STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

THE JUDSON GROUP, LLC,

Plaintiff,

vs.

JOHN RANDALL,

Defendant.

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Case No. 16-05819-CKB

HON. CHRISTOPHER P. YATES

TEMPORARY RESTRAINING ORDER

As the Court understands the circumstances of this dispute, which came up on an emergency basis on Friday, June 24, 2016, Defendant John Randall signed on with Plaintiff The Judson Group, LLC ("Judson"), executed an employment agreement with restrictive covenants in November 2015, availed himself of the training offered by Judson, and then left Judson to set up a competing business in May 2016. Although Michigan law permits the Court to pare back restrictive covenants to render them reasonable, see MCL 445.774a(1), neither the restrictive covenants themselves nor anything in Michigan law permits Randall to take advantage of his training from Judson by running a business that competes directly with his former employer. Thus, at the behest of Judson, the Court shall enter a temporary restraining order ("TRO") prohibiting Randall from operating a business in competition with his former employer until the Court can conduct a hearing to determine whether to convert the TRO into a preliminary injunction.

On November 24, 2015, Defendant Randall signed a contract identified as a "Confidentiality, Non-Competition, Non-Circumvention, and Non-Solicitation Agreement." That contract provided that, during Randall's tenure with Plaintiff Judson and for two years thereafter, Randall would "not,

directly or indirectly, engage in, or have an ownership interest in or be associated with" any business entity "engaged in any aspect of [Judson]'s business of employment search, recruiting, and staffing in any state in which [Judson] has conducted said business within the previous twenty four months." On January 4, 2016, Randall began working for Judson, which gave training to him in the company's area of operations, *i.e.*, search and staffing with a "nationwide focus on the banking, IT, and finance industries." See Brief in Support of Motion for Injunctive Relief, Exhibit 2 (Affidavit of Analisa Blakley , ¶ 1). After Judson spent more than $40,000 training him, Randall voluntarily left his job with Judson on May 23, 2016. Id. (Affidavit of Analisa Blakley, ¶ 5). Randall then founded a new placement firm, Avian Search Partners, LLC ("Avian"), see id. (Affidavit of Analisa Blakley, ¶ 6), whose on-line marketing materials indicate that the new venture competes in the very same industry as Judson.[1] See id., Exhibit 3.

As an initial matter, the materials and arguments presented to the Court thus far establish that Plaintiff Judson is likely to prevail on the merits in its effort to enforce its agreement with Defendant Randall. First, although Randall insists his agreement cannot be enforced for want of consideration, "[m]ere continuation of employment is sufficient consideration to support a noncompete agreement." QIS, Inc v Industrial Quality Control, Inc, 262 Mich App 592, 594 (2004). Here, Randall signed his agreement before he began working for Judson, so his employment clearly constitutes consideration for his noncompetition agreement. Second, even if a two-year, post-termination ban on competition might be too long in Judson's industry (a debatable point, at best), Randall just left his employment with Judson, so a TRO would merely impose such a ban in the first months after his departure from

[1] Screen captures of the Avian website, which no longer seems to be operational, cite the new venture's areas of expertise as "Financial Services, IT [and] Accounting and Finance." See Brief in Support of Motion for Injunctive Relief, Exhibit 3.

his former employer. Third, with respect to "the type of employment or line of business," see MCL 445.774a(1), Judson does not seek to prevent Randall from engaging in all search and staffing work; Judson simply wants Randall to refrain from providing those services in the niche areas of banking, IT, and finance in which Judson operates. Thus, Randall can assist attorneys, medical professionals, and other skilled workers outside the specific disciplines serviced by Judson. Fourth, Judson would even allow Randall to work with banking, IT, and finance professionals so long as he does so outside the broad geographic area in which Judson operates. In sum, the Court concludes that the restrictions imposed by Randall's noncompetition contract are narrowly tailored to protect Judson's "reasonable competitive business interests." See MCL 445.774a(1).

With respect to potential irreparable injury to Plaintiff Judson, the Court acknowledges that the company's contract with Defendant Randall contains a clause permitting Randall to buy his way out of the noncompetition obligation for $250,000. But the language of that clause makes clear that it cannot be viewed as a liquidated-damages provision. Instead, that clause simply provides Randall with an expensive method for ridding himself of his contractual noncompetition obligation. Thus, the Court cannot conclude that Judson has a readily available remedy at law, especially in the face of Randall's unwillingness to pay that buy-out amount or abide by the noncompetition agreement's restrictions. To be sure, Judson cannot obtain a TRO (or any other form of injunctive relief) unless it can "demonstrate a noncompensable injury for which there is no legal measurement of damages." Thermatool Corp v Borzym, 227 Mich App 366, 377 (1998). Moreover, a "relative deterioration of competitive position does not in itself suffice to establish irreparable injury." Id. But Randall has taken his extensive training from Judson and promptly left the company to compete directly with his former employer in the core areas of its business. Consequently, although Randall's effort to take

on his former employer might be regarded as a match-up of David against Goliath, Randall presents a clear and present danger to Judson because Randall is plainly targeting the very customers that his former employer services and solicits.

The remaining two factors – the balance of harms and the potential harm to the public interest – militate in favor of some form of injunctive relief. Plaintiff Judson's request is modest insofar as it simply seeks to prevent Randall from competing in the niches where Judson operates. Randall can maintain a business in the search-and-staffing industry so long as he stays away from banking, IT, and finance professionals. That leaves Randall free to work with medical, legal, and other types of professionals. Finally, although the public might benefit from another search-and-staffing provider, the public will not be deprived of Randall's services if he simply stays away from the professionals who can turn to Judson for assistance. Therefore, **IT IS ORDERED that Defendant John Randall shall be prohibited and enjoined from offering or providing search and staffing services to any professionals in the banking, IT, and finance sectors in the geographic area in which Plaintiff Judson currently operates until further order of the Court.** If Randall wishes to challenge this TRO, he simply must move to dissolve the TRO and request a hearing seeking that relief.[2]

IT IS SO ORDERED.

Dated: June 28, 2016

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

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[2] Because the Court conducted a conference call with counsel for both parties and then heard both parties on the record at 4:00 P.M. on Friday, June 24, 2016, the TRO does not automatically expire within 14 days of its issuance. See MCR 3.310(B)(3).