

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

PHARMERICA, INC.,

Plaintiff,

Case No. _____

v.

SCOTT ARLEDGE,

Defendant.

_____ /

**PHARMERICA, INC.'S, MOTION FOR TEMPORARY RESTRAINING ORDER
AND/OR PERMANENT INJUNCTION AND SUPPORTING MEMORANDUM OF LAW**

Plaintiff, PharMerica, Inc. (“PharMerica”), pursuant to Federal Rule of Civil Procedure 65(b) and Local Rule 4.05, seeks emergency relief by entry of a temporary restraining order or, in the alternative, a preliminary injunction against Defendant, Scott Arledge (“Arledge”). This motion is based upon the facts set forth in the Complaint and the Declarations filed in support of this motion, filed simultaneously herewith and adopted and incorporated herein by reference.

I. Summary of Grounds for Motion

Until March 9, 2007, Arledge served as PharMerica’s Senior Vice-President of Operations. In this position, Arledge had access to crucial Company secrets including, but not limited to, PharMerica trade secrets relating to (a) PharMerica’s development of a major plan to transform its operations by centralizing distribution and moving to a paperless communication system with its nursing home customers; (b) PharMerica’s development and implementation of a specialized Quality Management Program, and (c) PharMerica’s pricing, especially those for major corporate clients, who represent at least one-third of PharMerica’s total revenues.

On February 13, 2007, less than one month before Arledge resigned his position with PharMerica, Arledge met with the senior officers at PharMerica's primary competitor, Omnicare, Inc. ("Omnicare"), in Covington, Kentucky to discuss his possible employment with Omnicare. Earlier on the very same morning of his interview with PharMerica's largest competitor's President and Vice President, Arledge downloaded an extremely confidential and sensitive file to his private AOL account. The information Arledge downloaded – the Mercer Report – contained plans to revolutionize PharmMerica's business and was created at a cost to PharMerica of hundreds of thousands of dollars and hundreds of executive man-hours. At some point after the meeting on February 13, 2007, Omnicare offered Arledge a position as a Senior Vice-President with responsibilities similar to those he had at PharMerica. Arledge accepted Omnicare's offer.

On March 9, 2007 Arledge resigned from PharMerica. Janice Rutkowski ("Rutkowski"), PharMerica's Interim President, spoke with Arledge that same day. During the conversation, Arledge informed Rutkowski that he was giving PharMerica thirty days' notice. Arledge also informed her that he was "taking a position at Omnicare and that he would be working to improve Omnicare's hub and spoke distribution system." Arledge further stated that he was going to help improve Omnicare's quality and standardize their operations and expressed his desire to help make Omnicare a "friendlier" company. (Declaration of Janice Rutkowski).

PharMerica has determined that shortly before March 9, Arledge purposefully and secretly downloaded files containing PharMerica's confidential proprietary information and trade secrets, in addition to the Mercer Report, most likely to a "Store'N'Go" device. The "Store N' Go device allows a user to copy computer files and delete them (in theory) without a trace. PharMerica also determined that Arledge permanently deleted more than 475 files from his laptop computer a day or two before he resigned. PharMerica believes that between February 13,

2007 and March 9, 2007, Arledge permanently deleted files from his laptop computer that contained confidential and proprietary business information that belonged to PharMerica. Arledge never informed PharMerica that he downloaded or deleted any files containing PharMerica's confidential and proprietary business information and trade secrets. Despite signing a confidentiality agreement that required Arledge to return all PharMerica materials to PharMerica before he left employment, Arledge failed to return any of these documents or files.

II. PharMerica Has Established Proof of All Elements Necessary to Warrant A TRO

PharMerica will suffer irreparable injury if Arledge is not enjoined from using the trade secrets and proprietary information he obtained from PharMerica. Monetary damages cannot compensate PharMerica for the impact that the disclosure of such information to any of PharMerica's competitors, including but not limited to Omnicare, could have on PharMerica's future business and competitive edge in the pharmaceutical marketplace.

Injury to PharMerica is imminent because much of the data that Arledge misappropriated is in electronic form and therefore susceptible to quick, effortless, and widespread use and/or dissemination by Arledge. Moreover, Arledge's conduct evidences a strong intention to use PharMerica's confidential and proprietary business information and trade secrets in competition against PharMerica. Because injury to PharMerica is imminent, damage will result to PharMerica before Arledge can be heard in opposition to this Motion.

PharMerica is likely to succeed on the merits and the harm to PharMerica and to the public by not entering a temporary restraining order outweighs any potential harm to Arledge if the TRO is entered. PharMerica has information that Mr. Arledge was not planning on commencing employment with Omnicare for two weeks. In addition, notice prior to the entry of a TRO should not be required because no harm or prejudice would come to Arledge by not

receiving notice because Arledge has no right to retain PharMerica's confidential information and trade secrets. Prior notice might result in the improper use, dissemination, dissipation, and/or disposal of PharMerica's trade secrets and proprietary information.

PharMerica is willing to post a reasonable bond, although a minimal bond should be necessary under the circumstances because Arledge will suffer no damages if a TRO is entered by the Court and because Arledge agreed, in his Agreement Not to Disclose or Solicit, that an injunction could be entered without a bond if he violated the terms of that agreement.

