

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 09-60202-CIV-COHN/SELTZER

THE CONTINENTAL GROUP, INC.,
a Florida Corporation,

Plaintiff,

v.

KW PROPERTY MANAGEMENT, LLC d/b/a KW
PROPERTY MANAGEMENT AND CONSULTING, LLC,
a Florida Limited Liability Company; KW HOLDING
ONE, LLC d/b/a KW PROPERTY MANAGEMENT AND
CONSULTING, LLC, a Florida Limited Liability
Company; THE GRAND PRESERVE AT NAPLES LLC d/b/a
KW PROPERTY MANAGEMENT AND
CONSULTING, LLC, a Florida Limited Liability
Company; and MARCY KRAVIT, an individual,

Defendants.

**PLAINTIFF'S MOTION TO AMEND AND SUPPLEMENT PRELIMINARY
INJUNCTIVE RELIEF REQUESTED IN LIGHT OF EXPEDITED DISCOVERY**

Plaintiff, The Continental Group, Inc. ("TCG"), pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, and the Court's discovery order, respectfully moves to supplement the preliminary injunctive relief previously requested of the Court, in light of the findings from the expedited discovery ordered in this case and the Responses to Plaintiff's Motion for Preliminary Injunction filed by Defendants. In Support Plaintiff states as follows:

I. Motion to Amend and Supplement Preliminary Injunctive Relief Requested

Plaintiff on February 10, 2009 moved for a preliminary injunction and separately for expedited discovery in this case. In its Motion for Preliminary Injunction and proposed order, Plaintiff sought to enjoin and restrain Defendants, individually and collectively, together with their respective officers, agents, servants, employees, attorneys, accountants, and all persons acting in

concert with them or under their inducement, encouragement or persuasion from performing any of the following acts, directly or indirectly, on their own behalf or on behalf of any third party:

- (a) retaining any confidential, proprietary or valuable information belonging to Plaintiff that is stored or maintained in tangible form (including computer files, CDs, electronic files on removal media, or in any other electronic form, and hard copy documents) and instead returning all such documents, computer files, and other data to Plaintiff;
- (b) using or causing to be used, or disclosing in any manner, any electronically-stored information obtained from the Plaintiff, including without limitation client and prospective client information, financial information, personal identifying information, employee information, and information relating to or regarding Plaintiff's business;
- (c) modifying, deleting, altering, or destroying any of Plaintiff's files, documents, or data obtained or removed from Plaintiff, or reflecting information accessed at or obtained from Plaintiff, including any confidential or valuable information, and including documents or other evidence reflecting the removal, use or disclosure of any confidential information including but not limited to printed documents and documents or data in any electronic format, however stored, including any type of computer, disk, storage device or otherwise, or destroying evidence of the transfer, copying, use, or disclosure of such information; or
- (d) contacting, soliciting, or transacting business with any active client, or any prospective client with which TCG was in negotiations or with which TCG had provided services with or without remuneration during the two years prior to this action.

TCG now moves to amend and supplement the preliminary injunctive relief previously requested, to include the following additional relief:

- (e) KW Defendants shall not solicit, recruit, hire or engage the services of any person who was a TCG employee during Defendant Kravit's employment with TCG;
- (f) to amend paragraph (d) to provide that the KW Defendants, together with their respective officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order, shall not solicit or provide any property management or related services to any client or prospective client or for the benefit of any client or prospective client of TCG identified on a list to be filed under seal with the Court, for the duration of this preliminary injunction;
- (g) KW Defendants shall not continue to employ or engage the services of Marcy Kravit, Marlene Niemeier, or Brian Seidler;

- (h) to amend paragraph (a) to require Defendants to delete and “wipe” clean of all TCG files and data, through use of a certified computer forensic expert as agreed to by TCG the computers and computer systems of the KW Defendants and those used by the KW Defendants, including without limitation all servers and backup servers at NAP or elsewhere owned or utilized by VirtuWorks on behalf of the KW Defendants and to store files and data of the KW Defendants, and including all personal e-mail accounts of Defendant Kravit and her spouse as well as the computers and computer systems used by Defendant Kravit, to the Department of Defense standards, or alternatively as to portable electronic devices and personal computers only to turn over all the hard drives and other electronic storage devices, including USB drives, to TCG.

As to Defendant Kravit, TCG now moves to amend and supplement the preliminary injunctive relief previously requested, to include the following additional relief:

- (i) to enjoin Defendant Kravit from maintaining or accepting employment with any person, organization, or entity that competes with TCG in that portion of the State of Florida in which TCG did business during Kravit’s employment with TCG;
- (j) to enjoin Defendant Kravit from providing or offering to provide services relating to any aspect of the property management business to any person, organization or entity located within the area described above;
- (k) Contacting, soliciting or employing, recruiting, any person who was an employee of TCG during Kravit’s employment or any individual whose identity was learned by Kravit in the course of Kravit’s association with Plaintiff or from information (including resumes) obtained from Plaintiff; or
- (l) contacting, soliciting, or transacting business with any active client, or any prospective client with which TCG was in negotiations or with which TCG had provided services with or without remuneration during the two years prior to this action on the list to be filed under seal with the Court.

In support TCG states as follows:

II. Memorandum in Support of Motion to Amend or Supplement Preliminary Relief

Plaintiff hereby seeks the amended and supplemental preliminary injunctive relief above in light of the evidence Plaintiff has obtained to date through the expedited discovery ordered by the Court, specifically including evidence only obtained in the last two days of files and data contained on Defendant Kravit’s computers and portable electronic devices, the applicable case law, and the positions taken by Defendants in their papers in this action to date. Plaintiff will demonstrate the

necessity for the amended and supplemental preliminary injunctive relief requested in the preliminary injunction hearing set by the Court for March 26, 2009.

