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CIRCUIT COURT
FOR MULTNOMAH COUNTY

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

NIKE, INC., an Oregon corporation,

Plaintiff,

v.

DENIS DEKOVIC, an individual; MARC
DOLCE, an individual; and MARK
MINER, an individual,

Defendants.

Case No. 14CV18876

MOTION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD
NOT ISSUE AND MEMORANDUM IN
SUPPORT

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MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE AND
MEMORANDUM IN SUPPORT

TABLE OF CONTENTS

1		
2		Page
3	TABLE OF AUTHORITIES	ii
4	MOTION.....	1
5	MEMORANDUM OF POINTS AND AUTHORITIES	2
6	I. INTRODUCTION	2
7	II. FACTUAL BACKGROUND	4
8	A. Defendants Promise They Will Protect Nike’s Competitive Trade Secret Material	4
9	B. Defendants Begin Consulting with Adidas.....	5
10	C. Defendants Steal Nike Trade Secrets, Destroy Evidence, and Promote Adidas.....	7
11	D. Dekovic’s Misappropriation of Nike’s Inventions and Designs.....	10
12	III. LEGAL STANDARD.....	10
13	IV. ARGUMENT	12
14	A. Nike Will Succeed on the Merits of Its Claims	13
15	1. Defendants Repeatedly Breached Their Nike Contracts	13
16	2. Defendants Blatantly Misappropriated Nike’s Trade Secrets.....	17
17	3. Defendants Committed Multiple Additional and Independent Torts	19
18	B. Nike Will Suffer Imminent, Irreparable Harm Absent Immediate Relief.....	21
19	C. The Balance of Hardships Tips Decidedly in Nike’s Favor	23
20	D. The Public Interest Supports the Enforcement of Contracts.....	25
21	V. CONCLUSION.....	29
22		
23		
24		
25		
26		

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TABLE OF AUTHORITIES

1

2 Page

3 Cases

4 *Acrymed, Inc. v. Convatec*,
317 F. Supp. 2d 1204 (D. Or. 2004)17

5 *Alexander & Alexander Benefits Services, Inc. v. Benefit Brokers &*
6 *Consultants, Inc.*,
756 F. Supp. 1408 (D. Or. Feb. 6, 1991)20

7 *Alliance for the Wild Rockies v. Cottrell*,
8 632 F.3d 1127 (9th Cir. 2011)11, 12, 23

9 *Amedisys Holding, LLC v. Interim Healthcare of Atlanta, Inc.*,
793 F. Supp. 2d 1302 (N.D. Ga. 2011)17

10 *Bauer Bros. LLC v. Nike, Inc.*,
11 No. 09cv500, 2012 WL 1899838 (S.D. Cal. May 24, 2012)18

12 *Beecher Carlson Holdings, Inc. v. DeGrange*,
13 No. 3:13-cv-01809, 2013 WL 5774123 (D. Or. Oct. 24, 2013)13, 14

14 *Brocade Commc'ns Sys., Inc. v. A10 Networks, Inc.*,
15 No. 10-3428, 2013 WL 140039 (N.D. Cal. Jan. 10, 2013)24

16 *Courtesy Temp. Serv., Inc. v. Camacho*,
222 Cal. App. 3d 1278 (1990)19

17 *Creative Computing v. Getloaded.com LLC*,
386 F.3d 930 (9th Cir. 2004)12, 17

18 *E.I. DuPont de Nemours & Co. v. Kolon Indus., Inc.*,
894 F. Supp. 2d 691 (E.D. Va. 2012)25

19 *Enter. Leasing Co. of Phoenix v. Ehmke*,
20 3 P.3d 1064 (Ariz. Ct. App. 1999)19

21 *Forestry Sys., Inc. v. Coyner*,
No. 1:11CV295, 2011 WL 1457707 (M.D.N.C. Apr. 15, 2011)25

22 *Giftango, LLC v. Rosenberg*,
23 925 F. Supp. 2d 1128 (D. Or. 2013)25

24 *Haught v. Louis Berkman, LLC*,
417 F. Supp. 2d 777 (N.D. W. Va. 2006)26

25 *Herr v. State Farm & Cas. Co.*,
26 No. 04-6211, 2004 WL 1923767 (D. Or. Aug. 25, 2004)11

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TABLE OF AUTHORITIES

1		
2		Page
3	<i>Lamb-Weston, Inc. v. McCain Foods, Ltd.</i> , 941 F.2d 970 (9th Cir. 1991)	13
4	<i>Lindland v. United Bus. Inves., Inc.</i> ,	
5	298 Or. 318 (1984) (<i>en banc</i>)	19, 20
6	<i>MAI Syst. Corp. v. Peak Computer, Inc.</i> ,	
7	991 F.2d 511 (9th Cir. 1993)	19
8	<i>Markovits v. Venture Info Capital, Inc.</i> ,	
9	129 F. Supp. 2d 647 (S.D.N.Y. 2001).....	23
10	<i>McGanty v. Staudenraus</i> ,	
11	321 Or. 532 (1995).....	21
12	<i>Merill Lynch, Pierce, Fenner & Smith, Inc. v. Chung</i> ,	
13	No. 01-00659, 2001 WL 283083 (C.D. Cal. Feb. 2, 2001)	19
14	<i>Microstrategy, Inc. v. Bus. Objects, S.A.</i> ,	
15	369 F. Supp. 2d 725 (E.D. Va. 2005)	25
16	<i>Miller La Grande Ranches, LLC v. Oregon Water Resources Dept.</i> ,	
17	No. 06-08-43868, 2006 WL 6211778 (Or. Cir. Ct. Aug. 24 2006)	11
18	<i>MWI Veterinary Supply Co. v. Wotton</i> ,	
19	896 F. Supp. 2d 905 (D. Idaho 2012)	25
20	<i>Nike, Inc. v. McCarthy</i> ,	
21	285 F. Supp. 2d 1242 (D. Or. 2003), <i>aff'd</i> , 379 F.3d 576 (9th Cir. 2004).....	13, 25
22	<i>Nike, Inc. v. McCarthy</i> ,	
23	379 F.3d 576 (9th Cir. 2004)	12, 21, 24, 25
24	<i>Texaco Ref. & Mktg. Inc. v. Davis</i> ,	
25	819 F. Supp. 1485 (D. Or. 1993)	25
26	<i>Ticor Title Ins. Co. v. Cohen</i> ,	
27	173 F.3d 63 (2d Cir. 1999).....	23
28	<i>Too Marker Prods, Inc. v. Shinhan Art Materials</i> ,	
29	No. 09-1013, 2009 WL 4718733 (D. Or. Dec. 3, 2009).....	10
30	<i>Uncle B's Bakery, Inc. v. O'Rourke</i> ,	
31	920 F. Supp. 1405 (N.D. Iowa 1996).....	26
32	<i>Univ. of Haw. Prof'l Assembly v. Cayetano</i> ,	
33	183 F.3d 1096 (9th Cir. 1999)	23

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TABLE OF AUTHORITIES

1
2
3
4
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Page

Other Authorities

Restatement (Second) of Agency.....20

1 UTCR STATEMENT

2 Pursuant to UTCR 5.010, counsel for plaintiff Nike, Inc. (“Nike”) state that they have
3 notified Defendants that Nike will move for a temporary restraining order before this Court
4 *ex parte* on December 9, 2014, at 1:30 p.m. Counsel for Nike will invite Defendants to
5 confer on this and the other contemporaneously filed motions in this matter and report to the
6 Court at the hearing as to whether conferral has been accomplished.

7 MOTION

8 Pursuant to ORCP 79, Nike requests that the Court enter Nike’s proposed Temporary
9 Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue
10 as indicated in the Proposed Order filed herewith. As stated in Nike’s Proposed Order,
11 Defendants should be ordered to:

- 12 • Return immediately Nike’s misappropriated materials, including all Nike trade secrets
13 and other confidential and proprietary information.
14 • Delete all Nike trade secrets and confidential information from any web-based email
15 accounts or personal electronic devices, and make the accounts and devices available
16 for forensic inspection.

17 In addition, Defendants should be enjoined from:

- 18 • Using or disclosing Nike trade secrets and other confidential and proprietary
19 information.
20 • Working for, consulting with, or associating with Adidas or any other Nike
21 competitor, including any work on the Brooklyn Design Studio and the Moonwalker
22 sportswear business.
23 • Soliciting, diverting, or hiring away Nike employees.

