STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

MASS2MEDIA, LLC,

Plaintiff, **Case No. 21-187468-CB**
v **Hon. Michael Warren**

DANIEL LENNON, et al.,

Defendants.
_____/

OPINION AND ORDER MAINTAINING
PRELIMINARY INJUNCTION

At a session of said Court, held in the
County of Oakland, State of Michigan
October 5, 2021

PRESENT: HON. MICHAEL WARREN
_____/

OPINION

I
Introduction

Before the Court is the Plaintiff's Motion for Preliminary Injunction. After (1) denying the Plaintiff's Emergency Ex Parte Motion for Temporary Restraining Order and for a Preliminary Injunction and (2) granting the Plaintiff's Motion for Preliminary Injunction on Cinco de Mayo (May 5), 2021[1] (the "Cinco de Mayo Injunction Order"), the

[1] For whatever reason, the clerk's office did not file the Opinion and Order until the following day.

Court conducted an exhaustive evidentiary hearing regarding whether the Preliminary Injunction should remain in effect and issues this Opinion and Order.

At stake in this matter is whether this Court should maintain preliminary injunctive relief when (1) the public interest (enforcing contracts versus free market competition) rises and falls on the merits, (2) the harms of denying or granting the relief slightly favor the Defendants, (3) the Plaintiff has shown that it is likely to prevail on the merits, and (4) there is a showing of irreparable harm if injunctive relief is not maintained? Because the answer is "yes," the preliminary injunction remains in effect.

Also, at stake is whether the Defendants committed civil contempt of court by violating the injunction by continuing to work for clients competitive to the Plaintiff and actually accepting a $30,000 deposit for new work? Because the answer is "yes," the Court hereby orders that the deposit be disgorged, and the Defendants pay the reasonable attorney fees and costs for pursuing the civil contempt proceedings.

II
Findings of Fact

A
Preliminary Injunction Findings of Fact

At the evidentiary hearing, there was no credible challenge to the enforceability of the employment agreements between the Plaintiff and each of the Defendants Moore and Lennon as employees of the Plaintiff (the "Employment Agreements"). The Employment

Agreements each include non-competition and non-solicitation covenants, as well as a bar against the use or disclosure of confidential information. The Plaintiff alleges that post-employment, the Defendants have each violated his respective Employment Agreement by soliciting the Plaintiff's employees, using the Plaintiff's confidential information, and competing against the Plaintiff. The Defendants conceded that they performed work for customers or potential customers of the Plaintiff, that they engaged the Plaintiff's employees to assist in delivering services to those customers, and that they provided construction document services to those customers.

The key defense at the evidentiary hearing was that the Defendants did not compete against the Plaintiff in connection with the solicitation, development, and sale of construction documents because the Plaintiff no longer offers those services. The Defendants also argue that the services they provide in connection with the construction papers are not confidential in nature, but a normal process of designers and architects.

In fact, the evidence unequivocally showed that the Plaintiff offered various design and architectural services, from relatively basic lab designs to very sophisticated construction documents that include an architect's seal that could be used to obtain a construction permit from a municipality. The Defendants' defense was not that they did not provide services to potential customers of the Plaintiff, but that they only prepared construction documents and the Plaintiff abandoned the construction documents market by the time the Defendants engaged in that work. In other words, because the Plaintiff

had abandoned the market, the Defendants' efforts in that market was not competitive with the Plaintiff and did not violate the Employment Agreements.

However, assessing the credibility, demeanor, weight, and other indicia of reliability, the Court preliminarily finds by clear and convincing evidence that the Plaintiff had not abandoned the construction documents market; although it compromises a small portion of its overall revenue, it continues to solicit and provides those services to customers. As such, the Defendants engaged in activities competitive with the Plaintiff. The Court also preliminarily finds by clear and convincing evidence that the Defendants misled key employees of the Plaintiff to believe that the Plaintiff was not offering such services and then diverted those employees to "moonlight" for the Defendants' company to compete in the construction documents market. Furthermore, although there was some truth to the Defendants' claim that the formatting of construction documents, they provided was a universal, nonproprietary practice, the Court finds by clear and convincing evidence that the Defendants obtained the proprietary design knowledge of how to design cannabis laboratories and related buildings from the Plaintiff - as such, that information is confidential and was misappropriated by the Defendants.