WHEREFORE, Plaintiff, PharMerica, Inc., demands:

1. Entry of a Temporary Restraining Order and a Preliminary Injunction directing that Arledge:

(a) Immediately return to PharMerica any and all documents, data, and information Arledge has taken from PharMerica and enjoining any use or disclosure of PharMerica's Confidential Information;

(b) Immediately cease use or deletion of any materials from the computer to which he sent or uploaded PharMerica documents and any and all other computers, equipment, USB storage devices, hard drives, PDA's, or any similar device on which data may be stored, in his custody, possession or control ("the Computer Equipment").

(c) Within two days of his receipt of the Order, deliver the Computer Equipment to PharMerica's computer expert, Adam Sharp, E-Hounds, Inc., 2045 Lawson Road, Clearwater, Florida 33763, so that PharMerica's expert can examine and copy the information on the Computer Equipment.

(d) Within ten days of his receipt of the Order, appear in Tampa for deposition (not to exceed 8 hours) by PharMerica.

(e) Immediately postpone beginning his new employment with Omnicare until at least 10 days after all of the above requirements are met and the deposition is concluded, thereby allowing PharMerica time to seek additional relief if necessary, including but not limited to an injunction further postponing Arledge's employment with Omnicare.

MEMORANDUM OF LAW

LEGAL STANDARD

Federal Rule of Civil Procedure 65(b) provides in pertinent part:

Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

Fed. R. Civ. P. 65(b).

As set forth in detail below, PharMerica has established each of the elements required for the entry of a temporary restraining order. Specifically, "(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest." Schiavo v. Schiavo, 403 F.3d 1223, 1225-26 (11th Cir. 2005) (citing Ingram v. Ault, 50 F.3d 898, 900 (11th Cir.1995)); see also Local Rule 4.05(b)(4).

FACTS

I. Arledge's Employment with PharMerica

PharMerica is a Delaware corporation with its principal place of business in Tampa, Florida. Scott Arledge (hereinafter “Arledge” or “Defendant”) is the former Senior Vice-President of Operations at PharMerica, and an Alabama resident. While employed by PharMerica as its Senior Vice-President of Operations, Arledge worked out of PharMerica’s Tampa office.

PharMerica is a wholly owned subsidiary of AmerisourceBergen Corporation. PharMerica provides pharmaceuticals, medical equipment, and other supplies to long-term care and residential facilities, such as nursing homes and hospitals. Its primary competition in this market is Omnicare, which markets the same products to the same customer pool as does PharMerica.

Defendant was employed by PharMerica from 1985 until 2007. He served in various capacities during his twenty-two year employment with the Company. From 2003 until his resignation on March 9, 2007, Arledge was employed as PharMerica’s Senior Vice-President of Operations. As Senior Vice-President of Operations, Arledge was in charge of operations for the entire Company, with direct and indirect responsibility for over 2,500 employees.

II. The Nondisclosure and Non-Solicitation Agreement

As part of PharMerica’s ongoing effort to maintain the confidentiality of its proprietary information, PharMerica requires its employees to sign an Agreement Not to Disclose or Solicit (the “Agreement”), which Defendant signed on December 16, 2004. (A copy of the Agreement is attached as Exhibit 1).

In Section II of the Agreement, Defendant agreed that upon termination of his employment with PharMerica, (a) he would not to disclose PharMerica’s Confidential Information to anyone, and (b) he would return to PharMerica any and all of PharMerica’s Confidential Information, as follows:

(B). After the termination of Your employment with PharMerica for any reason, You will not, directly or indirectly divulge or disclose to any person any Confidential Information without, in each instance, first obtaining the written consent of PharMerica's Group Counsel.

(C). Upon termination of Your employment with PharMerica for any reason, You will immediately deliver to PharMerica, at its Tampa headquarters or at some other location designated by Your immediate supervisor, 1) all of the written or computer stored or available Confidential Information in Your possession or control, including, without limitation, originals and copies of books, catalogues, sales brochures, customer lists, prospect lists, employee manuals and operations and/or training manuals, and 2) all other materials furnished to You or acquired by You as a result of or during the course of Your employment with PharMerica, excluding any materials of a strictly personal nature.

"Confidential Information" is defined broadly in the Agreement and expressly includes data in any format, including electronic documents and materials, as follows:

[A]ll information or material, written and verbal, or related to the Company that is not generally known or available to the public (other than as a result of Your or any breach of this or a similar Agreement) that a) provides the Company some competitive business advantage (or the opportunity of obtaining such an advantage) or the disclosure of which could be detrimental to the interests of the Company, and b) is owned by the Company or in which the Company has an interest, including, without limitation, information in any form concerning: proprietary process involving the ordering, processing, and delivery of pharmacy products and services to customers and patients; claims processing; sales and marketing information, methods and techniques; design systems and system designs; pricing methods, pricing rates, pricing calculations, and pricing strategies; all business processes, procedures, and formulas; designs of computer or other equipment hardware or software, or improvements to any portion or phase of any computer or other equipment hardware or software, or improvements to any portion or phase of any computer or other equipment hardware or software, whether patented or not patented; customer lists; information about individuals who are the Company's contacts at each customer; information about each customer's specific customer needs and customer service history; information about the strengths and weaknesses of the Company's operations and customer service history; information about the strengths and weaknesses of the Company's operations and customer service, both generally and with respect to specific customers; drug formularies; competitive analyses and business plans; and patient medical records and other protected health information.