24 This motion is supported by the following Memorandum of Points and Authorities,
25 the Complaint on file in this case, and the declarations filed herewith.

26

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Nike seeks temporary and preliminary injunctive relief against three former Nike
4 footwear designers—Denis Dekovic, Marc Dolce, and Mark Miner—to halt their ongoing
5 scheme to use stolen trade secrets and other confidential and proprietary Nike information to
6 create a “creative design studio” for one of Nike’s key competitors, Adidas. Defendants have
7 misappropriated Nike trade secrets for use in their new business venture, and have attempted
8 to lure other Nike designers to join them at Adidas, all in blatant violation of their
9 employment contracts with, and legal duties to, Nike. Defendants are well aware that their
10 actions are unlawful. They attempted to destroy evidence of their scheme by erasing and
11 damaging their Nike issued devices, all of which contained evidence of their plot, and
12 arranged for Adidas hire outside counsel to represent them (which it did) in case they were
13 caught. Nike will suffer irreparable harm if Defendants’ unlawful scheme to compete against
14 Nike is permitted to continue and Nike’s competitively valuable information is left in the
15 hands of Defendants, who have made clear that they are looking to get rich at Nike’s expense
16 and are certain to use Nike’s trade secrets as a means of delivering the “wealth of information
17 and knowledge” that they promised “to give Adi[das] the advantage” over Nike. (Hearn
18 Decl. Ex. 1-2.)

19 The full extent of Defendants’ betrayal remains unknown, but Nike knows this much
20 from a recent forensic review of their Nike-issued devices: while still Nike employees,
21 Defendants began working for Adidas to develop a design studio to compete against Nike,
22 attended key product and strategy meetings at Nike even after committing to Adidas
23 (essentially enabling Adidas to attend by proxy), and, as their *coup de grace*, stole a veritable
24 treasure trove of Nike’s most valuable trade secrets and tried to cover their tracks. Erasing
25 any doubt that Defendants have been plotting to illegally profit at Nike’s expense, Dekovic
26 also covertly designed and commercialized a footwear and sportswear brand named

1 “Moonwalker” based on existing Nike vintage designs while working for Nike. Although
2 Dekovic is currently living in Italy—a country he moved to at Nike’s expense because,
3 among other reasons, he believed Nike’s “non compete is difficult to enforce” there (Hearn
4 Decl. Ex. 4 at 14)—he has continued to make plans to commercialize his stolen ideas in
5 violation of Nike contract. (Hearn Decl. Ex. 15, Ex. 16). Based on this evidence (from
6 Defendant’s Nike-owned devices), Nike is likely to succeed on its claims for breach of
7 contract, theft of trade secrets, and breach of duty of loyalty against Defendants.

8 Nike will suffer irreparable harm if Defendants are not *immediately* stopped. The
9 information in Defendants’ possession includes critical proprietary and trade secret Nike
10 business information: Nike’s strategic plans for the global athletic footwear and football (i.e.,
11 soccer) markets, specific strategies to compete with Adidas, proprietary innovations in
12 football and footwear technology, unreleased product designs and materials, and products
13 “planned for the next 2-3 years” in its “3 biggest business[es]” of running, sportswear, and
14 football. (Hearn Decl. Ex. 3.) If a Nike competitor obtained this information, it could
15 undermine Nike’s strategic marketing plans, Nike’s key product launches, and enable that
16 competitor to copy Nike’s proprietary technological innovations, designs, and materials.
17 (Lotti Decl. ¶¶ 22, 31, 39, 5, 58; Cain Decl. ¶¶ 12, 20, 34, 50) Moreover, Nike is performing
18 its end of the bargain of Defendants’ Covenant Not to Compete and Non-Disclosure
19 Agreement (“Noncompete Agreement”) (Nike is paying Defendants half of their salary even
20 to this day), while being denied the benefit of its bargain as Defendants continue to flaunt
21 their obligations. (Ornstein Decl., ¶ 25.) The balance of equities thus favors granting Nike’s
22 motion, because while Nike faces serious, irreversible harm and the loss of its bargained-for
23 contractual rights, entering Nike’s requested injunction would merely require Defendants to
24 comply with their legal and contractual duties.

25 Nike therefore urges this Court to immediately enjoin Defendants from further
26 exploiting Nike’s trade secrets and unlawfully competing with Nike by entering an order: (1)

1 compelling Defendants to return immediately all Nike trade secrets and other confidential
2 and proprietary information; (2) compelling Defendants to make available to an independent
3 third party, all web-based email accounts and personal electronic devices on which any Nike
4 trade secrets or confidential and proprietary information resides, so that third party can
5 perform a forensic examination and make a forensic copy to return such information to Nike,
6 and to supervise the deletion of such information found on such email accounts and devices;
7 (3) enjoining Defendants and all others acting in concert or participation with them from
8 using and/or disclosing Nike trade secrets and other confidential and proprietary information;
9 (4) enjoining Defendants from working for, consulting with, or associating with Adidas or
10 any other Nike competitor, including any work on the Brooklyn Design Studio and the
11 Moonwalker sportswear business; and (5) enjoining Defendants from soliciting, diverting, or
12 hiring away Nike employees or Nike-sponsored athletes. Nike requests that this Court enter
13 this relief in the form of a temporary restraining order that will remain in effect until such
14 time as the Court rules on Nike's motion for a preliminary injunction.

15 II. FACTUAL BACKGROUND

16 A. Defendants Promise They Will Protect Nike's Competitive Trade Secret

17 Material

18 Defendants Dekovic, Dolce, and Miner are former Nike footwear designers who for
19 years were intimately involved in the design and planned future development of Nike's
20 football (Dekovic), running (Dolce), and sportswear and basketball (Miner) footwear and
21 other product lines. (Lotti Decl. ¶¶ 13–19; Caine Decl. ¶¶ 15–20.) Defendants were each
22 provided with access to Nike's most competitively valuable trade secret and confidential and
23 proprietary information relating to product design, innovation, and strategy in Nike's
24 running, football and sportswear categories (Lotti Decl. ¶¶ 56; Caine Decl. ¶¶ 59–60),
25 because they "needed to know" such information to perform their specific job duties at Nike
26 (Caine Decl. ¶¶ 59, 62). Thus, Defendants were given physical and electronic access to

1 confidential information and data that the vast majority of Nike employees are restricted
2 from viewing by Nike's extensive security measures (*id.* ¶¶ 59-60, 62-63).

3 Defendants agreed to keep this information secret by signing Noncompete and their
4 Employee Invention and Secrecy Agreements ("Secrecy Agreement") under which they
5 promised: (1) not to compete with Nike during and for a period of one year following their
6 employment, including by not working, consulting, or associating with Adidas (Ornstein
7 Decl. Exs. 2, 4, 6 § 1(a)); (2) not to use or disclose any of Nike's confidential information,
8 and to return all copies of such information at the end of their employment (*id.* Exs. 1, 3, 5 §
9 1, Exs. 2, 4, 6 § 3); (3) not to solicit other Nike employees away from Nike to a competitor
10 (*id.* Exs. 2, 4, 6 § 6); and (4) to assign to Nike the rights to any inventions conceived during
11 their employment (*id.* Exs. 1, 3, 5 §§ 4, 5).

12 **B. Defendants Begin Consulting with Adidas**

13 Armed with this access to Nike's valuable and confidential plans and designs, and
14 lured by the prospect of getting rich at Nike's detriment, in mid-2014 Defendants conjured
15 up their plan to create a knock-off of Nike's innovation studio (known as "NXT" or the
16 "Kitchen"). (Caine Decl. ¶ 4; Hearn Decl. Ex. 5 at 3.) Defendants planned to use the new
17 design studio to launch purportedly innovative designs and strategies that would, in reality,
18 be stolen from Nike. (Hearn Decl. Ex. 5 at 3.) Defendants were missing just one thing: a
19 partner to finance their venture.

