AgTac's efforts to solicit new customers in Texas by utilizing Thornburg's inside knowledge of Universal Protection's pricing platforms, employee skills, customer needs and preferences and other security plans, directly jeopardizes Universal Protection's ability to compete for the same customers because Defendants are attempting to induce prospective customers to refrain from entering customer contracts with Universal Protection.

144. Indeed, Defendants have already induced one of Universal Protection's customers to terminate its contract with Universal Protection.

145. If not for Defendants' interference, there was a reasonable probability Universal Protection would have entered into a business relationship with this customer.

146. Defendants' acted with conscious desire to prevent the relationship from occurring and know the interference was substantially certain to occur as a result of their conduct.

147. Defendants' conduct was independently tortious and included breaches of contract and a breach of the duty of loyalty, among other things.

148. Defendants' interference proximately caused Universal Protection to lose the JBS-Cactus account. This former Universal Protection customer has indicated that it will be serviced by AgTac.

149. Universal Protection has suffered and will continue to suffer damages and irreparable harm as a direct result of Defendants' tortious interference with its prospective business relationship, including loss of its prospective business and contractual relationships and harm to its goodwill and reputation.

150. Universal Protection's damages cannot be adequately compensated through remedies at law alone, thereby requiring equitable relief in addition to compensatory and punitive relief.

151. Defendants' actions will continue to cause irreparable harm and damages to Universal Protection if not restrained.

COUNT VIII

Civil Conspiracy (Injunctive Relief and Damages) Against All Defendants

152. Universal Protection realleges and incorporates by reference Paragraphs 1 through 151 as though fully set forth herein.

153. Defendants acted in concert to commit various wrongful acts, including without limitation, the torts identified specifically in the preceding counts.

154. Defendants had a meeting of the minds on the course of action identified in the preceding accounts, including unfairly poaching Universal Protection's customer and employees using its own misappropriated confidential and trade secret information.

155. Defendants continue to act in concert to unlawfully and tortiously interfere with Universal Protection's contractual relationships and prospective business relationships.

156. Universal Protection's damages cannot be adequately compensated through remedies at law alone, thereby requiring equitable relief in addition to compensatory and punitive relief.

157. Defendants' actions will continue to cause harm to Universal Protection if not restrained.

JURY DEMAND

158. Plaintiff hereby asserts its right to a trial by jury and makes this demand for a jury trial. Plaintiff will tender any required jury fee.

PRAYER

WHEREFORE, Universal Protection prays for judgment against Defendants, jointly and severally, as follows:

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;

H. Award to Universal Protection actual damages against Thornburg, Weatherl and AgTac, jointly and severally, including compensatory, exemplary, consequential and/or restitutionary damages;

I. Award to Universal Protection of attorneys' fees under the Texas Uniform Trade Secrets Act and the Defend Trade Secrets Act;

J. Award to Universal Protection exemplary damages in an amount twice the amount of actual damages awarded, for willful and malicious misappropriation under the Defend Trade Secrets Act; and

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

Respectfully submitted,

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