B
Civil Contempt Findings of Fact[2]

Assessing the credibility, demeanor, weight, and other indicia of reliability, the Court finds by clear and convincing evidence that the Defendants violated the Court's Cinco de Mayo Preliminary Injunction by (1) providing miscellaneous minor construction document services by responding to construction document client inquiries (who were clients prior to May 5, 2021) and (2) by accepting new construction document business after the Cinco de Mayo Preliminary Injunction was in effect, including accepting a $30,000 deposit.[3]

III
The Preliminary Injunction Stands

A
The Law

Under MCR 3.310(A), this Court has the authority to grant a preliminary injunction. The burden is on the party seeking injunctive relief to prove why such relief should be issued. MCR 3.310(A)(4) ("At the hearing on an order to show cause why a preliminary injunction should not issue, the party seeking injunctive relief has the burden of establishing that a preliminary injunction should be issued"). "Whether a preliminary

[2] These findings of fact are not preliminary.

[3] These findings of fact are not preliminary.

injunction should issue is determined by a four-factor analysis . . . ." *MSEA v Dep't of Mental Health*, 421 Mich 152, 157 (1984). This analysis must address the following factors:

> 1) Harm to the public interest if an injunction issues;
>
> 2) Whether harm to the moving party in the absence of injunctive relief outweighs the harm to the opposing party if a stay is granted;
>
> 3) The strength of the moving party's demonstration that the moving party is likely to prevail on the merits; and
>
> 4) Demonstration that the applicant will suffer irreparable injury if injunctive relief is not granted.
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> [*MSEA,* 421 Mich at 157-158.]

In addition, this inquiry "often includes the consideration of whether an adequate legal remedy is available to the applicant." *Id.* at 158. Other considerations to be addressed when considering injunctive relief "are whether it will preserve the status quo so that a final hearing can be held without either party having been injured and whether it will grant one of the parties final relief prior to a hearing on the merits." *Campau v McMath*, 185 Mich App 724, 729 (1990). See also *Thermatool Corp v Borzym*, 227 Mich App 366, 376 (1998).

Moreover, "[t]he general rule is that whenever courts have found a mandatory injunction essential to the preservation of the status quo and a serious inconvenience and loss would result to plaintiff and there would be no great loss to defendant, they will grant it." *Steggles v National Discount Corp,* 326 Mich 44, 50 (1949). See also *Gates v Detroit*

& Mackinac Railway Co, 151 Mich 548, 552 (1908); *L & L Concession Co v Goldhar-Zimner Theatre Enterprises, Inc,* 332 Mich 382, 388 (1952), quoting *Steggles*, 326 Mich at 50.

Furthermore, this Court's ruling "must not be arbitrary and must be based on the facts of the particular case." *Thermatool,* 227 Mich App at 376. Generally, the granting of such relief falls within the broad discretion of the court. *Steggles*, 326 Mich at 50 (holding that granting injunctive relief "is largely a matter of discretion of the trial court"); *Campau*, 331 Mich at 729 (the Court of Appeals "will not overturn a trial court's grant or denial of a preliminary injunction save for an abuse of discretion." *Bratton v DAIIE*, 120 Mich App 73, 79 (1982).

B
Application of the Law

1
Harm to the Public Interest

Under this factor of the analysis, this Court must address whether the public policy of Michigan is furthered or undermined by the granting of the injunctive relief.

