

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 05/13/2015

TIME: 08:20:00 AM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Tiffany Froedge

REPORTER/ERM: Leah Tommela

CASE NO: **56-2014-00461060-CU-NP-VTA**

CASE TITLE: **P.Q.L Inc vs Revolution Lighting Technologies Inc**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Motion - Other (CLM) PQL -Mtn for trade secret Protective Order

MOVING PARTY: P.Q.L Inc

CAUSAL DOCUMENT/DATE FILED: Motion - Other for Protective order RE such trade secret information, 04/20/2015

APPEARANCES

Nicholas Kanter, counsel, present for Defendant(s).

Blake Delgado, self represented Defendant, present.

Jordan Kotero, self represented Defendant, present.

H. Steven Schiffres, counsel, present for Defendant,Cross - Complainant(s) telephonically.

T Randolph Catanese, counsel, present for Cross - Defendant,Plaintiff(s).

David Yoshida, attorney for PQL

At 09:10 a.m., court convenes in this matter with all parties present as previously indicated.

Counsel have received and read the court's written tentative ruling.

Matter submitted to the Court with argument.

Mr. Kantor requests that proposed order attached as exhibit B2 of the moving papers be made the order of the court.

The Court orders Mr. Kantor to provide his copy for all parties and counsel present to review prior to the Court ruling on the matter.

09:20 a.m. Court is in recess.

09:42 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

All counsel and parties have reviewed the order and have agreed to make it a court order as modified.

Counsel further agree that discovery will be within 30 days of today's date and that there is a further 45 day hold prior to filing of a preliminary injunction.

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling.

The tentative is the ruling of the court but as modified by the signed Protective Order filed 5/13/15.

The court's ruling is as follows:

Grant the request for judicial notice of Andy Sreden's declaration in support of Plaintiff's *ex parte* application for a temporary restraining order.

Overrule the evidentiary objections to the declarations of Randall Wheeler and Andy Sreden.

Grant the Motion for a Protective Order without the "attorneys' eyes only" limitation (strike the language from Proposed Order regarding "attorneys' eyes only")

Grant the Motion for the Record to be filed under seal.

Discussion:

A party claiming misappropriation of a trade secret under the Uniform Trade Secrets Act must identify the alleged trade secrets "with reasonable particularity" before commencing discovery relating to the trade secrets. (CCP § 2019.210; *Advanced Modular Sputtering, Inc. v. Sup.Ct. (Sputtered Films, Inc.)* (2005) 132 Cal. App. 4th 826, 834–835.) Plaintiff, as the moving party, bears the burden of establishing that a protective order is appropriate. (*Standish v Superior Court* (1999) 71 Cal.App.4th 1130, 1144-45.) If the complaint does not describe the trade secret adequately, plaintiff must provide a separate statement containing the requisite description. Before serving the separate statement, plaintiff may seek a protective order under *Civil Code* section 3426.5. *Civil Code* section 3426.5 provides:

"In an action under this title, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval." ***Evidence Code section 1060 provides: "If he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice." Evidence Code section 1061(b) provides the procedure for assertion of trade secret privilege: "The movant shall, by a preponderance of the evidence, show that the issuance of a protective order is proper. The court may rule on the request without holding an evidentiary hearing. However, in its discretion, the court may choose to hold an in camera evidentiary hearing concerning disputed articles with only the owner of the trade secret, the people's representative, the defendant, and defendant's counsel present. If the court holds such a hearing, the parties' right to examine witnesses shall not be used to obtain discovery, but shall be directed solely toward the question of whether the alleged trade secret qualifies for protection."***

Plaintiff has met the burden of establishing that a protective order is appropriate. A customer list

may be considered a trade secret where the identity of customers itself has economic value and the owner has made reasonable efforts to preserve its secrecy. (See *Civ.C. § 3426.1(d)*.) The declaration of Andy Sreden provides that he is the President, CEO, and sole shareholder of Plaintiff PQL, Inc. The business was a startup and what makes it unique is the company's specialized knowledge, gained through years of experience, effort and education as a result of extensive expenditures of time, money and effort. The information is not generally known in the trade. The information would not be replicated due to the "very nature of the information and the process of PQL." The trade secrets are: "Client list, vendor list, supplier list, pricing and expense model, profit margin analysis, marketing analysis, "energy analysis" software, Enterprise Resource Planning software, Customer Retention Management software and strategic plan and, technology for select products and future products." **The question is, what is reasonable protective order in this case, and specifically, is the "attorneys' eyes only" provision reasonable? Plaintiff is correct that there are cases that have held that it is appropriate in certain circumstances to limit disclosure to attorneys only and not to the underlying client. (See, *Moskowitz v. Superior Court* (1982) 137 Cal.App.3d 313, 318-19; *Nutratch, Inc. v. Syntech Int'l, Inc.* (C.D. Cal. 2007) 242 F.R.D. 552, 554-55.) However, unlike *Moskowitz, supra*, this is neither an attorney malpractice case, nor a case dealing with personal financial affairs. Plaintiff has not met its burden of establishing why an additional level of restriction is necessary in light of the expense and prejudice that Defendants may face as a result of the requested "attorneys' eyes only" restriction. Such a restriction may interfere with the Defendants ability consult with counsel and amongst themselves as to aspects of the case. Also, "non-attorney eyes" have already seen the documents. The added restriction would make Defendants discussions with each other and with counsel more burdensome without enough of a justification. "[W]here the financial information goes to the heart of the cause of action itself (as opposed to only the punitive damages portion), a litigant should not be denied access so easily." (*GT, Inc. v. Superior Court* (1984) 151 Cal.App.3d 748, 754.)**

The formal order was signed this date.

Protective Order filed by PQL and Andy Sreden.

The judicial assistant is to make copies of Protective Order and provide them to all parties and counsel. Mr. Catanese states he will provide a hard copy to Mr. Schiffres via fax and mail.

The Court admonishes the parties of the seriousness of a protective order as well as the contempt proceedings if the order is violated.