20 Adidas—which at the time was looking to reverse the direction of its waning market
21 share to satisfy its anxious investors—was the perfect candidate. As was widely reported by
22 the press (and discussed by Defendants at the time (Hearn Decl. Ex. 5 at 29, Ex. 4 at 13),
23 Adidas was facing "enormous pressure" as a result of a poor 2014 second quarter, around the
24 same time that Defendants hatched their plot. (Reeves Decl. Ex. 1.) Indeed, Adidas's CEO,
25 Herbert Hainer, admitted to company shareholders and market analysts that "we know we
26 have to raise our game," after Adidas slashed its profit forecasts by 33% (over €300 million),

1 reported a 6% overall decrease in quarterly revenue, and a whopping 20% decrease in North
2 American sales. (*Id.* Exs. 2, 3.) Adidas hired Defendants to create a new design studio,
3 which Adidas would control. (Hearn Decl. Ex. 5 at 18-19) Adidas saw this as the key to
4 reversing the decline in its performance, especially in football and in the North American
5 Market. *See* Reeves Decl. Ex. 4. (“Nike has even stolen Adidas’s thunder in soccer, where
6 the German company has long been the global leader To up its game, Adidas has
7 poached three designers from Nike and recently announced its plan to open a creative design
8 studio in Brooklyn”.)

9 Defendants needed Adidas’s deep pockets, so although none of them “really want[ed]
10 to work for adi[das],” they ultimately decided to join the company as “a step towards”
11 creating an independent design studio, taking comfort in the fact that Adidas’ “money can
12 allow [them] to shortly own [their] own business.” (Hearn Decl. Ex. 5 at 15.) Defendants
13 therefore agreed to develop a design studio concept for Adidas, collect a paycheck from
14 Adidas while working at the Adidas-led studio they created for a few years, and then
15 “terminate the agreement with Adidas and start the [independent] studio.” (Hearn Decl. Ex.
16 6.)

17 Having determined to use Adidas to help launch their studio, and aware of Adidas’s
18 well-publicized financial struggles, Defendants decided to pitch themselves to Adidas as the
19 “big change” that could “turn things around.” (Hearn Decl. Ex. 5 at 32.) Defendants even
20 purchased phony social media followers on Instagram and Twitter to bolster the appearance
21 of their popularity. (*Id.* Ex. 7.) Defendants sweetened their pitch with promises to “bring a
22 wealth of information and knowledge that will give Adi[das] the advantage,” and discussed
23 among themselves that fulfilling such promises would “hurt [Adidas’s] competitor” Nike.
24 (*Id.* Exs. 2; 1.)

25 The pitch worked, and in or around summer 2014 Defendants began (in their own
26 words) “do[ing] work” for Adidas as consultants to create a blueprint for the Adidas-backed

1 design studio. (Hearn Decl. Ex. 5 at 17–18.) In their new capacity as Adidas consultants
2 (although still employed by Nike), Defendants met with Adidas design executives, and
3 developed the very positions that they would hold in the new design studio, as well as all of
4 the strategic details of that organization, including how it would be structured, how it would
5 operate, where it would be located, how it would interact with the Adidas brand, its staffing,
6 design, right down to the square footage. (Hearn Decl. Exs. 2; 5 at 3, 18–19, 23.)
7 Defendants have also planned and requested meetings with Adidas’s design team to continue
8 advising Adidas regarding the Brooklyn Creative Design Studio, and in recent days, have
9 begun attempting to solicit key Nike-sponsored athletes. (Hearn Decl. Ex. 5 at 30.); Compl.
10 ¶ 60.

11 Fearing that their actions were unlawful and in clear breach of their employment
12 agreements, Defendants decided that they needed to get Adidas “to confirm and get in
13 writing that Adidas will offer [them] legal support” and “cover [the] lawyer fees With Nike.”
14 (Hearn Decl. Ex. 5 at 26–27, 24.) Defendants sent a copy of Dekovic’s Nike Noncompete
15 Agreement to Adidas, who then hired outside counsel for Defendants. (*Id.* Ex. 5 at 25, Ex.
16 8.) In subsequent meetings with the Defendants, their Adidas-paid-for lawyer assured them
17 that Adidas would provide legal representation in a potential lawsuit by Nike. (*Id.* Ex. 4 at
18 6.) Adidas then made Defendants lucrative employment offers that they could not refuse.

19 **C. Defendants Steal Nike Trade Secrets, Destroy Evidence, and Promote Adidas**

20 With assurances of legal protection and lucrative employment contracts in hand,
21 Defendants executed the final steps in their plan. In their final days at Nike (less than two
22 weeks before they resigned), Defendants stole Nike trade secrets to make sure Defendants
23 could deliver the competitive “advantage” they had promised to deliver to Adidas, including
24 what product launches and other strategic moves Nike had “planned for the next 2-3 years”
25 in its “3 biggest business[es]”—running, sportswear, and football. (Hearn Decl., Ex. 2)

26

1 Specifically, on September 7, Dekovic promised the others he would “get all the files
2 [from his laptop], wipe it, and then send [it] back” to Nike. (Hearn Decl. Ex. 5 at 1.) A week
3 later, on September 16, Dekovic had the entire contents of his Nike-issued laptop copied onto
4 an external disk, complete with thousands of proprietary documents including Nike’s football
5 footwear product designs and business and marketing plans for the next three to five years.
6 (Cotton Decl. ¶¶ 12-13.; Hearn Decl. Ex. 9, Ex. 17). The stolen material includes: (1)
7 strategic plans reflecting Nike’s global football business strategies for the next three-to-four
8 years, *including specific strategies for competing directly against Adidas*; (2) details of
9 Nike’s key football product launches through 2018; (3) unreleased product designs,
10 drawings, and models for Nike footwear products set to be released over the next two-to-
11 three years, including models of team uniforms, footwear, and accessories for the 2016
12 European World Cup, reflecting details of each product’s design, including materials, fabrics,
13 cuts, and color strategies; (4) proprietary innovations in Nike’s athletic and footwear
14 technology and testing methods; (5) non-public financial breakdown of footwear sales at the
15 product level, including gross margin expectations, and projected growth for the next 12 to
16 18 months; (6) Nike’s footwear product launch and marketing strategies, including
17 promotion, in-store presentations, training, and public relations relating to specific past and
18 future product launches and events, including story lines around new product launches.
19 (Lotti Decl. Exs. 1–13; Caine Decl. Exs. 1–2, 4–6.) Three days later, on September, 19,
20 2014, Dolce emailed to his personal email account and a personal cloud server, a computer
21 .zip file containing highly confidential Nike documents. (Compl. ¶ 65–66.) These materials
22 include design drawings related to an as-yet unreleased shoe designed for one of Nike’s star
23 endorsed athletes. (*Id.*)

24 Having gotten what they needed from Nike, Defendants then executed their departure
25 and cover up. Defendants knew full well that “[a]ll [of their] work computers, [and] work
26 cell phones” would be full of months’ worth of emails, text messages, and other “information

1 that [Nike] can acquire” to learn of their scheme. (Hearn Decl. Ex. 5 at 26.) Dolce and
2 Miner thus reset their iPhones (Cotton Decl. ¶¶ 24, 28) in a clear attempt to make their text
3 messages and emails inaccessible to Nike. Dolce and Miner also both deleted all or most of
4 their laptop computer files, including emails and text messages revealing their illegal activity.
5 (*Id.* ¶¶ 19-21, 26) Dekovic’s laptop and iPhone had already been physically damaged, which
6 gave him misplaced comfort that he had no need do the same. (*Id.* ¶¶ 10; Ornstein Decl. ¶
7 35; Hearn Decl. Ex. 9.) Defendants then collectively turned in their damaged and erased
8 devices and resigned from Nike on September 22 and 23, 2014. (Ornstein Decl. ¶¶ 33–42.)

9 That same day, on September 24, 2014, Defendants posted messages on Instagram
10 and Twitter proclaiming how “excited” they were to become part of “three stripes” and
11 “Team Adidas 2015” and displaying “///”—a well-known Adidas logo and trademark.
12 (Hearn Decl., Ex. 10, Ex. 11.) Defendants did so despite being “very clear” that their
13 Noncompete Agreements with Nike prohibited them from being “connected in any manner
14 with . . . Adidas” for a full-one-year period even after leaving Nike’s employment, including
15 via social media, in the hopes that “Adidas [could] leverage [the announcement] to get other
16 talented designers to want to follow our lead.” (Hearn Decl. Ex. 5 at 28, 31; Ornstein Decl.
17 Exs. 2, 4, 6 § 1(a).)