III. Arledge's Knowledge of Confidential and Proprietary Information and Trade Secrets Belonging to PharMerica

Arledge was at the top level of PharMerica's management team and, in that capacity, had access to extremely sensitive and proprietary information and documents that were restricted to management at the executive vice president level. In this regard, Arledge had authorization to access and use information concerning all of PharMerica's confidential projects and plans. Arledge was also instrumental in developing and implementing many of PharMerica's most important and sensitive trade secrets. These trade secrets can be grouped into several categories, which include (a) PharMerica's development of a major plan to transform its operations by centralizing distribution and moving to a paper-less communication system with its nursing home customers; (b) PharMerica's development and implementation of a specialized Quality Management Program, and (c) PharMerica's pricing, especially those for major corporate clients, who represent at least one-third of PharMerica's total revenues.

PharMerica's trade secrets give it a distinct advantage over its competitors. There are no commercially available programs or systems tailored to fit the highly regulated long term care industry so if PharMerica's competitors wish to design and implement such programs or systems, they must do what PharMerica did – invest hundreds of thousands of dollars and thousands of hours of employee time.

A. PharMerica's Centralized Distribution and Paper-less Communication System

Arledge has detailed knowledge of a major project PharMerica began in late 2005 to modernize, streamline, and centralize its distribution, and move to a paper-less communication system with its nursing home customers. At that time, PharMerica realized that its distribution

system needed to be updated to shift to a more centralized system and that its communications system should become more computerized. As a result, PharMerica began studying the methods by which it could modernize its distribution system from one where each of its distribution centers operated much like a neighborhood pharmacy, with primarily manual entry of information and packaging of drugs, to a more efficient computerized and centralized system. At the same time, PharMerica began studying how to computerize its communications with customers to replace a system that relied primarily on paper and faxes.

The “Hub and Spoke” Distribution System and the Mercer Report

PharMerica dedicated hundreds of hours of management time and hired an outside consultant, Mercer, to assist PharMerica in determining methods and procedures that would enable it to shift to a more centralized hub and spoke distribution system and a paper-less electronic communication system. In addition to the hundreds of hours of time invested by PharMerica employees in this effort, PharMerica paid Mercer over \$275,000. Mercer delivered an extensive report to PharMerica, detailing its findings and recommendations (the “Mercer Report”).

In addition to the Mercer Report, numerous other documents were prepared by the PharMerica team working on this project. These documents included detailed models, pro formas, and similar documents that addressed issues of importance in PharMerica’s industry. Because of the highly regulated nature of the pharmaceutical industry (including packaging and disbursement of prescription medication), the details of such a system are crucial to its success, and include an analysis of operational and financial metrics and compliance with regulatory standards for the packaging and distribution of pharmaceuticals.

As a result, information concerning PharMerica's hub and spoke distribution system (including the Mercer Report) and the transition to a paper-less communication system, have been closely guarded secrets at PharMerica. Only a few members of the PharMerica team working on this project had knowledge about the entire project. This was done in an effort to further protect the confidentiality of this information. Furthermore, a "Clean Team" designation was placed on the Mercer Report when PharMerica was in merger negotiations with Kindred Pharmacy Services, which is one of PharMerica's competitors. This was done to insure that confidential and proprietary information that flowed back and forth between the companies in merger discussions would not be used to competitive advantage in the event a merger did not occur.

PharMerica's Electronic Paper-less Transmittal System

The other aspect of this project – PharMerica's transformation to an electronic paper-less communication system – is underway. While Arledge was with PharMerica, it acquired Vector, Inc., a company that owned patent-pending technology which permitted the transition to a paper-less system. Since that acquisition, PharMerica has moved forward with its planned roll-out of a paper-less system. Arledge and his operations staff were intimately involved in the implementation of this program, which involved technical, regulatory, and operational issues, all of which had to be analyzed and addressed in detail. PharMerica's investment in this system and its roll-out thus far exceeds \$15 million.

B. PharMerica's Quality Management Program

In addition to Arledge's high-level participation in the analysis and development of the hub and spoke distribution system and the paper-less communication system, Arledge was a primary participant in the development and implementation of PharMerica's Quality

Management Program. PharMerica differentiates itself from its competitors by focusing on quality assurance and customer satisfaction. Because there is no commercially available customized quality assurance program customized for the long term care pharmacy industry, PharMerica was required to create its own customized program, which it began in early 2004. At that time, PharMerica engaged the firm of Philip Crosby and Associates, an expert in the quality assurance field, to assist PharMerica in developing a formal Quality Management Program, incorporating education, training, establishment of best practices, policies and procedures, and metrics for measuring success.

PharMerica invested thousands of hours of employee time and well over \$175,000 in consulting fees and other hard costs to develop its Quality Management Program. Although Quality Management Program materials are made available to PharMerica employees in branches around the country, those employees are all required to sign non-disclosure agreements which are intended to cover these and other PharMerica materials.

C. PharMerica's Pricing Matrix

As the Senior Vice-President of Operations at PharMerica, Arledge was also instrumental in the development and use of PharMerica's pricing analyses, schedules, and information. This information is crucial to PharMerica's business because the vast majority of its major clients award contracts based on pricing. PharMerica keeps its pricing confidential and only those employees involved in pricing are given access to price information. In addition, PharMerica's contracts with its customers include an express provision requiring the customer to maintain the secrecy of PharMerica's pricing.