In this particular case, the public interest rises or falls with the underlying merits of the case. Michigan law generally favors enforcing written contracts, including those protecting confidential information. See, e.g. Const 1963, art 1, § 10 ("No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted"); MCL 566.132; *Rory v Cont'l Ins Co,* 473 Mich 457, 468 (2005) (internal footnotes and quotation

marks omitted) ("A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be enforced as written. Courts enforce contracts according to their unambiguous terms because doing so respects the freedom of individuals freely to arrange their affairs via contract. This Court has previously noted that "[t]he general rule [of contracts] is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts.").[4]

On the other hand, Michigan favors a free market by which parties may of their own accord reach commercial agreements for the provision of services and goods. See, e.g., MCL 445.774 (Michigan Antitrust Reform Act). In the absence of a legal prohibition, contracting parties should be encouraged to explore the market to find the most mutually

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[4] The Court in *Rory,* quoting *Terrien v Zwit,* 469 Mich 41, 51-52 (2003) (internal citations omitted), elaborated:

> This approach, where judges . . . rewrite the contract . . . is contrary to the bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance such as a contract in violation of law or public policy. This Court has recently discussed, and reinforced, its fidelity to this understanding of contract law in *Terrien v Zwit*, 467 Mich. 56, 71 (2002). The notion, that free men and women may reach agreements regarding their affairs without government interference and that courts will enforce those agreements, is ancient and irrefutable. It draws strength from common-law roots and can be seen in our fundamental charter, the United States Constitution, where government is forbidden from impairing the contracts of citizens, art. I, § 10, cl. 1. Our own state constitutions over the years of statehood have similarly echoed this limitation on government power. It is, in short, an unmistakable and ineradicable part of the legal fabric of our society. Few have expressed the force of this venerable axiom better than the late Professor Arthur Corbin, of Yale Law School, who wrote on this topic in his definitive study of contract law, Corbin on Contracts, as follows:
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> > "One does not have 'liberty of contract' unless organized society both forbears and enforces, forbears to penalize him for making his bargain and enforces it for him after it is made." [15 Corbin, Contracts (Interim ed.), ch. 79, § 1376, p. 17.

beneficial agreement possible. This not only furthers the freedom of contract, but it also benefits society by creating the most rational allocation of goods and services, thereby increasing the wealth of the entire society. See, e.g., Smith, *An Inquiry into the Nature and Cases of the Wealth of Nations, Representative Selections* (Bruce Mazlish, editor, The BobbsMerrile Company, Inc, 1961) (originally published 1776).[5] This proposition is nothing more than mirror image of the public policy of favoring the freedom of contract. In the absence of an enforceable agreement to the contrary, the public interest favors the free market and not binding parties to obligations to which they have not assented. Const 1963, art 1, § 9 ("Neither slavery, nor involuntary servitude unless for the punishment of crime, shall ever be tolerated in this state"). As such, the public interest favors whoever is most likely to prevail on the merits.

[5] Adam Smith at 108 explains in one particularly poignant passage:

> The interest of the dealers, however, in any particular branch of trade or manufactures, is always in some respects different from and even opposite to, that of the public. To widen the market and to narrow the competition is always in the interests of the dealers. To widen the market may frequently be agreeable enough to the interest of the public; but to narrow the competition must always be against it, and can serve only to enable the dealers, by raising their profits above what they naturally would be, to levy, for their own benefit, an absurd tax upon the rest of their fellow citizens. The proposal of any new law or regulation of commerce which comes from this order ought always be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention. It comes from an order of men whose interest is never exactly the same with that of the pubic, who have generally an interest Ito deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it.

2
Balance of Harm

Under this prong of the analysis, this Court must evaluate whether the harm suffered by the nonmoving parties caused by granting the proposed injunctive relief will outweigh the harm suffered by the moving party if the injunctive relief is denied.

In the instant case, the Plaintiff alleges that the Defendants' alleged violations of the Agreements is causing monetary losses, loss of customers, and loss of good will. To grant the Motion would have a mirror image effect on the corporate Defendant and would hinder the individual Defendants from making a living. The evidence reveals that the individual Defendants and the corporate Defendant are in somewhat desperate straits as small providers of services, whereas the Plaintiff, while substantially degraded by the ongoing epidemic, is better able to sustain the loss of the minor market to its bottom-line. This factor slightly favors the Defendants.