18 Defendants were well aware that their actions were wrong, and they took extensive
19 steps to hide those actions from Nike, including communicating via personal, non-Nike email
20 accounts (Hearn Decl. Exs. 12, 13.), frequently cautioning one another to stick to “using
21 personal phones” or private messaging applications (*id.* Ex. 5 at 24) and to “stay off text” (*id.*
22 Ex. 5, at 12), and ultimately deleting and destroying their devices (Cotton Decl. ¶¶ 10, 19-21,
23 24,26, 28). But Defendants could not hide all of their misdeeds, and Nike has been able to
24 forensically recover a portion of the destroyed evidence, largely because Dekovic failed to
25 completely scrub his computer, falsely thinking that it was damaged to the point that no
26 documents were recoverable. Due to the other two Defendants’ purposeful erasing of their

1 Nike issued laptops and iPhones and Nike's inability to recover all the data from Dekovic's
2 damaged laptop, however, Nike does not yet know the full extent of the material that
3 Defendants have stolen. Particularly in light of their egregious misconduct and deliberate
4 attempts to destroy evidence, Defendants should be compelled to turn over their physical
5 personal devices and their electronic personal account passwords for forensic examination.
6 Nike has retained an experienced forensic examiner who is prepared, at Nike's cost, to
7 examine those accounts and devices to preserve evidence per the attached forensic procedure.

8 **D. Dekovic's Misappropriation of Nike's Inventions and Designs**

9 During this scheme, and while still employed at Nike, Dekovic had also been secretly
10 developing footwear and sportswear company purportedly inspired by Michael Jackson's
11 famous "moonwalk" dubbed "Moonwalker." (Hearn Decl. Ex. 14, Ex. 15.) Dekovic sold the
12 idea, which is based in part on existing Nike shoe designs, to outside investors by promising
13 it would swiftly become a "leading sportswear brand" to compete with Nike. (Hearn Decl.
14 Ex. 15; Lotti Decl. ¶¶ 64-65.)

15 Dekovic knew full well that these developments were a blatant violation of the
16 noncompete, confidentiality, and assignment provisions in his contracts with Nike. He
17 repeatedly told his prospective investors and his advisors of the need for "confidentiality"
18 surrounding the business, begging the investors to keep the project very confidential because
19 he "could be in hot waters for doing this." (Hearn Decl. Ex. 14.) If he is not enjoined,
20 Dekovic stands to reap—by his estimate—a projected \$93 million in profits in the product's
21 first six years, all of which will come at the expense of Nike, to whom the Moonwalker
22 designs rightly belong under Dekovic's employment agreements. (Hearn Decl. Ex. 16.;
23 Compl. 82).

24 **III. LEGAL STANDARD**

25 Oregon Rule of Civil Procedure 79 provides the legal standard for both temporary
26 restraining orders and preliminary injunctions. Or. R. Civ. Proc. 79(A)(1) ("a temporary

1 restraining order or a preliminary injunction may be allowed under this rule”); *see also Too*
2 *Marker Prods, Inc. v. Shinhan Art Materials*, No. 09-1013, 2009 WL 4718733, at *2 (D. Or.
3 Dec. 3, 2009) (“The same legal standard applied to temporary restraining orders and
4 preliminary injunctions. . .”); *Herr v. State Farm & Cas. Co.*, No. 04-6211, 2004 WL
5 1923767, at *2 (D. Or. Aug. 25, 2004) (“[A]n application for a temporary restraining order is
6 to be treated as one for a preliminary injunction where, as here, the defendants have been
7 given an opportunity to present their opposition.”).

8 Because Rule 79 mirrors Federal Rule of Civil Procedure 65, Oregon courts look to
9 federal case law in deciding whether to issue temporary and preliminary injunctive relief.
10 *See Von Ohlen v. German Shorthaired Pointer Club of Am.*, 179 Or. App. 703, 710–11 &
11 n.13 (2002) (stating that “federal authorities [are] persuasive in interpreting Oregon law”
12 concerning the proper application of Oregon’s rules regarding injunctive relief); *Miller La*
13 *Grande Ranches, LLC v. Oregon Water Resources Dept.*, No. 06-08-43868, 2006 WL
14 6211778 (Or. Cir. Ct. Aug. 24 2006) (holding that because “[t]here is a dearth of Oregon
15 cases concerning specific standards for preliminary injunction or temporary restraining
16 orders,” the court looks to “the express provisions of ORCP 79” and “the tests used by
17 federal courts”).

18 Under both Oregon and federal law, a party seeking a temporary restraining order or
19 preliminary injunction must demonstrate: (1) it is likely to succeed on the merits; (2) it is
20 likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of
21 equities tips in its favor, and (4) an injunction is in the public interest. *Winter v. Natural Res.*
22 *Def. Council*, 555 U.S. 7, 20 (2008). These factors are examined on a “sliding scale,” such
23 that “a stronger showing of one element may offset a weaker showing of another.” *Alliance*
24 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). “For example, a
25 stronger showing of irreparable harm to [the] plaintiff might offset a lesser showing of
26 likelihood of success on the merits.” *Id.* And where the balance of hardships “tips sharply

1 toward the plaintiff,” the plaintiff need only demonstrate “serious questions going to the
2 merits,” rather than a strong likelihood of success. *Id.* at 1131–32.

3
4 **IV. ARGUMENT**

5 All four factors weigh heavily in favor of the entry of temporary and preliminary
6 injunctive relief here. *First*, Nike has presented overwhelming evidence that Defendants
7 blatantly and overtly breached their employment agreements and violated Oregon state law
8 by misappropriating Nike’s confidential information *and* by consulting with Adidas and
9 developing the Moonwalker project while still employed by Nike, among other violations.
10 *Second*, absent the issuance of an injunction, Nike will suffer, and continue to suffer,
11 immediate and irreversible harm by way of the lost ability to exclusively use its trade secrets
12 and confidential information in a competitive marketplace, and lost benefits of its contracts
13 with Defendants, among other harms. *Third*, the disruption to Nike strongly outweighs any
14 harm that the injunction would cause Defendants in the intermediate or long term because,
15 among other reason, Nike is currently compensating Defendants to *not work* for Nike’s
16 competitors. And *fourth*, the public interest favors the enforcement of contracts and the
17 preservation of trade secrets.

18 Because each factor weighs heavily in favor of an injunction, this Court should enter
19 an injunction protecting Nike’s trade secrets and confidential business information, and
20 preventing Defendants from associating or consulting with Nike’s competitor, Adidas. *See*
21 *Nike, Inc. v. McCarthy*, 379 F.3d 576 (9th Cir. 2004) (affirming temporary and preliminary
22 injunction barring employee from “engaging in a competing business” even absent a showing
23 of “potential disclosure of confidential information” with Reebok because the potential that
24 the employee could “divert all or part of the employer’s business given [his] knowledge” of
25 confidential information was sufficient to warrant injunctive relief); *see Creative Computing*
26 *v. Getloaded.com LLC*, 386 F.3d 930, 932, 937–38 (9th Cir. 2004) (affirming
“extraordinarily broad” temporary, preliminary, and permanent injunctive relief against

1 former employee who violated trade secret statute when he “downloaded, and sent to his
2 home email account” confidential and proprietary information); *Lamb-Weston, Inc. v.*
3 *McCain Foods, Ltd.*, 941 F.2d 970, 975 (9th Cir. 1991) (affirming injunction against
4 employee who had misappropriated trade secrets from former employer and recognizing that
5 “Oregon law affords broad protection to trade secrets”).

6 **A. Nike Will Succeed on the Merits of Its Claims**

7 **1. Defendants Repeatedly Breached Their Nike Contracts**

8 Nike will undoubtedly succeed on its claim that Defendants breached several
9 provisions of *both* their Noncompete Agreements (Ornstein Decl. Exs. 2, 4, 6), *and* Secrecy
10 Agreements (*id.* Exs. 1, 3, 5). Courts routinely issue temporary restraining orders to enforce
11 such contracts—including virtually identical Nike Noncompete Agreements—finding them
12 enforceable under Oregon Revised Statute § 653.295, which requires that non-compete
13 contracts meet four specific criteria. *See, e.g., Nike, Inc. v. McCarthy*, 285 F. Supp. 2d 1242,
14 1243, 1247 (D. Or. 2003) (issuing temporary restraining order enforcing similar Nike non-
15 compete agreement to prohibit defendant from working for Nike’s competitor, Reebok and
16 rejecting argument that the contract was “unfair” under § 653.295), *aff’d*, 379 F.3d 576 (9th
17 Cir. 2004); *Beecher Carlson Holdings, Inc. v. DeGrange*, No. 3:13-cv-01809, 2013 WL
18 5774123, at *2 (D. Or. Oct. 24, 2013) (issuing temporary restraining order to enforce non-
19 compete and non-solicitation clauses in employee agreement because “[t]he great weight of
20 case law . . . is toward the enforceability of such provisions”).

