IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP, Plaintiff, v. BENJAMIN J. SWEET, THE SWEET LAW FIRM, P.C., and DEAN P. HENRY, Defendants.	CIVIL DIVISION No. GD-19-002790 Type of Pleading: **RESPONSE IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION** Filed on Behalf of Defendants: Benjamin J. Sweet and The Sweet Law Firm, P.C. Counsel of Record for Defendants Benjamin J. Sweet and The Sweet Law Firm, P.C.: William Pietragallo, II, Esq. PA ID No. 16413 Peter St. Tienne Wolff, Esq. PA ID No. 208433 Dasha Gorlov, Esq. PA ID No. 323160 PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP One Oxford Centre, 38th Floor Pittsburgh, PA 15219 412-263-2000 (Phone) 412-263-2001 (Fax)

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP,	)	CIVIL DIVISION
	)	No. GD-19-002790
Plaintiff,	)	
v.	)	
BENJAMIN J. SWEET, THE SWEET LAW FIRM, P.C., and DEAN P. HENRY,	)	
Defendants.	)	

RESPONSE IN OPPOSITION TO PLAINTIFF'S
EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

Defendants, Benjamin J. Sweet and The Sweet Law Firm, P.C. (together, "Sweet"), by and through their attorneys, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, hereby submit this Opposition to Emergency Motion for Preliminary Injunction filed by Plaintiff Carlson Lynch Sweet Kilpela & Carpenter, LLP ("Plaintiff," "Carlson Lynch," or the "Firm") on Friday, February 22, 2019 and the Declaration of Benjamin J. Sweet, and the attachments thereto, filed contemporaneously herewith.

I. INTRODUCTION

Carlson Lynch's Complaint and Emergency Motion are nothing more than a tactical ploy to attempt to gain leverage over Benjamin Sweet, a former partner who was expelled from the Firm as part of the remaining partners' plot to increase their own share of the profits expected in 2019. The Firm has attempted to transform its current and former clients' files into "trade secrets" for no reason other than to restrain Sweet and the clients who left Carlson Lynch to follow him from pursuing their work, to the detriment and disservice of the current and former clients who actually own the investigative data at issue. Carlson Lynch's behavior is a disgrace to the legal profession and in open contempt of this Court's Order dated January 28, 2019, a

copy of which is attached as Exhibit 1. This sideshow is just the latest example of their willingness to cast aside their former clients' interests now that the vast majority of clients in pending ADA cases (18 out of 18 in pending website matters and 9 out of 11 in pending parking matters) have fired Carlson Lynch and opted for Sweet to represent them.

The Firm's after-the-fact re-labeling of its clients' investigative data as trade secrets is just that: a baseless label that is contradicted by written agreements between the Firm and its clients, which specify that the Firm's investigative activities were being performed on behalf of the clients asserting the underlying claims under the Americans with Disabilities Act. The Firm has made ***no*** agreement—with its clients, its investigators, or even amongst the partners—that it would develop proprietary investigative data or that any such data should be kept confidential. For example, the Partnership Agreement that governs the Firm makes no provision for the partnership holding any intellectual property, but ***it does*** provide that withdrawing and expelled partners would be allowed to access to client files and data after the partner's departure.

Carlson Lynch's Complaint and Motion are an attempt to manufacture confusion over this issue because Carlson Lynch is actually required turn over the investigative data at issue to Sweet, as explained in Sweet's ***previously filed*** Emergency Motion to Enforce January 28, 2019 Order[1]. For one thing, this Court has already entered an order enforcing the Partnership Agreement and prohibiting Carlson Lynch from preventing Sweet from accessing the client files in Carlson Lynch's possession. Carlson Lynch's Motion is in contempt of that Order. Alternatively, Sweet's current clients have requested, and are entitled to, their own client files

[1] Continuing their efforts to manufacture confusion, Carlson Lynch filed a Response in Opposition to Plaintiff's Emergency Motion to Enforce January 28, 2019 Order containing page after page of unverified factual allegations and *ad hominem* attacks that have absolutely nothing to do with the pending dispute. These impertinent allegations – all of which are demonstrably false – highlight the lack of legal merit in Carlson Lynch's position that information developed on behalf of a client is not part of a client's file, but rather a trade secret owned by the law firm.

from Carlson Lynch. As a matter of Pennsylvania law and Carlson Lynch's professional responsibilities, these files include the investigative data at issue and must be turned over. And those same clients ***expressly*** authorized Sweet to use the investigative data in their client files – and will attest publicly to that fact – for the benefit of similarly situated and disabled clients, long before Carlson Lynch ever suggested that this data was anything other than a client file.