The preliminary injunctive relief requested is supported by not only Florida statutory and common law, but by case authority under the federal Computer Fraud and Abuse Act, including the following supplemental authorities: *EF Cultural Travel BV v. Zefer Corp.*, 318 F.3d 58, 64 (1st Cir. 2003) (affirming grant of injunctive relief under the CFAA that was “premised on [a party’s] misuse of confidential information” and enjoined a party from “helping a . . . wrongdoer in exploiting that confidential information”); *Se. Mech. Servs., Inc. v. Brody*, 8:08-CV-1151, 2008 WL 4613046, at *1 (M.D. Fla. Oct. 15, 2008) (granting preliminary injunction under CFAA and enjoining defendants from, among other things: (1) using, disclosing, or examining plaintiff’s confidential and proprietary information including customer lists, pricing rates and systems, customer information, employee lists, and sales techniques; and (2) engaging in competitive work for plaintiff’s customers); *Universal Engraving, Inc. v. Duarte*, 510 F. Supp. 2d 1140, 1148-49 (D. Kan. 2007) (granting injunction under CFAA, holding that employer demonstrated both imminent threat and actual suffering of irreparable injury where former employee had knowledge of employer’s secrets and resigned to work for a competitor in the same type of position, despite having executed confidentiality and noncompete agreements, holding that “[i]f this preliminary injunction is not granted, [plaintiff] may continue to suffer irreparable harm due to disclosure of its confidential information.” (citing *Nike, Inc. v. McCarthy*, 379 F.3d 576, 587 (9th Cir. 2004) (holding that there is potential harm from unfair competition resulting from former employee’s knowledge of former employer’s confidential information)); *Physicians Interactive v. Lathian Sys., Inc.*, 2003 WL 23018270, at *11 (E.D. Va. 2003) (enjoining defendant and its agents from using or disclosing plaintiff’s customer lists and other proprietary information obtained by violating the CFAA, finding

irreparable harm in the threat of future hacking attempts.); *Pac. Aerospace & Elec., Inc. v. Taylor*, 295 F. Supp. 2d 1205, 1219 (E.D. Wash. 2003) (holding permanent injunction was warranted to enjoin defendants' use of plaintiff's confidential customer information because of the "apparent difficulty in calculating monetary damages" arising from such use.); *see also Quaker Chem. Corp. v. Varga*, 5089 F. Supp. 2d 469, 479 (E.D. Pa. 2007) (granting injunction enjoining defendant from competing with plaintiff and from disclosing plaintiff's confidential information, stating that, "[defendant] possesses extensive knowledge of [plaintiff's] trade secrets and other confidential information, including specific information regarding existing customers and potential customers . . . [and therefore] has a very real opportunity to harm [plaintiff's] legitimate business interests by working for [competitor], and thus [plaintiff] will likely suffer irreparable harm if [defendant] is allowed to work for [competitor].").

Dated this 25th day of March, 2009.

Respectfully submitted,

s/Joan Canny

Joan Canny

Fla. Bar No. 0492531

E-Mail: jcanny@morganlewis.com

Jason Nickerson

Fla. Bar No. 0659568

E-Mail: jnickerson@morganlewis.com

MORGAN, LEWIS & BOCKIUS LLP

200 South Biscayne Boulevard

5300 Wachovia Financial Center

Miami, FL 33131-2339

Telephone: (305) 415-3330

Facsimile: (877) 432-9652

*Attorneys for Plaintiff The Continental
Group, Inc.*

Certificate of Service

I hereby certify that on March 25, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

s/Joan M. Canny

Joan M. Canny

SERVICE LIST

KW PROPERTY MANAGEMENT, LLC d/b/a KW PROPERTY MANAGEMENT AND CONSULTING, LLC, a Florida Limited Liability Company; KW HOLDING ONE, LLC d/b/a KW PROPERTY MANAGEMENT AND CONSULTING, LLC, a Florida Limited Liability Company; THE GRAND PRESERVE AT NAPLES LLC d/b/a KW PROPERTY MANAGEMENT AND CONSULTING, LLC, a Florida Limited Liability Company; and MARCY KRAVIT, an individual.

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Frank C. Simone, Esq.
Sherman Law Offices, Chartered
1000 Corporate Drive
Suite 310
Ft. Lauderdale, Florida 33334

*Attorneys for KW Property Management, LLC
d/b/a KW Property Management and
Consulting, LLC and KW Holding One, LLC
d/b/a KW Property Management and
Consulting, LLC*

Served via CM/ECF

Franklin Lewis Zemel, Esq.
Arnstein and Lehr, LLP
200 East Las Olas Boulevard
Suite 1700
Ft. Lauderdale, Florida 33301

*Attorneys for KW Property Management, LLC
d/b/a KW Property Management and
Consulting, LLC, KW Holding One, LLC d/b/a
KW Property Management and Consulting,
LLC, and The Grand Preserve at Naples LLC
d/b/a KW Property Management and
Consulting, LLC*

Served via CM/ECF

Gary W. Pollack, Esq.
Bretton I. Pollack, Esq.
Gary W. Pollack, P.A.
1260 SunTrust International Center
One Southeast Third Avenue
Miami, Florida 33131-1714

Attorney for Defendant Marcy Kravit

Served via CM/ECF