21 Here, the contracts satisfy each of the four statutory prerequisites to enforceability:
22 (i) Dekovic and Miner signed the contracts as a condition of bona-fide promotions, and
23 Dolce signed the contract upon the commencement of his employment¹ (*compare* Or. Rev.

24
25 ¹ Dolce’s contracts are governed by the pre-2008 version of the statute because he signed
26 them in 2005, *see Beecher Carlson Holdings, Inc.*, 2014 WL 5774123, at *1 (applying
pre-2008 version of § 653.295 to contracts signed in 2005 and 2006), and therefore his
(*Cont’d on next page*)

1 Stat. § 653.295(1)(a)(A)–(B), *with* Ornstein Decl. ¶¶ 16–22); (ii) Defendants exercised
2 creative discretion and independent judgment in their salaried positions at Nike (*compare* Or.
3 Rev. Stat. §§ 653.295(1)(b), 653.020(3), *with* Ornstein Decl. ¶ 23); (iii) Nike has a
4 “protectable interest” because Defendants had “access to competitively sensitive confidential
5 business” information during their employment (*compare* Or. Rev. Stat. § 653.295(1)(c),
6 *with* Ornstein Decl. ¶ 23; Lotti Decl. ¶¶ 13–58; Caine Decl. ¶¶ 15–61); (iv) and Defendants’
7 salary exceeded the statutory minimum (*compare* Or. Rev. Stat. § 653.295(1)(d), *with*
8 Ornstein Decl. ¶ 24). The contracts are therefore enforceable under Oregon law.

9 Defendants have breached, and continue to breach to this day, multiple plain and
10 unambiguous provisions of these contracts, resulting in irreparable and irreversible harm to
11 Nike.

12 ***Non-Compete Provision.*** First, each Defendant violated the non-compete provision
13 in his Noncompete Agreement by consulting with Adidas during, and within one year after,
14 the period of his employment with Nike. Indeed, in their *own words*, Defendants “work[ed]
15 for” Adidas as consultants to create a blueprint for the Brooklyn Creative Design Studio.
16 (Hearn Decl. Ex. 5 at 3-4, 6-7, 17-18; Ex. 18 at 4.) Among other things, Defendants met
17 with Adidas design executives and developed the very positions that they would hold in the
18 new design studio, as well as the strategic details of that organization, including how it would
19 be structured, how it would operate, where it would be located, how it would interact with
20 the Adidas brand, its staffing, design, right down to its square footage. (*Id.* Exs. 5 at 3-4, 6-7,
21 18-19, 23; Ex. 2.) These acts are in flagrant breach of the non-compete provision, which
22 states that defendants “will not direct or indirectly . . . consult for, or be connected in any

23

24

(Cont’d from previous page)

25 contracts are enforceable because they were “entered into upon [his] initial employment,”
26 *id.*; (Ornstein Decl. ¶¶ 18–19, Exs. 3–4).

1 manner with” a Nike competitor, including but “not limited to: Adidas. . . .” (Ornstein Decl.
2 Exs. 2, 4, 6 § 1(a).)

3 Dekovic further breached the non-compete provision by virtue of his ownership and
4 management role in the Moonwalker project. In that provision he agreed to not “directly or
5 indirectly, own, manage, control, or participate in the ownership, management or control of,
6 or be employed by, consult for, or be connected in any manner with, any business engaged
7 anywhere in the world in the athletic footwear, athletic apparel . . . or any other business
8 which directly competes with NIKE. . . .” (*Id.* Ex. 2 § 1(a).) Moonwalker is undoubtedly a
9 sportswear brand that is engaged in the business of footwear and sportswear sales, as
10 Dekovic admitted in his own emails (Hearn Decl. Exs. 14, 15), and therefore his
11 “connection” to Moonwalker is a violation of the Noncompete Agreement.

12 In addition, Defendants further breached the non-compete provision by publicly
13 associating themselves with Adidas during and within one year of the period of their
14 employment with Nike. For example, Defendants posted on Instagram and Twitter how
15 “excited” they were to become part of “three stripes” and “Team Adidas 2015” and actually
16 displaying three stripes - /// - a well-known Adidas logo. (Hearn Decl. Ex. 10, 11.)

17 ***Non-Solicitation Provision.*** Second, each Defendant violated the non-solicitation
18 provision in his Noncompete Agreement by recruiting each other, and other Nike designers
19 and employees, to leave Nike for Adidas, and they have recently also attempted to solicit key
20 Nike-sponsored athletes. (Compl. ¶¶ 60, 71–75.) For example, the stated intention of
21 Defendants’ public announcements of their association with Adidas on Instagram and Twitter
22 was to solicit other Nike employees by arming Adidas with “leverage to get other talented
23 designers to want to follow our lead”, and to “influence” those designers to leave Nike.
24 (Hearn Decl. Exs. 5 at 31; 4 at 11.) Such actions clearly violate the non-solicitation
25 provision of Defendants’ Noncompete Agreements, which states that Defendants “will not,
26

1 directly or indirectly, solicit . . . or attempt to solicit . . . any NIKE employee” to “any other
2 company.” (Ornstein Decl. Exs. 2, 4, 6 § 6.)

3 ***Non-Disclosure Provision.*** Third, each failure to keep secret or disclose Nike’s
4 confidential information constitutes a clear violation of the non-disclosure provisions in
5 Defendants’ Invention and Secrecy Agreements (*Id.* Exs. 1, 3, 5 § 1), and their Noncompete
6 Agreements (*id.* Exs. 2, 4, 6 § 3). The Contracts define “confidential information” broadly to
7 include “trade secrets,” “confidential information,” *as well as* competitively sensitive
8 business and professional information “regardless of whether such information constitutes a
9 trade secret.” (*Id.* Exs. 1, 3, 5 § 1, Exs. 2, 4, 6 § 3(a).) Confidential information is defined to
10 include “sketches,” “designs,” “design concepts,” “business plans,” and “marketing and sales
11 information.” (*Id.* Exs. 1, 3, 5 § 1, Exs. 2, 4, 6 § 3(a).)

12 Here, Defendants violated the non-disclosure provisions by misappropriating Nike’s
13 Protected and Confidential Information, including Dekovic having a copy of the contents of
14 his laptop hard drive made and failing to return that copy to Nike (Cotton Decl. ¶ 7-8, 13, 17,
15 23; Hearn Decl. Ex. 17; Lotti Decl. ¶¶ 60; Cain Decl. ¶¶ 21, 59, 63), and Dolce emailing
16 confidential protected information to his personal email account (Compl. ¶ 65; Cotton Decl.
17 ¶ 22).

18 ***Return of Documents Provision.*** Fourth, Defendants violated the Provision in their
19 Invention and Secrecy Agreements that required them to promptly return to Nike “all
20 confidential information of NIKE” “including copies, reproductions and translations
21 thereof.” (Ornstein Decl. Exs. 1, 3, 5 § 9.) For example, Dekovic failed to return to Nike the
22 copy of his laptop hard drive that he caused to be made on September 16, 2014. (Hearn
23 Decl. Ex. 9, Ex. 16; Cotton Decl. ¶ 7-8, 13, 17, 23.) And Dolce failed to return to Nike the
24 confidential design plans he emailed to his personal email account on September 19, 2014.
25 (Compl. ¶ 65, 67.)

26

1 **Notification and Assignment Provisions.** Fifth, Dekovic further violated his
2 Invention and Secrecy Agreement by failing to “promptly and in writing” notify and assign
3 to Nike the Moonwalker project (Ornstein Decl. Ex. 1 §§ 4, 5, 8), which was conceived
4 during his employment with Nike (Lotti Decl. ¶ 63-64), and which “relate[s] . . . to the actual
5 or anticipated business . . . of NIKE,” namely, athletic footwear (Ornstein Decl. Ex. 1 § 4;
6 Lotti Decl. ¶ 65), and now seeking to commercialize Moonwalker without notifying Nike.
7 This conduct further violates the non-compete provision in Dekovic’s Noncompete
8 Agreement. (Compl. ¶ 95; Ornstein Decl. Ex. 2 § 1(a).)