IV. Arledge's Resignation and Systematic Copying and Deletion of Confidential, Proprietary, and Trade Secret Information Belonging to PharMerica

On March 9, 2007, Arledge resigned from his employment with PharMerica to become a Vice-President at Omnicare, Inc. (“Omnicare”), PharMerica’s primary competitor. At that time, Arledge stated that he was going to work on Omnicare’s hub and spoke distribution plan and on Omnicare’s quality control processes to make Omnicare more “friendly” to its customers. (Declaration of Janice Rutkowski). Arledge also told PharMerica that Omnicare had offered him a two year contract and had agreed to indemnify him from any claims made by PharMerica. (Declaration of Janice Rutkowski)

Shortly thereafter, PharMerica began examining its computers, including the laptop computer that Arledge used in his Tampa office. Stephen J. Myers, Director of Windows and Communications Services at PharMerica, was directed to review of Arledge’s laptop computer. While reviewing the laptop, he determined that there were several thousand e-mails on the laptop but that the hard drive”C” drive was virtually empty. (Declaration of Stephen J. Myers). PharMerica also employed a forensic computer expert, Adam Sharp at E-Hounds, to examine the PharMerica computer that Arledge had been using at his Tampa office.

As a result of these efforts, on March 14, 2007, PharMerica learned that:

(a) On February 13, 2007, Arledge downloaded a copy of the Mercer Report, which was marked “CLEAN” (regarding PharMerica’s hub and spoke system), to an external personal AOL account (SA1961@aol.com) at 8:25 a.m. (Declaration of Stephen J. Myers). Later that day, Arledge met with Pat Keefe, the Executive Vice-President of Omnicare, and Joel Gemunder, the President of Omnicare, at Omnicare’s headquarters in Covington, Kentucky. Arledge apparently download the Mercer Report in preparation for his meeting at Omnicare. In an email fragment retrieved from Arledge’s laptop computer, Arledge wrote to Mr. Keefe on February 14, 2007, about the February 13 meeting:

Just wanted to drop you a quick note to say thanks for spending time with me yesterday. I really appreciate the professional and friendly nature of the conversation. It certainly seems we have a similar philosophy and approach to the LTC Pharmacy business. I enjoyed meeting with Joel as well. I appreciate him making time to talk. Please pass along my appreciation as I do not have his email address.

Pat, I am very interested in continuing our discussions. It certainly seems like a great opportunity. Do not hesitate to call me on my cell at any time, including over the weekend if you would like to talk.

I hope you have a good rest of the week and a good board meeting.

(Declarations of Adam Sharp, Exhibit 2).

(b) On March 7, 2007, two days prior to his resignation, Arledge copied almost all of his electronic files from his work computer and then permanently deleted many, if not most, of those files. Specifically, Arledge downloaded files containing PharMerica's confidential proprietary information and trade secrets likely using a "Store'N'Go" USB drive, then permanently deleted more than 475 of these files from the computer. The "Store'N'Go" device is marketed as a device that permits the user to access and download information from a computer without a trace. (Declaration of Adam Sharp).

PharMerica has analyzed the files that Arledge downloaded and has determined that they contain PharMerica's Confidential Information and trade secrets including, but not limited to, files concerning (a) PharMerica's hub and spoke distribution model and its paper-less electronic communication system with customers; (b) merger and account management information; (c) PharMerica's corporate pricing; (d) PharMerica's development and implementation of a specialized Quality Management Program, and (e) the Market Analytics Group ("MAG") study enlisted by PharMerica at considerable expense and effort in order to improve its operating efficiencies and bottom line.

(Declaration of Janice Rutkowski).

Arledge never informed PharMerica that on February 13, 2007 and March 7, 2007, he purposefully downloaded files containing PharMerica's confidential proprietary information and trade secrets to his personal AOL account or to a "Store'N'Go" device. Similarly, Arledge never informed PharMerica that he permanently deleted over 475 files from his laptop computer. Arledge has not returned to PharMerica any of its Confidential Information or trade secrets.

ARGUMENT

I. A Temporary Restraining Order is Appropriate Under Each of the Three Counts of the Complaint

A. A TRO Is Proper Under The Claim for Breach Of The Non-Disclosure Agreement.

1. Likelihood of Success on the Merits

On December 16, 2004, Arledge signed an "Agreement Not to Disclose or Solicit." The Agreement specifically provides that it shall be "governed, construed and enforced by the laws of the state of Florida." Section II(C) of the agreement provides that upon termination all PharMerica materials will be immediately returned to PharMerica. Section II states in full:

II. Agreement Not to Disclose Confidential Information. You agree that:

A During Your employment with PharMerica, You will not use, copy, summarize or disclose to any person who is not employed by the Company any confidential information, except, 1) as is specifically required to carry out Your duties on behalf of PharMerica, or 2) as is authorized in writing by PharMerica's Group Counsel.

B After termination of Your employment with PharMerica You will not, directly or indirectly, divulge or disclose to any person any confidential information without, in each instance, first obtaining the written consent of PharMerica's Group Counsel.

C Upon termination of Your employment with PharMerica for any reason, You will immediately deliver to PharMerica, at its Tampa headquarters or at some other location designated by Your immediate supervisor, 1) all of the written or computer stored or available Confidential Information in Your possession or control, including, without

limitation, originals and copies of books, catalogs, sales brochures, customer lists, prospect lists, employee manuals and operations and/or training manuals, and 2) all of the materials furnished to You or acquired by You as a result of or during the course of Your employment with PharMerica, excluding any materials of a strictly personal nature.