3
The Merits

Under this prong of the analysis, the moving party must demonstrate that it is likely to prevail on the merits of a fully litigated action. There appears to be no dispute that the Agreements were entered into. In addition, the provisions in the Employment Agreements continue to appear legally enforceable. See, e.g., MCL 445.1901 *et seq.* (Uniform Trade Secrets Act); MCL 445.774a (defining elements of an enforceable non-

competition agreement); *Hayes-Albion v Kuberski,* 421 Mich 170 (1984); *St Clair Medical, P.C. v Borgiel,* 270 Mich App 260 (2006) (per curium). At the evidentiary hearing, there was no credible challenge to the enforceability of the Employment Agreements. On the other hand, the length and scope of the application of the provisions at issue - e.g., the international 3 year "Restriction Period" applicable to the Non-Competition Provision of Section 5.2 — could eventually fall. However, even if this Court were to find that such a provision is too long in time and too wide in scope, the activities alleged in the Complaint almost certainly fall within a reasonable timeframe and geographic location. As such, even if this Court were to exercise its authority under MCL 445.774a(1) to limit the Employment Agreements to render them "reasonable in light of the circumstances in which" they were made, they would almost certainly be enforceable at the present time. In a parallel fashion, Section 5.6 of the Employment Agreements themselves have such a savings clause.

Furthermore, the Defendants' arguments that the individual Defendants are not engaging in competitive activities or using confidential information is belied by the Court's Preliminary Findings of Fact.

In light of the foregoing, the Plaintiff has shown it has a high probability of success on the merits.

4
Irreparable Harm

Irreparable harm means harm that cannot be remedied by damages. *Thermatool,* 227 Mich App at 377. In other words, "to establish irreparable injury, the moving party must demonstrate a noncompensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty." *Id.* Moreover, the "[t]he injury must be both certain and great, and it must be actual rather than theoretical." *Id.* Our Supreme Court elaborated in *Michigan Coalition of State Employee Union v Civil Service Comm'n*, 465 Mich 212, 225-226 (2001) (footnote omitted) in the context of injunctive relief sought pursuant to Const 1963, art 11, § 5:

> Thus, it is clear that in 1940 it was beyond dispute in the legal community that a party needed to make a particularized showing of concrete irreparable harm or injury in order to obtain a preliminary injunction. Moreover, there is no basis to conclude that the requirements to secure a preliminary injunction changed in any pertinent way between the adoption of the amendment in 1940 and the adoption of its successor, § 5, in the present Michigan Constitution in 1963, or even up to this day. The requirement of a showing of irreparable harm remains as it did a century ago. In our latest statement on this issue in *Michigan State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152, 157-158 (1984), this Court reiterated the requirement of a showing of irreparable harm as a prerequisite for a preliminary injunction, explaining that it was a requirement for the issuance of a preliminary injunction to demonstrate "that the applicant will suffer irreparable injury if a preliminary injunction is not granted."
>
> Accordingly, we conclude that a particularized showing of irreparable harm was, and still is, as our law is understood, an indispensable requirement to obtain a preliminary injunction. Moreover, the people, in causing the Michigan Constitution to be amended in 1940, evidenced no desire, as they had done with standing, to modify the traditional rules that had pertained with regard to this requirement for a

> preliminary injunction. Therefore, when considering the request for a preliminary injunction in this matter, the trial court and the Court of Appeals were in error in granting any preliminary injunction without a showing of concrete irreparable harm to the interests of a party before the Court.
>
> There is no irreparable harm to the Plaintiff. She does not reside on the property at issue. This case does not involve the demolition of a priceless historical building, the suppression of free speech rights, or the release of confidential proprietary information – it involves the ownership of a parcel of property, the monetary value of which can be easily ascertained.

In the instant case, the Plaintiff's allegation involving the release of confidential information favors the granting of injunctive relief. As the Employment Agreements note, the Plaintiff is engaged in a competitive industry and the confidential information is therefore subject to very vigorous and detailed protection.

With regard to the non-competition and non-solicitation provisions, Section 5.5 of the Employment Agreements provide that "the parties agree that the Company would be irreparably harmed, that money damages alone would be inadequate and that the Company shall be entitled to an injunction restraining such breach." These are no contracts of adhesion. Both individual Defendants were highly compensated (with annual base salaries of $100,000 and $80,000 respectively, plus bonuses).