9 **2. Defendants Blatantly Misappropriated Nike’s Trade Secrets**

10 Nike will also prevail on its claim that Defendants misappropriated Nike’s trade
11 secrets in violation of § 646.461(2) of the Oregon Uniform Trade Secrets Act (the “Act”).
12 To establish a misappropriation claim under the Act, a plaintiff must demonstrate that: “(1)
13 the subject of the claim qualifies as a statutory trade secret; (2) the plaintiff employed
14 reasonable measures to maintain the secrecy of its trade secrets; and (3) the conduct of the
15 defendants constitutes statutory misappropriation.” *Acrymed, Inc. v. Corvatec*, 317 F. Supp.
16 2d 1204, 1217 (D. Or. 2004).

17 The statute defines “misappropriation” as the “improper acquisition, disclosure, or
18 use of a trade secret.” *Id.* (citing Or. Rev. Stat. § 646.461). Here, Defendants
19 misappropriated through improper means countless Nike trade secrets, including by copying
20 the materials from their Nike issued laptops onto hard drives and sending them to personal
21 email accounts. *See Creative Computing*, 386 F.3d at 932, 937–38 (affirming
22 “extraordinarily broad injunction” against employee who violated Idaho Trade Secret Statute
23 when he “downloaded, and sent to his home email account, [employer’s] confidential”
24 information); *see also Amedisys Holding, LLC v. Interim Healthcare of Atlanta, Inc.*, 793 F.
25 Supp. 2d 1302, 1311–12 (N.D. Ga. 2011) (granting temporary restraining order and finding
26 “substantial likelihood of prevailing on [] trade secret claim” where defendant “sent [trade

1 secrets] to her personal email account”); *W. Plains, LLC v. Retzlaff Grain Co. Inc.*, 927 F.
2 Supp. 2d 776, 781–82, 788 (D. Neb. 2013) (granting temporary restraining order and
3 preliminary injunction where defendants misappropriated trade secrets when they “sent
4 emails containing [confidential information] to their personal email addresses shortly before
5 submitting their resignations”). Defendants further misappropriated Nike’s trade secrets by
6 disclosing and using this information to compete against Nike and to plan and implement the
7 “Brooklyn Creative Design Studio.” (Hearn Decl. Ex. 5 at 3, 7.) Indeed, Defendants’
8 attempt to conceal their bad acts *after* copying and emailing the misappropriated material
9 strongly suggests that Defendants intend to use these trade secrets for improper purposes,
10 including for their own benefit and the benefit of Adidas.

11 There can be no doubt that these misappropriated materials are, in fact, trade secrets
12 under the statute, because they “derive independent economic value” from not being known
13 generally or to Nike’s competitors who, upon learning this valuable information, could use it
14 for economic gain. (Or. Rev. Stat. § 646.461(4); *Bauer Bros. LLC v. Nike, Inc.*, No.
15 09cv500, 2012 WL 1899838, at *2–4 (S.D. Cal. May 24, 2012) (holding Nike’s “financial
16 data” and other competitively sensitive information were “valuable trade secrets”); Lotti
17 Decl. ¶¶ 31, 45; Caine Decl. ¶ 59.) Indeed, if Defendants are permitted to take these ideas—
18 the very fruits of Nike’s research and development—and share them with any Nike
19 competitor, the harm to Nike would be too great to quantify. (Lotti Decl. ¶ 31; Caine Decl. ¶
20 32.) Such disclosure would enable Adidas to capitalize on Nike’s ideas, develop counter-
21 strategies, and beat Nike to market with these innovative new products, depriving Nike of its
22 full hard-earned competitive advantage in the global footwear market. (*Id.*)

23 And Nike has employed reasonable measures to maintain the secrecy of these trade
24 secrets, including by requiring Defendants to sign confidentiality and non-disclosure
25 agreements (Ornstein Decl. Exs. 1–6), by limiting access to confidential material to only
26 those employees with a direct “need to know” about such information to execute their jobs

1 (Lotti Decl. ¶ 58), and through implementation of a robust security procedure known as
2 “Keep It Tight” (“KIT”), among many other security measures. (See Lotti Decl. ¶¶ 58–60
3 [describing such measures in detail]; Ornstein Decl. ¶¶ 4–11; Cain Decl. ¶¶ 62–63.) These
4 measures unquestionably qualify as sufficient to maintain secrecy surrounding Nike’s trade
5 secrets. See *MAI Syst. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 521 (9th Cir. 1993)
6 (holding employer “took reasonable steps to insure the secrecy to [its confidential]
7 information” because it “required its employees to sign confidentiality agreements respecting
8 its trade secrets”); *Merill Lynch, Pierce, Fenner & Smith, Inc. v. Chung*, No. 01-00659, 2001
9 WL 283083, at *4 (C.D. Cal. Feb. 2, 2001) (finding employer took “measures to protect the
10 secrecy of its confidential . . . information which are reasonable under the circumstances,
11 including requiring Defendants to sign agreements which prohibited use or disclosure of [the]
12 confidential and proprietary . . . information”); *Enter. Leasing Co. of Phoenix v. Ehmke*, 3
13 P.3d 1064, 1070 (Ariz. Ct. App. 1999) (“Reasonable efforts” include “limit[ing] disclosure”
14 of the information even internally, informing employees of the need for confidentiality, and
15 requiring employees to sign confidentiality and nondisclosure agreements, and “do not
16 require extreme and unduly expensive procedures to be taken to protect trade secrets against
17 industrial espionage”); *Courtesy Temp. Serv., Inc. v. Camacho*, 222 Cal. App. 3d 1278, 1288
18 (1990) (“[R]easonable efforts to maintain secrecy . . . include advising employees of the
19 existence of a trade secret, limiting access to a trade secret on ‘need to know basis,’ and
20 controlling . . . access [to that information].” (first alteration in original)).

21 Nike has thus shown that it will undoubtedly succeed on its claim for violation of
22 misappropriation of trade secrets under Oregon law.

23 **3. Defendants Committed Multiple Additional and Independent Torts**

24 Defendants have also committed additional torts relating to their misappropriation
25 and deception, each of which has harmed and will continue to harm Nike absent an
26 injunction from this Court.

1 **Breach of Duty of Loyalty.** For example, Defendants breached their duties of loyalty
2 to Nike by acting for their own benefit while they were still Nike employees. *Lindland v.*
3 *United Bus. Inves., Inc.*, 298 Or. 318, 324 (1984) (*en banc*) (explaining that a conflict of
4 interest or self-dealing “alone establishes the breach of duty”). Defendants not only
5 consulted with Nike’s competitor, but also misappropriated Nike’s trade secrets and
6 confidential, proprietary information to use for their own benefit in competing against Nike,
7 and in recent days solicited a key Nike-sponsored athlete. Dekovic further breached his duty
8 of loyalty by independently developing and marketing the Moonwalker shoes and sportswear
9 without giving Nike the opportunity to do so. *Id.* It is a clear breach of the duty of loyalty
10 for an employee to “use confidential information peculiar to his employer’s business and
11 acquired therein” when making arrangements to compete before the termination of his
12 employment. Restatement (Second) of Agency § 393 cmt. e; *Lindland*, 298 Or. at 324
13 (adopting Restatement (Second) of Agency for breach of duty of loyalty claims). The facts
14 clearly demonstrate that defendants did just that—leveraging their “wealth of information
15 and knowledge that will give Adidas the advantage” for their own financial gain, directly in
16 conflict with Nike’s interests. *See Lindland*, 298 Or. at 324. Defendants boasted that Nike
17 would be “losing their top talent . . . instantly creat[ing] issues in . . . 3 main businesses” in
18 order to get bigger and better employment offers from Adidas. (Hearn Decl. Ex. 2.) These
19 blatant and overt breaches of the duty of loyalty provide yet another reason that the
20 injunction should issue. *See Alexander & Alexander Benefits Services, Inc. v. Benefit*
21 *Brokers & Consultants, Inc.*, 756 F. Supp. 1408, 1410 (D. Or. Feb. 6, 1991) (entering
22 preliminary injunction and finding a likelihood of success on the merits where employees
23 organized an en mass resignation and misappropriated employer’s confidential information
24 and trade secrets).

25 **Intentional Interference.** In addition, Defendants intentionally, with an improper
26 purpose and by improper means, interfered with Nike’s current and prospective contractual

1 relationships with each other and with Nike’s existing employees, including by publicly
2 announcing their association with Adidas in a purposeful effort to solicit and “induce” others
3 to leave Nike to join Adidas and soliciting at least one of Nike’s key sponsored athlete on
4 social media and contacting Nike employees in an attempt to secure contact information for
5 that athlete. *Whelan v. Albertson’s, Inc.*, 129 Or. App. 501, 506 (1994); *McGanty v.*
6 *Staudenraus*, 321 Or. 532, 536 (1995).