Rather than return the computer files and electronic data containing PharMerica's confidential information and trade secrets, Arledge copied them and kept them for his own use. As is set forth in more detail above, on February 13, 2007, Arledge downloaded a copy of the Mercer Report to his AOL account and then met with at least two senior executives from Omnicare that very same day. In addition, prior to his resignation, Arledge surreptitiously copied numerous electronic files from his work computer containing PharMerica's confidential proprietary and trade secret information and downloaded files containing PharMerica's confidential proprietary and trade secret information likely to a "Store'N'Go" USB drive. He then deleted many of these files from his work computer. The "Store'N'Go" USB drive is marketed as a device that permits the user to access and download information from a computer without a trace.

On March 9, 2007, Arledge resigned from his employment with PharMerica to become vice-president at PharMerica's primary competitor, Omnicare. Arledge failed to return any of the information that he improperly downloaded in February and March, 2007.

2. Irreparable Harm

In Section IV of the Agreement, Arledge acknowledged and agreed that:

D. Irreparable harm will result to PharMerica if You fail to act as You have promised in this Agreement, and that money damages would not be an adequate remedy for PharMerica in such an event. For that reason, in addition to any legal remedies PharMerica may have, including recovery of monetary damages, PharMerica shall be entitled as a matter of right and law to an injunction from a court of competent jurisdiction restraining any violation or threatened violation of this Agreement, without the necessity of posting any bond.

The information that Arledge forwarded to his home computer is proprietary, confidential, and much of it involves or constitutes trade secrets. It has independent economic value because it is not generally known. For example, the Mercer Report alone was generated as a result of the investment of over \$1 million in consultant fees and hundreds of hours of management time to develop and to upgrade its distribution system. PharMerica would be greatly harmed if this system wound up in the hands of its largest competitor, Omnicare, for whom Arledge is now going to work.

Arledge also has copied and kept PharMerica's confidential trade secret information related to its pricing, quality control, and paper-less communication system. Arledge has this information in electronic form, and it could be easily be shared with, and used by, PharMerica's primary competitor, Omnicare. Once a trade secret is known by its competitor, the damage will be done; PharMerica will not be able re-obtain that advantage, and monetary damages are an inadequate to remedy.

As set forth in section 542.335(j) the violation of a restrictive covenant, such as the Non-Disclosure Agreement at issue here, causes irreparable harm:

A court shall enforce a restrictive covenant by any appropriate and effective remedy, including, but not limited to, temporary and permanent injunctions. The violation of an enforceable restrictive covenant creates a presumption of irreparable injury to the person seeking enforcement of a restrictive covenant.

See also Am. II Elecs., Inc. v. Smith, 830 So.2d 906, 908 (Fla. 2d DCA 2002); Lynch v. Silcox, 2001 WL 1200656, *3 (S.D. Fla. Oct. 4 2001) (granting preliminary injunction enjoining former employee from soliciting and accepting business from customers whose names employee learned during employment with Merrill Lynch where such information was protected from misappropriation by Florida law and employee had signed written agreement with restrictive

covenants prohibiting him from using such confidential information except in the course of conducting business for Merrill Lynch).

3. The Threat of Injury to PharMerica Outweighs the Harm the Relief would Inflict on Arledge.

The Agreement itself demonstrates an understanding between the parties that irreparable harm would result to PharMerica if Arledge failed to act as he promised to do under the Agreement. Such harm could cause millions of dollars in losses to PharMerica. Arledge simply has no right to keep PharMerica's information or to use it for Omnicare's benefit in competition against PharMerica, particularly given that the information was developed at great expense and effort by PharMerica. Defendant knew the value of this information, but nonetheless intentionally and surreptitiously violated the Agreement, deleted files to hide his breach of contract and illegal activities in stealing the trade secrets belonging to PharMerica, and is apparently taking these trade secrets to PharMerica's largest competitor.

On the other hand, no harm would be inflicted on Arledge by requiring him to return PharMerica's property or to delay his employment with Omnicare. The fact that Arledge offered thirty days' notice to PharMerica is evidence that no injury would come to him if he does not commence his employment at Omnicare immediately.

4. The Entry of the TRO Would Serve the Public Interest.

The public interest will be served by protecting the trade secrets and confidential and proprietary information of businesses such as PharMerica who invest a great deal of resources in developing intellectual property to serve its customers. The free enterprise system is designed to reward effort and innovation. If that effort, innovation, and investment in research and development are permitted to be stolen at will by former employees and taken to competitors, it will create a disincentive for research and development of new ideas and intellectual property.

Protecting this information permits the advancement of honest business enterprises and the economic well-being of the nation as a whole. Therefore the granting of this injunction to protect the integrity of the business relationships and the intellectual property of the innovators is in the public interest. Clearly, a Defendant who intentionally and illegally breached his contract and willfully stole information of his employer to take it to a competitor is against public interest.

PharMerica has established every element required of it to obtain a temporary restraining order against Arledge based on the breach of contract claim. The same is true under the Misappropriation of Trade Secrets claim.

B. A TRO Is Proper Under The Misappropriation Of Trade Secrets Count.

1. Likelihood of Success on the Merits

The Florida legislature adopted the Uniform Trade Secrets Act, Chapter 688, Florida Statutes, which specifically provides for injunctive relief in this situation. § 688.003, Fla. Stat.