The Defendants are correct that IF the total potential damages incurred have already been identified and quantified by the Plaintiff and is the sole extent of damages, the case for irreparable damages is weak. But the whole point of injunctive relief is to stop

the bleeding now before such damages are incurred in the future in an incalculable manner.

This prong strongly favors the Plaintiff.

5
Other Considerations

None of the other miscellaneous considerations set forth in Michigan jurisprudence disfavor granting injunctive relief.

In light of the foregoing analysis, injunctive relief remains warranted, and the injunction stands.

IV
Civil Contempt of Court

A
The Law of Contempt

The judiciary's "'primary functions . . . are to declare what the law is and to determine the rights of parties conformably thereto.'" *Johnson v Kramer Bros Freight Lines, Inc*, 357 Mich 254, 258 (1959), quoting 16 CJS, Constitutional Law § 144, p 687. Accordingly, from "time immemorial" the judicial power has included the authority to ensure the orderly administration of justice and to enforce orders and judgments of the court in the face of contempt. *Nichols v Judge of Superior Court of Grand Rapids,* 130 Mich 187, 195 (1902). Indeed, the power of the courts to find parties and litigants in contempt

of court "is as ancient as the courts, and antedates *Magna Charta*." *Id.* at 196. This is so because Michigan law has long held that the contempt power is inherent in the power judicial. See, e.g., *Langdon v Judges of Wayne Circuit Courts,* 76 Mich 358, 367 (1889) ("Courts of record in this state have inherent power to hear and determine all contempts of court which the superior courts of England had at the common law"); *In Re Chadwick*, 109 Mich 588, 601 (1896) quoting *Ex Parte Robinson,* 86 US 505, 510; 22 L Ed 205; 19 Wall 505 (1873) ("'The power to punish for contempts is inherent in all courts'"); *In re Dingley*, 182 Mich 44, 50 (1914) ("The right of the court to punish as for a criminal contempt an offender is no longer an open question in this state. . . . The courts possess the power independent of the statute"); *People v Doe,* 226 Mich 5, 19 (1924) (Dissenting Fellows, J.) ("The power to punish for contempt is inherent in the court. It is a part of the judicial power. It is as firmly vested in the constitutional courts by the Constitution as is the exercise of any other judicial power. That the exercise of the judicial power and all of it cannot be taken away from constitutional courts by the Legislature is settled" [opinion of four justices, affirming by evenly split decision the trial court's exercise of the contempt power]); *In re White,* 340 Mich 140, 146 (1954), *rev'd on other grounds*, 349 US 133; 75 S Ct 623; 99 L Ed 942 (1955), quoting *Doe*, 226 Mich at 19; *In Re Scott*, 342 Mich 618 (1955); *In Re Huff,* 352 Mich 402, 415 (1958) ("There is inherent power in the courts, to the full extent that it existed in the courts of England at the common law, independent of, as well as by reason of statute" [citations omitted]); *Cross Co v United Auto, Aircraft and Agr Implement Workers of America, Local 155,* 377 Mich 208 n 2 (1966) ("Michigan courts have inherent power to punish for contempt"); *In re Grand Jury Proceedings, No. 93, 164,* 384 Mich 24, 35

(1970), quoting *In re Huff*, 352 Mich at 415, 416*; In re Contempt of Dougherty,* 429 Mich 81, 92 n 14 (1987) ("Michigan courts have, as an inherent power, the power at common law to punish all contempts of court"); *In Re Contempt of Auto Club Ins Ass'n,* 243 Mich App 697, 708-709 (2000), quoting *In re Huff*, 352 Mich at 415; *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 499 (2000); *In re Contempt of Steingold,* 244 Mich App 153, 157 (2000) ("Michigan courts of record have the inherent common-law right to punish all contempts of court"). In so finding, Michigan law is in accord with federal and other state jurisprudence. See, e.g., *Ex parte Robinson*, 86 US 505, 510; 22 L Ed 205 (1873) ("The power to punish for contempts is inherent in all courts"). Thus, "[t]his contempt power inheres in the judicial power vested in this Court, the Court of Appeals, and the circuit and probate courts by Const 1963, art 6, §1." *Dougherty*, 429 Mich at 92 n 14. "Such power, being inherent and a part of the judicial power of constitutional courts, cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it." *In re Huff*, 352 Mich at 415-416. See also *Appeal of Murchison,* 340 Mich 151, 155-156 (1954), rev'd *In re Murchison,* 349 US 133 (1955) (finding in response to the petitioner's claim that a statute prohibited the trial court from trying the contempt case that "[t]he trial judge answered * * * [the claim] by holding that the state statute barring him from trying the contempt cases violated the Michigan Constitution on the ground that it would deprive a judge of inherent power to punish contempt. This interpretation of the Michigan Constitution is binding here"); *Grand Jury Proceedings, No 93, 164*, 384 Mich at 36, quoting *Murchison,* 349 US at 135.