7 **B. Nike Will Suffer Imminent, Irreparable Harm Absent Immediate Relief**

8 The harm to Nike from Defendants’ many unlawful acts is imminent and ongoing,
9 and is magnified each day Defendants are wrongfully in possession of Nike’s valuable and
10 confidential information. (Lotti Decl. ¶¶ 22, 31, 58.) Courts consistently hold that the
11 potential disclosure of confidential and proprietary information constitutes irreparable harm
12 because the value in the material is its secret nature, and once the valuable information is
13 revealed to the public or a competitor, its value is diminished or destroyed. *Nike*, 379 F.3d
14 at 586–87 (affirming finding of irreparable harm because former Nike employee could help
15 choose product lines, “including how products are priced,” thereby “divert[ing] a substantial
16 part of Nike’s footwear sales to Reebok based on his knowledge of information confidential
17 to Nike” even without “explicitly disclosing this information to any of Reebok’s
18 employees”); *see also V’Guara, Inc. v. Dec.*, 925 F. Supp. 2d 1120, 1126 (D. Nev. 2013)
19 (“[P]ublic disclosure of a trade secret destroys the information’s status of a trade secret
20 . . . caus[ing] irreparable harm to the trade secret owner by both depriving him of a property
21 interest and by allowing his competitors to reproduce his work without an equivalent
22 investment of time and money”). This is the case *even where* there is *no evidence* that the
23 defendants will actually disclose the confidential information. *See Nike*, 379 F.3d at 586–87
24 (affirming temporary and preliminary injunction enforcing non-compete contract barring
25 employee from “engaging in a competing business” even absent a showing of “potential
26 disclosure of confidential information” with Reebok because the potential that the employee

1 could “divert all or part of the employer’s business given [his] knowledge of confidential
2 information” was sufficient to warrant injunctive relief).

3 Such concerns are amplified here, where Defendants have taken overt steps to
4 conceal their bad acts, further signaling to Nike that they have no qualms in using deception
5 to accomplish their goals. For example, Defendants set up separate email accounts to
6 communicate about their conspiracy (Hearn Decl. Exs. 12, 13.), advised each other to “stay
7 off text” so that Nike could not view their plans (*id.* Ex. 5 at, 12.), and discussed “get[ting]
8 all the files, wip[ing the laptop] and send[ing] it back” to Nike (*id.* Ex. 5, at 10.).
9 Defendants’ violations in misappropriating Nike’s trade secrets has already caused harm, and
10 will continue to cause harm, to Nike by disclosing confidential information that can benefit a
11 competitor of Nike and detrimentally affect Nike’s position in the marketplace. This harm is
12 further heightened by the fact that Defendants have breached their employment contracts by
13 consulting for Adidas in violation of the non-compete provisions, thus increasing the
14 likelihood that they are giving Adidas access to Nike’s trade secrets and other confidential
15 and proprietary information. (Ornstein Decl. Exs. 2, 4, 6 § 1(a).) Indeed, the highly
16 suspicious timing with which Defendants copied their laptops and emailed themselves
17 confidential information strongly supports the conclusion that Defendants intend to use, if
18 they have not already used, these documents for their own benefit and for the benefit of
19 Adidas, and emphasize the harm that Nike is sure to suffer, in addition to the harm already
20 suffered, if emergency relief is not granted. (Hearn Decl. Ex. 2; Cain Decl. ¶¶ 21, 58; Lotti
21 Decl. ¶¶ 22, 56, 58..)

22 As just one example of the harm Nike would suffer, if a Nike competitor were to now
23 get access to Nike’s integration details and product content for planned Nike product
24 releases—including in connection with major international events—and showing integrated
25 color schemes and ideas around Nike’s plans in the football and footwear marketplace in
26 2016 and beyond, Adidas could co-opt Nike’s ideas *now*, and roll out similar color schemes

1 before Nike, thereby staking out a false but profitable position as a market leader and
2 innovator. (Lotti Decl. ¶ 39; Caine Decl. ¶¶ 32, 34, 44, 46, 50, 54.)

3 There is no adequate remedy at law for the irreparable harm that has been and will
4 continue to be caused to Nike as a result of Defendants' unlawful conduct. It would be
5 nearly impossible for Nike to calculate damages from Defendants' harm to its competitive
6 position and theft of confidential and proprietary information if they are allowed to remain in
7 possession of or otherwise use such information and if Defendants continue to consult with
8 Adidas. Indeed, Defendants even admitted in their Noncompete Agreements that Nike will
9 suffer "severe damage" that would be "difficult to measure," if Defendants breached those
10 agreements (Ornstein Decl. Exs. 2, 4, 6 § C), therefore conceding that Nike's injuries are
11 irreparable. *See Ticor Title Ins. Co. v. Cohen*, 173 F.3d 63, 69 (2d Cir. 1999) (explaining that
12 a similar contract provision "might arguably be viewed as an admission by [defendant] that
13 plaintiff will suffer irreparable harm were he to breach the contract's non-compete
14 provision"); *Markovits v. Venture Info Capital, Inc.*, 129 F. Supp. 2d 647, 661 (S.D.N.Y.
15 2001) (explaining that similar contract provision "does weigh in [plaintiff's] favor . . . [and]
16 is . . . one factor that must be considered in deciding whether irreparable harm would result if
17 an injunction did not issue").

18 **C. The Balance of Hardships Tips Decidedly in Nike's Favor**

19 The balance of hardships also "tips sharply toward the plaintiff [Nike]." *Alliance for*
20 *the Wild Rockies*, 632 F.3d at 1132. "To determine which way the balance of the hardships
21 tips," a court must weigh "the possible harm caused by the preliminary injunction against the
22 possibility of the harm caused by not issuing it." *Univ. of Haw. Prof'l Assembly v. Cayetano*,
23 183 F.3d 1096, 1108 (9th Cir. 1999). The balance of hardships here is not even close. On
24 the one hand, Nike is seeking to protect its trade secrets, and to require its former employees
25 to comply with the law. (Lotti Decl. ¶¶ 56-58; Caine Decl. ¶63.) In stark contrast,
26 Defendants have expressed a desire to financially gain from exploiting the misappropriated

1 materials. *See V'Guara*, 925 F. Supp. 2d at 1126–27 (D. Nev. 2013) (finding balance of
2 hardships tips in favor of plaintiff where temporary restraining order would “prevent
3 Defendants from profiting from the alleged trade secrets” to which “Defendants actually have
4 no right”).

5 Even setting aside Defendants’ plot against their former employer, the balance of
6 hardships still tips sharply in Nike’s favor. Indeed, in a strikingly similar case where Nike
7 sought to enforce a similar non-compete agreement to prevent a former employee from
8 working for, and revealing trade secrets to, Reebok, the Ninth Circuit found that the balance
9 of hardships weighed decisively in Nike’s favor because the “potential disruption to Nike’s
10 sales and products” resulting from a disclosure of its confidential information “outweighs any
11 harm that the injunction would cause [the former employees] in the intermediate or long
12 term” as a result of being required to comply with their Noncompete Agreements. *Nike*, 379
13 F.3d at 587. Likewise, if Defendants here were to disclose Nike’s trade secrets and
14 confidential information to Adidas, it could use that information to more effectively compete
15 against Nike, irreparably damaging Nike’s sales, brand, reputation, and goodwill with
16 consumers, athletes, employees, and endorsers. *See Lotti Decl.* ¶¶ 31, 33, 43, 58; *Caine*
17 *Decl.* ¶¶ 32, 34.; *Nike*, 379 F.3d at 585 (“[I]f a company knew its competitor’s launch dates,
18 it could time its own products to disrupt the sales of its competitor.”); *see also Brocade*
19 *Commc’ns Sys., Inc. v. A10 Networks, Inc.*, No. 10-3428, 2013 WL 140039, at *5 (N.D. Cal.
20 Jan. 10, 2013) (finding greater hardship to plaintiff where “loss would be at the hands of a
21 direct competitor”).