Thus, Carlson Lynch's Complaint and Motion fails on approach. There cannot have been any misappropriation of any proprietary data owned by Carlson Lynch because the very data at issue was not owned by Carlson Lynch but by its clients. And there cannot have been any misappropriation or unauthorized access of this information when Sweet remains entitled to access the information under the terms of the Partnership Agreement. Nor does the investigative data even bear any of the hallmarks of confidential or proprietary data; Carlson Lynch did not take any reasonable steps to prevent the data's disclosure such as requiring employees to sign a non-disclosure agreement or even labeling the documents as confidential. Even if the information could somehow be deemed a trade secret—which it is not—Carlson Lynch's unsupported allegation that Defendant Henry stole the data for Sweet's use in filing three complaints is demonstrably false. Sweet had emailed completed drafts of these complaints well before Henry left Carlson Lynch and was hired by Sweet. Those timestamped emails alone show that Henry did not provide, and Sweet did not use, any alleged trade secrets and outweigh the nonexistent "evidence" contained in Carlson Lynch's self-serving "verified" complaint. Sweet is willing to provide these time-stamped emails and attachments to this Court for *in camera* review if necessary.

When all is said and done, Sweet will prevail on the merits of Carlson Lynch's frivolous claims and seek attorney's fees under the Pennsylvania Uniform Trade Secrets Act ("PUTSA").

But for now, the task before the Court is a much simpler matter of denying the Firm's "emergency" motion for a preliminary injunction, filed with less than one business day's notice, for failing to meet its burden for obtaining a mandatory preliminary injunction because the evidence in the record shows that Carlson Lynch will not prevail on the merits of its claims.

II. FACTUAL BACKGROUND

Plaintiff Benjamin J. Sweet is a lawyer, specializing in representing plaintiffs in litigation. (*See* Declaration of Benjamin J. Sweet, attached as Exhibit 2 ("Sweet Decl.") ¶ 2.) From early 2014 until January 3, 2019, Plaintiff was a partner at Carlson Lynch. (*See id*. ¶ 3.) Plaintiff's practice includes representing clients asserting claims under the Americans with Disabilities Act ("ADA"), which involves investigating the facts underlying claims that might be asserted on behalf of those clients. (*See id*. ¶ 4.) While Plaintiff was at Carlson Lynch, the firm's client retention agreements recited the unsurprising fact that Carlson Lynch would undertake investigative work on behalf of its clients in connection with representing them in the assertion of claims under the ADA. (*See id*. ¶ 5; Exs. B, C.) Under ***Benjamin Sweet's*** direction and supervision, Carlson Lynch's investigators took pictures and measurements of parking lots that might or might not comply with the ADA. (*See id*. ¶ 4.) This factual data would be necessary for a given client to assert a claim against a business for its failure to comply with the ADA. (*See id*.) A single client might file multiple claims under the ADA against multiple different businesses who did not provide sufficiently accessible parking, so these client files commonly consisted of lists of aggregated investigative findings along with the underlying data. (*See id.* ¶ 5.)

This investigative data did not receive any specific confidential treatment at Carlson Lynch. Carlson Lynch did not require its employees to sign or agree to non-disclosure

agreements. (*See id*. at ¶ 6.) It did not provide its employees with instructions about what information was to remain confidential. (*See id*.) Nor did the Firm provide its employees with any training on how to handle confidential materials. (*See id*.) The Firm did not use "Confidential" labels on its investigative data. (*See id*.) Nor has the Firm ever demanded the return of any materials that were supposedly confidential upon an employees' termination or departure—including with respect to Defendants in this case. (*See id*. at ¶ 7.)