Section 688.002(2), Florida Statutes, defines “misappropriation” as follows:

(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:

1. Used improper means to acquire knowledge of the trade secret;
or

2. At the time of disclosure or use, knew or had reason to know that her or his knowledge of the trade secret was:

a. Derived from or through a person who had utilized improper means to acquire it;

b. Acquired 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

3. Before a material change of her or 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.

Moreover, section 688.002(1) defines “improper means” as “theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.”

Here, Arledge misappropriated PharMerica’s trade secrets by breaching his duty to return the documents. Arledge further misappropriated those trade secrets by duplicating and copying them and/or sending them to his home computer or personal email account and deleting them from the PharMerica computers.

The PharMerica trade secrets stolen by Arledge include information relating to PharMerica’s paper-less communication system, quality assurance programs, distribution plans and methods, compliance plans, and methodologies for complying with regulatory standards for the packaging and distribution of pharmaceuticals. This highly confidential information was developed at great expense by PharMerica, involving hard costs in excess of \$400,000, and thousands of employee hours. Arledge, of all people, is aware of the cost and the confidential nature of this information and the damage that could be caused to PharMerica were it placed in the hands of its largest competitor.

As set forth in detail above, PharMerica made extensive efforts to protect the information by having Arledge and others like him sign the Agreement, and by restricting access to confidential information. As a result, information relating to PharMerica’s development of a “hub and spoke” distribution system, its paper-less communication

system with its nursing home customers, its development and implementation of a specialized Quality Management Program, and its pricing, especially those for major corporate clients, who represent at least one-third of PharMerica's total revenues, are clearly trade secrets as defined in Section 688.002(a), Florida Statutes.

Several Florida decisions have found the entry of a temporary restraining order proper in situations like this where former employees take trade secrets belonging to a former employer. See Delucca v. GGL Industries, Inc., 712 So.2d 1186 (Fla. 4th DCA 1998); Thomas v. Alloy Fasteners, Inc., 664 So.2d 59 (Fla. 5th DCA 1995); Board of Regents v. Taborsky, 648 So.2d 748 (Fla. 2d DCA 1994).

As a result, PharMerica is likely to prevail on the merits against Arledge for misappropriation of trade secrets.

2. Irreparable Harm, Threat of Injury, and Public Interest

As set forth above, PharMerica will suffer irreparable harm due to the misappropriation of its trade secrets by Arledge, the threat of injury to PharMerica outweighs the potential harm to Arledge, and the a TRO would serve the public interest in this case. As a result, PharMerica has established entitlement to a temporary restraining order under the claim for Misappropriation of Trade Secrets.

C. A TRO Is Proper Under The Computer Fraud And Abuse Act Count.

1. Likelihood of Success on the Merits

PharMerica would also likely succeed on the merits of its claim brought under the Computer Fraud and Abuse Act (the "CFAA"). See 18 U.S.C. §§ 1030 et seq. Section 1030(g) of the Act states:

Any person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief.

18 U.S.C. 1030(g). PharMerica has alleged facts that show that Arledge has committed several violations under the Act, including violations of §§ 1030(a)(4) and 1030(a)(5).

A claim under section 1030(a)(4) has four elements: (1) defendant has accessed a “protected computer”; (2) has done so without authorization or by exceeding such authorization as was granted; (3) has done so “knowingly” and with “intent to defraud”; and (4) as a result has “further[ed] the intended fraud and obtain[ed] anything of value.” P.C. Yonkers, Inc. v Celebrations the Party & Seasonal Superstore, LLC, 428 F.3d 504, 508 (3d Cir. 2005); ViChip Corp. v. Lee, 438 F. Supp. 2d 1087, 1100 (N.D. Cal. 2006); see also Pacific Aerospace & Elecs., Inc. v Taylor, 295 F. Supp. 2d 1188, 1195 (E.D. Wash. 2003).

As set forth in more detail above, just before resigning from PharMerica, Arledge intentionally accessed the PharMerica laptop computer assigned to him and, using that laptop computer for his own improper and illegal purposes (and thus, without authorization from PharMerica), downloaded a large body of data (including PharMerica’s confidential proprietary information and trade secrets) for his personal use so that he could use that information after leaving PharMerica’s employment (and in competition with PharMerica). After copying such data to his USB device, Arledge then permanently deleted, without authorization, over 475 files. Arledge also permanently deleted, without authorization, emails and other files to “cover his tracks” and deprive PharMerica of the benefit of the information contained in those files.

Approximately one month earlier, on February 13, 2007, Arledge downloaded the highly confidential Mercer Report and other materials concerning PharMerica’s hub and spoke distribution project to his personal AOL account. Arledge did so to further his own self interest and to promote his prospects at Omnicare, rather than to further the interests of PharMerica. Later that same day, Arledge met with officers of Omnicare to discuss his employment at

Omnicare. Beginning on or about February 13, 2007, Arledge's loyalties and alliances shifted from PharMerica to Omnicare. Thereafter, Arledge was acting outside the scope of his employment, agency and authorization such that his copying and destruction of PharMerica's electronic data were done without authorization from PharMerica.

From February 13, 2007 to March 9, 2007, Arledge accessed PharMerica computers and permanently deleted files that he was not authorized to permanently delete. Arledge's actions damaged PharMerica in that they destroyed information and electronic data belonging to PharMerica, impaired PharMerica's access to its data, and caused PharMerica to incur substantial expenses to attempt to recover its information and electronic data. As a result, PharMerica has established that it has a substantial likelihood of success on its claim under § 1030(a)(4).