A party who through act, omission, or statement, "impede[s] or disturb[s] the administration of justice," is considered in contempt of court. *Ex Parte Gilliland*, 284 Mich 604, 611 (1938), *cert den* 306 US 643; 59 S Ct 583; 83 L Ed 1042 (1939), *rehearing den* 306 US 669; 59 S Ct 641; 83 L Ed 1063 (1939). See also *Pontiac v Grimaldi,* 153 Mich App 212, 215 (1986) ("Contempt of court is a willful act, omission, or statement tending to impair the authority or impede the functioning of a court"); *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App at 708. Michigan jurisprudence has long held the contempt power "extends not only to contempt committed in the presence of the court, but also to constructive contempt arising from refusal of defendant to comply with an order of the court." *In re Huff*, 352 Mich at 415. See also *Carroll v City Commission,* 266 Mich 123, 124-125 (1934) ("There is no question but the court has inherent power to punish for contempt, whether such contempt is committed in the presence of the court, in which case the presiding judge may act summarily, or whether the contempt is constructive, arising from the refusal of the party to comply with an order of the court").

Indeed, "[a] party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date." *Kirby v Michigan High School Athletic Ass'n,* 459 Mich 23, 40 (1999). See also *Schoensee v Bennett,* 228 Mich App 305, 317 (1998). Stated another way, "an order entered by a court with proper jurisdiction must be obeyed even if the order is clearly incorrect." *Matter of Hague,* 412 Mich 532, 545 (1982). See also *Rose v Aaron,* 345 Mich 613, 615 (1956) ("Although the

temporary restraining order was improperly granted, it should have been obeyed until dissolved and the court had the power to punish disobedience thereof as for contempt. Accordingly, defendant is not entitled to reversal of the order from which he appeals not to costs" [citations omitted]); *State Bar of Michigan v Cramer*, 399 Mich 116, 125-126 (1976); *City of Troy v Holcomb,* 362 Mich 163, 169-170 (1978); *Lester v Spreen,* 84 Mich App 689, 697 (1978) ("While acknowledging that the order was improperly entered, it must still be obeyed until vacated by appropriate judicial action"). In fact, even if a higher court has previously "held the ordinance upon which [an] injunction was based to be void, nevertheless, an order entered by the court of proper jurisdiction must be obeyed even if it is clearly incorrect." *Ann Arbor v Danish News Co,* 139 Mich App 218, 229 (1984). Simply put, "Unless a court lacks jurisdiction, its orders must be obeyed, and a party's reasons for defying an order are 'irrelevant' to the issue of whether sanctions for disobedience are properly imposed." *Liberty Property Ltd v City of Southfield,* unpublished opinion of the Michigan Court of Appeals, issued June 18, 2002 (Docket No. 231323), quoting *Matter of Hague*, 412 Mich at 544. "The reasons for this principle were set forth by the United States Supreme Court in *Walker v City of Birmingham,* 388 US 307, 320-321; 87 S Ct 1824; 18 L Ed 1210 (1967), upholding convictions for criminal contempt of civil rights marchers who were in violation of an injunction: '(I)n the fair administration of justice no man can be judge in his own case, however exalted his station, however righteous his motives * * *. [R]espect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom'." *Cramer,* 399 Mich at 125-126. In short, the rule of law requires that the determination of the validity of a court's order