22 Moreover, Nike has bargained for the right to exclude Defendants from working for
23 or associating with a competitor, including Adidas (Ornstein Decl. Exs. 1–6), to prevent
24 Defendants from soliciting other Nike employees to leave Nike (*id.* Exs. 2, 4, 6 § 6), to
25 require Defendants to assign their inventions to Nike (*id.* Exs. 1, 3, 5 §§ 4, 5), and to keep
26 Nike’s trade secrets confidential (*id.* Exs. 1, 3, 5 § 1, Exs. 2, 4, 6 § 3). Thus, “if no injunction

1 [were] issued, [Nike] would be denied the benefit of [its] bargain with [the defendants],”
2 which is “the real hardship” at issue. *MWI Veterinary Supply Co. v. Wotton*, 896 F. Supp. 2d
3 905, 914 (D. Idaho 2012).

4 On the other side of the scale, an injunction would merely require Defendants to
5 comply with the law and their contracts, which is no hardship at all. *See E.I. DuPont de*
6 *Nemours & Co. v. Kolon Indus., Inc.*, 894 F. Supp. 2d 691, 708–09 (E.D. Va. 2012)
7 (“preventing a misappropriator from profiting from its theft of trade secrets is not really a
8 hardship because it simply prevents [him] from doing that which the law already prohibits”).
9 And even if there were some minimal hardship to Defendants—there is not—“a number of
10 factors mitigate [against] the potential harm to [defendants] from the preliminary injunction”
11 (*Nike*, 379 F.3d at 587), including that Nike is currently paying 50% of Defendants salaries.
12 Ornstein Decl. ¶ 25; *see also Nike*, 285 F. Supp. 2d at 1247 (finding no hardship to defendant
13 because “[i]f [he] wants to work over the next year, he may do so in any other industry but
14 the athletic footwear, apparel or sports equipment and accessory business”). Thus, in
15 addition to likelihood of success on the merits and irreparable injury, this factor also weighs
16 in favor of issuing the injunctive relief Nike seeks.

17 **D. The Public Interest Supports the Enforcement of Contracts**

18 The “public interest favors the enforcement of contracts” where, as here, the contracts
19 were “freely and voluntarily entered into between the parties.” *Texaco Ref. & Mktg. Inc. v.*
20 *Davis*, 819 F. Supp. 1485, 1486 (D. Or. 1993); *Giftango, LLC v. Rosenberg*, 925 F. Supp. 2d
21 1128, 1141 (D. Or. 2013) (“The public has an interest in enforcement of valid contracts to
22 which the parties have voluntarily agreed”); *MWI Veterinary Supply Co.*, 896 F. Supp. 2d at
23 914 (“The public interest lies in enforcing contractual agreements and so favors the granting
24 of an injunction here.”); *see Ornstein Decl. Exs. 1–6.*

25 Moreover, “the public interest favors protection of trade secrets.” *Forestry Sys., Inc.*
26 *v. Coyner*, No. 1:11CV295, 2011 WL 1457707, at *2 (M.D.N.C. Apr. 15, 2011);

1 *Microstrategy, Inc. v. Bus. Objects, S.A.*, 369 F. Supp. 2d 725, 736 (E.D. Va. 2005) (“there is
2 certainly a significant public interest in maintaining the confidentiality of trade secrets and
3 preventing their misappropriation”); *Haught v. Louis Berkman, LLC*, 417 F. Supp. 2d 777,
4 787 (N.D. W. Va. 2006) (concluding that it is in the public interest to protect the state’s trade
5 secrets through an “Invention and Confidentiality Agreement”); *Uncle B’s Bakery, Inc. v.*
6 *O’Rourke*, 920 F. Supp. 1405, 1438 (N.D. Iowa 1996) (same).

7 ***

8 Because all four factors weigh heavily in favor of injunctive relief, this Court should
9 enter Nike’s proposed temporary restraining order, and issue an order to show cause why a
10 preliminary injunction, granting the following relief, should not issue:

- 11 • ***Return of Misappropriated Materials.*** Defendants’ contracts require that they return
12 to Nike all Nike confidential information, including copies and reproductions. Yet
13 they have failed to return at least one copy of a Nike-issued laptop containing
14 countless trade secrets and other Nike confidential and proprietary information. And
15 because Defendants destroyed their devices before returning them to Nike, there are
16 unknown amounts of other confidential materials in their possession. The potential
17 disclosure of these trade secret and confidential materials to a Nike competitor or to
18 the public constitutes textbook imminent and irreparable harm, and is magnified each
19 day Defendants remain in possession of the materials. This Court should therefore
20 compel Defendants to return immediately all Nike trade secrets and other confidential
21 and proprietary information.
- 22 • ***Deletion of Trade Secrets.*** Because Defendants have demonstrated their willingness
23 to conceal and hide their possession of these trade secrets and confidential materials,
24 including by emailing the materials to their personal email accounts shortly before
25 their departure from Nike and then deleting or damaging their devices to hide their
26 misdeeds, the injunction will be toothless, and fail to provide Nike with any genuine

1 relief, absent an order from this Court requiring Defendants to *prove* that they are no
2 longer in possession of Nike's trade secrets and confidential materials. The Court
3 should therefore order Defendants to make available to an independent third-party all
4 web-based email accounts and personal electronic devices on which any Nike trade
5 secrets or confidential and proprietary information resides, so that the third party can
6 perform a forensic examination and make a forensic copy to return such information
7 to Nike, and supervise the deletion of such information found on such email accounts
8 and devices.

9 • ***Non-Disclosure.*** Even *after* Defendants have returned and deleted all of the
10 confidential materials in their possession, Nike will still be at risk that they will
11 disclose strategic information learned while Defendants were at Nike in breach of the
12 non-disclosure provision in their Nike contracts. Indeed, Defendants promised to
13 bring a wealth of "information and knowledge" to Adidas, and because Defendants
14 had access to and know of Nike's most valuable information (including strategic
15 plans), following through on their promise to Adidas, or otherwise disclosing Nike's
16 confidential information, would irreparably damage Nike's ability to exclusively use
17 its trade secrets and confidential material in a competitive marketplace. This Court
18 should therefore enjoin Defendants, and all others acting in concert or participation
19 with them, from using or disclosing Nike trade secrets and other confidential and
20 proprietary information.

21 • ***Non-Compete.*** Defendants have also breached the non-compete provisions in their
22 contracts, including their ongoing consultation for Adidas and their pursuit of
23 commercializing the Moonwalker project, resulting in daily compounding irreparable
24 harm to Nike in the form of diverted and lost sales and the simple deprivation of the
25 benefit to Nike of their bargain. This Court should therefore enjoin Defendants from
26 working for, consulting with, or associating with Adidas or any other Nike

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competitor, including any work on the Brooklyn Design Studio and the Moonwalker sportswear business.

- *Non-Solicit.* Defendants’ email and text communications reveal their desire to solicit Nike employees to leave Nike and join Adidas so that they can disrupt the Nike brand, all in breach of the non-solicitation provision of their Agreements. And they have already begun to execute this plan, including by posting their allegiance to Adidas on social media for the expressed purpose of inducing Nike designers to follow their lead. This Court should therefore enjoin Defendants from soliciting, diverting, or hiring away Nike employees.

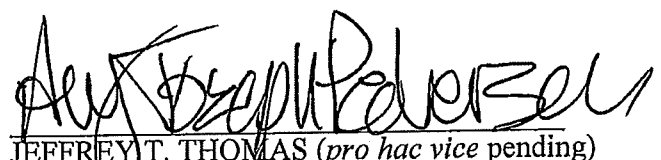
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V. CONCLUSION

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For these and all of the foregoing reasons, Nike respectfully requests that this Court grant its motion for a temporary restraining order, and issue an order to show cause as to why a preliminary injunction should not issue.

DATED: December 8, 2014.



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CERTIFICATE OF SERVICE


1
2 I hereby certify that I served the foregoing **MOTION FOR TEMPORARY**
3 **RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A**
4 **PRELIMINARY INJUNCTION SHOULD NOT ISSUE AND MEMORANDUM IN**
5 **SUPPORT** on the following named person(s) on the date indicated below by emailing
6 and/or sending to said person(s) a true copy thereof, contained in a sealed envelope,
7 addressed to said person(s) at his or her last-known address(es) indicated below:

8 **VIA EMAIL**
9 Denis Dekovic
10 dd@dkvc.net
11 mariangela.rosato@mac.com

VIA HAND DELIVERY AND EMAIL
12 Marc Dolce
13 13366 N.W. Hogan Street
14 Portland, OR 97229
15 marcdolce@yahoo.com

11 **VIA HAND DELIVERY AND EMAIL**
12 Mark Miner
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15 supsupmm@gmail.com
16 mm@mark-miner.com

15 DATED: December 8, 2014.

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