PharMerica's CFAA claim also includes a claim under § 1030(a)(5) for Arledge's permanent deletion of files from his laptop computer without authorization. That section imposes criminal liability on whoever:

(5)(A)(i) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer;

(ii) intentionally accesses a protected computer without authorization, and as a result of such conduct, recklessly causes damage; or

(iii) intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage; and

(B) by conduct described in clause (i), (ii), or (iii) of subparagraph (A), caused (or, in the case of an attempted offense, would, if completed, have caused)--

(i) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least \$5,000 in value. . . .

18 U.S.C. § 1030(a)(5)

As a result of Arledge's actions, PharMerica's electronic information and computer systems have been damaged and impaired and PharMerica has suffered damage and loss

exceeding \$5,000. Such loss includes, but is not limited to, expenses incurred to (a) examine the laptop computer that had been assigned to Arledge, (b) determine what files had been copied and deleted, and (c) attempt to restore information and electronic data Arledge destroyed or deleted.

In similar cases, employers have successfully pursued civil remedies under the CFAA against former employers who “sought” a competitive edge through wrongful use of information from the former employer’s computer system.” P.C. Yonkers, Inc., 428 F.3d at 510 (quoting Shurgard Storage Ctrs., Inc. v. Safeguard Self Storage, Inc., 119 F. Supp. 2d 1121, 1124 & n. 3 (W.D. Wash. 2000)); ViChip Corp. v. Lee, 438 F. Supp. 1087 (N.D.Cal. 2006); Int’l Airport Ctrs., LLC v. Citrin, 440 F.3d 418 (7th Cir. 2006). PharMerica is likely to prevail on the merits of this claim.

2. Irreparable Harm, Threat of Injury, and Public Interest

As set forth above, PharMerica will suffer irreparable harm due to Arledge’s violation of the CFAA, the threat of injury to PharMerica outweighs and potential harm to Arledge, and a TRO would serve the public interest in this case. PharMerica has, therefore, established its entitlement to a temporary restraining order under the claim for violations of the Computer Fraud and Abuse Act.

CONCLUSION

For all of the foregoing reasons, PharMerica respectfully requests that its Motion for Temporary Restraining Order be GRANTED.

Respectfully submitted,

s/ Nancy Faggianelli

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**ATTORNEYS FOR PLAINTIFF,
PHARMERICA, INC.**

CERTIFICATE OF ATTORNEY

Undersigned certifies that prior notice of the entry of an injunction is unnecessary and should not be required because Scott Arledge is not harmed or prejudiced by not receiving notice and because notice might result in the improper use, dissemination, dissipation, and/or disposal of PharMerica's trade secrets and proprietary information.

s/ Nancy Faggianelli
ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion For Temporary Restraining Order And/Or Permanent Injunction, the Notice of Filing Declarations in Support of the Motion, and the Proposed Order will be served with the Complaint on the Defendant Scott Arledge.

s/ Nancy Faggianelli

AGREEMENT NOT TO DISCLOSE OR SOLICIT

This Agreement Not to Disclose or Solicit ("Agreement") is entered into this 16th day of December, 2004 between the Employee whose name is set forth in the signature block below ("You" or "Your") and PharMerica, Inc. ("PharMerica").

I. Background Agreements. You and PharMerica agree that:

A. Your employment relationship with PharMerica is at-will, which means You or PharMerica may terminate this relationship at any time and for any reason, with or without cause, and with or without prior notice. Neither this Agreement nor its content alters the at-will nature of Your employment relationship with PharMerica.

B. While You are employed by PharMerica, You will perform various duties to further the from time-to-time lines of business of PharMerica, including, without limitation, PharMerica's institutional pharmacy business, hospital business, health care products business and/or PMSI workers' compensation industry pharmacy benefit management and home delivery service businesses (collectively, the "Business Lines").

C. As used in this Agreement, the following capitalized terms have the meanings ascribed to them below:

(1) "Company" means PharMerica and any company, partnership or other entity, which directly or indirectly, controls, is controlled by or is under common control with PharMerica, including AmerisourceBergen Corporation, PMSI Inc., TMESYS and Pharmacy Corporation of America.

(2) "Confidential Information" means all information or material, written and verbal, of or related to the Company that is not generally known or available to the public (other than as a result of Your or any breach of this or a similar Agreement) that a) provides the Company some competitive business advantage (or the opportunity of obtaining such an advantage) or the disclosure of which could be detrimental to the interests of the Company, and b) is owned by the Company or in which the Company has an interest, including, without limitation, information in any form concerning: proprietary processes involving the ordering, processing, and delivery of pharmacy products and services to customers and patients; claims processing; sales and marketing information, methods and techniques; design systems and system designs; pricing methods, pricing rates, pricing calculations, and pricing strategies; all business processes, procedures, and formulas; designs of computer or other equipment hardware or software, or improvements to any portion or phase of any computer or other equipment hardware or software, whether patented or not patented; customer lists; information about individuals who are the Company's contacts at each customer; information about each customer's specific customer needs and customer service history; information about the strengths and weaknesses of the Company's operations and customer service, both generally and with respect to specific customers; drug formularies; competitive analyses and business plans; and patient medical records and other protected health information.

(3) "Current Customer" means any person or entity to which the Company has, within one year immediately preceding the time in question a) agreed to provide goods or services or b) provided goods or services.