"is one to be made by the courts, not by the parties." *Lester*, 84 Mich App at 696. The Michigan Court of Appeals, explained these principles of law when affirming the trial court's finding of criminal contempt against a defendant who wore a shirt in defiance of the trial court's order, even though the Court of Appeals found that the trial court's order barring the shirt was in error:

> Therefore, despite our conclusion that the statement on appellant's shirt did not constitute an imminent threat to the administration of justice and was constitutionally protected speech, appellant's willful violation of the trial court's order, regardless of its legal correctness, warranted the trial court's finding of criminal contempt. Civil disobedience is not the appropriate course of action when a person disagrees with a court order. We are a society of laws and the legal remedy available to appellant was to seek leave to appeal the trial court's order precluding him from wearing his shirt. Appellant elected not to pursue his legal remedy, and instead elected to willfully disobey a valid albeit erroneous court order. A person may not disregard a court order simply on the basis of his subjective view that the order is wrong or will be declared invalid on appeal. Allowing such behavior would encourage noncompliance with valid court orders on the basis of misguided subjective views that the orders are wrong. There exists no place in our justice system for self-help. [*In re Contempt of Dudzinski*, 257 Mich App 96, 111-112 (2003) (footnotes omitted)].

Accordingly, the proper recourse for a party in light of an order the party believes is erroneous is to file an appeal or to move to change the order, not to disregard the order of the court. *Cramer*, 399 Mich at 125, quoting Kuhns, *Limiting The Criminal Contempt Power: New Roles For The Prosecutor And The Grand Jury*, 73 Mich L Rev 484, 504 (1975), citing *Howat v Kansas,* 258 US 181, 189-190; 42 S Ct 277; 66 L Ed 550 (1922); *Worden v Searls,* 121 US 14; 7 S Ct 814; 30 L Ed 853 (1887).

Moreover, attempts to circumvent orders through indirect subterfuge also constitute contempt. See, e.g., *Glover v Malloska*, 242 Mich 34, 36 (1928) ("In substance and legal effect [the business practice in question] is the same scheme the continuance of which was forbidden. At best it is a mere subterfuge. It is contempt to employ a subterfuge to evade the decree of the court"); *Craig v Kelley*, 311 Mich 167, 178 (1945) ("The temporary restraining order enjoined Louise Lathrup Kelley, her agents, employees and servants, from taking any action or permitting any action or proceeding to be taken whatsoever toward the erection of any residential building costing less than $7,500. Louise Lathrup Kelley and her husband, Charles D. Kelley, deliberately proceeded to cause the erection of residential buildings to cost not to exceed $6,000. This was done by subterfuge, which is as much a contempt of court as though done by more direct action"); *ARA Chuckwagon of Detroit v Lobert*, 69 Mich App 151, 159 (1976) ("Case law has also stressed that nonsignatories to a restrictive agreement who act and conspire with a signatory to cause its violation are equally liable to restraint orders and to contempt proceedings").

The United States Supreme Court has aptly illustrated the purpose and proper use of civil contempt:

> If a defendant should refuse to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance required by a decree for specific performance, he could be committed until he complied with the order. Unless there were special elements of contumacy, the refusal to pay or to comply with the order is treated as being rather in resistance to the opposite party than in contempt of the court. The order for imprisonment in this class of cases, therefore, is not to vindicate the

> authority of the law, but is remedial, and is intended to coerce the defendant to do the thing required by the order for the benefit of the complainant. If imprisoned, as aptly said *In Re Nevitt,* 117 F 448, 451 [CA 8, 1902], "he carries the keys of his prison in his own pocket." He can end the sentence and discharge himself at any moment by doing what he had previously refused to do. [*Gompers v Bucks Stove & Range Co,* 221 US 418, 442; 31 S Ct 492; 55 L Ed 797 (1911).]