(4) "Current Prospect" means any person or entity to which the Company has submitted, within one year immediately preceding the time in question, a documented oral or written proposal to provide good or services.

D. During Your employment with PharMerica, You agree 1) You will have access to Confidential Information that will be provided to You to permit You to carry out Your duties or that may be available to You while engaged in such duties, and 2) You will receive specialized training from PharMerica that will assist You in the performance of Your duties involving a substantial investment by PharMerica of time and money. Your employment with PharMerica and such access and training provide good and valuable consideration for the agreements made herein.

E. PharMerica has a strong and legitimate business interest in preserving and protecting PharMerica's 1) investment in You, 2) Confidential Information, and 3) relationships with Current Customers and Current Prospects.

F. If You have a question as to whether information is considered to be Confidential Information, You will request clarification, in writing, from Your immediate supervisor or from PharMerica's Legal Department.

II. Agreement Not to Disclose Confidential Information. You agree that:

A. During Your employment with PharMerica, You will not use, copy, summarize or disclose to any person who is not employed by the Company any Confidential Information, except 1) as is specifically required to carry out Your duties on behalf of PharMerica, or 2) as is authorized in writing by PharMerica's Group Counsel.

B. After the termination of Your employment with PharMerica for any reason, You will not, directly or indirectly, divulge or disclose to any person any Confidential Information without, in each instance, first obtaining the written consent of PharMerica's Group Counsel.

C. Upon termination of Your employment with PharMerica for any reason, You will immediately deliver to PharMerica, at its Tampa headquarters or at some other location designated by Your immediate supervisor, 1) all of the written or computer stored or available Confidential Information in Your possession or control, including, without limitation, originals and copies of books, catalogues, sales brochures, customer lists, prospect lists, employee manuals and operations and/or training manuals, and 2) all other materials furnished to You or acquired by You as a result of or during the course of Your employment with PharMerica, excluding any materials of a strictly personal nature.

III. Agreement Not to Solicit Customers or Employees. You agree that, during Your employment with PharMerica and for a period of one year following the termination of that employment for any reason, You will not, directly or indirectly, either individually or in any other capacity (such as a partner, joint venturer, employee, agent, independent contractor, officer or director of any person or entity):

A. Solicit or accept business (in any form) from any of the Company's then Current Customers or Current Prospects with respect to the Business Lines.

B. Influence or attempt to influence any Current Customer or Current Prospect to direct or transfer any business away from the Company.

C. Solicit, induce, influence or attempt to influence any employee or independent contractor of the Company to terminate his or her employment or other contractual relationship with the Company for any reason.

IV. Acknowledgments. You acknowledge and agree that:

A. You have a legal duty not to interfere with the Company's contractual relationships and not to use any Confidential Information for the advantage of any person or entity other than PharMerica.

B. This Agreement is fair to You and is reasonable with respect to both the length of time and the scope of the above non-disclosure and non-solicitation restrictions, given their purpose to protect PharMerica's commercial advantages.

C. If this Agreement is enforced against You, You have skills and training that will permit You to earn a livelihood and that, if Your employment with PharMerica is terminated for any reason, You will not need to disclose or use Confidential Information, or solicit (or accept business from) the Company's employees, Current Customers or Active Customers, to earn a livelihood.

D. Irreparable harm will result to PharMerica if You fail to act as You have promised in this Agreement, and that money damages would not be an adequate remedy for PharMerica in such an event. For that reason, in addition to any legal remedies PharMerica may have, including recovery of monetary damages, PharMerica shall be entitled as a matter of right and law to an injunction from a court of competent jurisdiction restraining any violation or threatened violation of this Agreement, without the necessity of posting any bond.

E. If You are found by a court to have violated this Agreement, You will be liable for all expenses, including attorney's fees, incurred by PharMerica to enforce this Agreement.

V. Miscellaneous Provisions. You and PharMerica agree that:

A. This Agreement shall be exclusively governed, construed and enforced by the laws of the State of Florida.

B. Waivers or changes of any provision of this Agreement are not effective unless they are in writing and signed by both You and a representative of PharMerica authorized to sign the same.

C. This Agreement shall bind, and inure to the benefit of, You and PharMerica and the respective successors and assigns of You and PharMerica. PharMerica may assign this Agreement without Your authorization or consent.

D. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, this shall not affect the validity or enforceability of any other provision of this Agreement, and the remaining provisions shall be interpreted so as to give maximum effect to the parties' intent as expressed in this Agreement.

E. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements of the parties, whether oral or written.

F. Personal jurisdiction and venue, for any action brought arising out of a breach or threatened breach of this Agreement, shall be exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida, and, therefore, should any legal action be taken concerning this Agreement other than in Hillsborough County, Florida, removal to a court located in Hillsborough County, Florida shall be appropriate and not contested.

G. Any controversy which may arise under this Agreement would involve complicated and difficult factual and legal issues and that, therefore, any action brought by either You or PharMerica arising out of this Agreement shall be determined by a Judge sitting without a jury.

H. You have been provided with a copy of this Agreement for review prior to signing it, You understand the purpose of this Agreement, and You have received a signed copy of this Agreement.

This Agreement is acknowledged and executed by the parties on this _____ day of _____.

PharMerica, Inc.:

By: _____
Name: _____
Title: _____

Employee:

Scott Arledge

Print Name: Scott Arledge