Accordingly, "[a] proper civil contempt proceeding seeks to coerce compliance with an act commanded by prior court order, or to compensate the complainant for actual loss. Only where the contemnor, at the time of the contempt hearing, is in violation of an order, is a coercive sanction permissible." *In Re Contempt of Dougherty*, 429 Mich at 111. In other words, "[p]roceedings for civil contempt are instituted to preserve and enforce the rights of private parties to suits and to compel obedience of orders and decrees made to enforce those rights and administer the remedies to which the court has found the parties are entitled. A court may issue an order to pay compensation for actual loss or injury caused by a contemnor's misconduct." *In Re Contempt of United Stationers Supply Co*, 239 Mich App at 500 (citations omitted). See also *In re Contempt of Rochlin*, 186 Mich App 639, 647 (1990). MCL 600.1721 has codified the compensatory civil contempt sanction:

> If the alleged misconduct has caused an actual loss or injury to any person the court shall order the defendant to pay such person a sufficient sum to indemnify him, in addition to the other penalties which are imposed upon the defendant.

B
By Violating the Court's Order, the Defendants Committed Civil Contempt and the Plaintiff is Entitled to a Remedy

In the instant case, as indicated in the Contempt Findings of Fact, the Defendants' actions clearly violated the order of this Court. That the Defendants believe the Court's order is misguided and erroneous matters not. As explained by the authorities *supra,* even if the Defendants are correct in that position, it does not sanction their violation of the Court's orders.

The Plaintiff has more than sufficiently shown that the Defendants' actions in violation of the Court's Preliminary Injunction resulted in the Defendants inappropriately obtaining $30,000. In addition, the Plaintiff has incurred reasonable attorney fees and costs in pursuing the civil contempt proceedings.

ORDER

In light of the foregoing Opinion, the Court hereby **ORDERS** that Defendants Steve Moore, Daniel Lennon, and Arch-Revival, LLC, are enjoined and prohibited from any and all conduct in violation of the non-competition, non-solicitation, and confidentiality covenants reflected in Articles 5.2,5.2, and 4.1(b) in Steve Moore and Daniel Lennon's respective Employment Agreements including, but not limited to the following:

a. Any and all acts by one or more of the Defendants in violation of the non-

competition covenant in Article 5.2 of Steve Moore and Daniel Lennon's respective Employment Agreements including the performance of any extraction laboratory design, planning, or architecture services in North America or Canada;

b. Any and all acts by one or more of the Defendants in violation of the non-solicitation covenant in Article 5.3 of Steve Moore and Daniel Lennon's respective Employment Agreements including soliciting for employment persons currently employed by the Plaintiff or that have been employed by the Plaintiff in the past 18 months; and

c. Any and all acts by one or more of the Defendants in violation of the confidentiality covenant in Article 4.1(b) of Steve Moore and Daniel Lennon's respective Employment Agreements, including directly or indirectly, in any form or manner, using, disclosing publishing, disseminating, distributing, copying or communicating, Plaintiff's Confidential Information as defined in Steve Moore and Daniel Lennon's respective Employment Agreements.

The Court further **ORDERS** that Defendants Steve Moore, Daniel Lennon, and Arch Revival, LLC shall immediately restore and preserve the *status quo* by preserving and not altering in any way:

a. Any computer device owned or used by Defendants Steve Moore or Daniel Lennon for the period of January 1, 2019 to the present;

b. Documents or electronically stored information stored, shared, or synchronized on any device or third-party cloud storage, including Dropbox and any access data captured by the use of Dropbox;

c. Documents or electronically stored information owned or created by the Plaintiff; and/or

d. Documents or electronically stored information concerning extraction laboratory design, planning, or architecture, created or maintained by PX2 Holdings, LLC or its trade names, or Arch-Revival, LLC.

The Court further **ORDERS** that in accordance with MCR 3.310(C)(4), this Order is binding on the Defendants, including their respective officers, agents, servants,

employees, and attorneys, and on those persons in active concert or participation with the Defendants who receive actual notice of this Order by personal service or otherwise.

As a remedy for the Defendants' civil contempt, the Court further **ORDERS** that (1) the Defendants shall return the $30,000 deposit referenced above within 30 days and (2) awards the Plaintiff's reasonable attorney fees and costs for prosecuting the Civil Contempt of Court Proceedings; the amount of such attorney fees and costs shall be fixed by stipulation or motion.