The present dispute began on January 3, 2019 when the other partners at Carlson Lynch voted to expel Plaintiff from the firm to avoid having to share some large attorneys' fees the firm expected to receive in 2019. (*See* Sweet Decl. ¶ 8.) Carlson Lynch was not content to simply cut Plaintiff out of the firm; they sought to impede and prevent him from taking his clients with him. First, Carlson Lynch dragged its feet in sending the client election letters that the firm was obligated to send under the Partnership Agreement within the agreed-upon time frame. (*See id*. ¶ 10.) Regardless, the vast majority of ADA clients in active litigation chose to leave Carlson Lynch and have Sweet represent them. (*See id*. ¶ 14.) Of the 18 ADA website accessibility cases pending in the Western District of Pennsylvania and the District of Massachusetts at the time of Sweet's departure, all 18 migrated with him to his new firm. (*Id*.) Of 11 pending ADA parking cases, 9 have migrated with Sweet to his new firm. The only cases that did not follow Sweet to his new firm are one where Carlson Lynch was already appointed lead counsel of the certified class in a case originated by Sweet (and therefore the client could not appoint new class counsel) and one initiated by Sweet but in which the client was directly referred to the Firm by a local Baltimore lawyer allied with Mr. Carlson. (*Id*.)

Realizing that it was badly losing the self-imposed fight[2] for clients following Sweet's expulsion, Carlson Lynch failed to follow through on their agreement and refused to send Plaintiff his emails on a daily basis. (*See id.* ¶ 12.) Carlson Lynch also refused to transfer the client files to Plaintiff even after receiving numerous requests directly from Carlson Lynch's former clients as well as requests those clients authorized Plaintiff himself to make. (*See id.* ¶¶ 6, 15, 17, 18.)

On January 15, 2019, Benjamin J. Sweet was forced to file a verified Complaint in Equity seeking, *inter alia*, injunctive relief as a result of Carlson Lynch's refusal to turn over the client files for clients who had chosen to leave Carlson Lynch and retain Sweet instead. On January 28, 2019, this Court entered an Order of Court, enjoining Carlson Lynch from, *inter alia*, "preventing Sweet from accessing his emails, calendar, ECF login information, and case files." *See* Exhibit 1, Order of Court dated January 28, 2019, Case No. GD-19-674 (the "Order"). Pursuant to the Order, Carlson Lynch was "enjoined from preventing Sweet from accessing his emails, calendar, ECF Login Information, and case files." *Id.* at ¶ a.

Despite Sweet's clients' longstanding requests for their files, the January 28, 2019 Order, and numerous letters arguing over the issue, Carlson Lynch has steadfastly refused to turn over these clients' files. (*See* Exhibit 2, Sweet Decl. ¶ 18, Ex. I.) Not only has Carlson Lynch declined to turn over the materials it is belatedly considering "trade secrets," it is has refused to turn over correspondence with opposing counsel and the pleadings in each client's file. (*Id.* ¶ 15)

Because Sweet owed his clients the professional responsibility of prosecuting their

[2] It bears noting that even after his unexplained and unwarranted expulsion from the Firm, Sweet offered to work with Carlson Lynch on existing matters for the benefit of the clients at issue. Only after Carlson Lynch refused to enter into a co-counseling arrangement was Sweet forced to take action to protect his clients' interests. The mass migration of clients from Carlson Lynch to The Sweet Law Firm over just a few weeks speaks for itself.

claims, Sweet accessed what little of his clients' files he possessed following his departure from the Firm, and prepared new suits alleging ADA claims. *See Michael G. Murphy v. United States Beef Corporation d/b/a Arby's and Taco Bueno*, Case No. 19-cv-471 (D. Colo.); *Michael G. Murphy v. The Kroger Co.*, Case No. 19-cv-472 (D. Colo.); *Michael G. Murphy v. Western Alta Holdings, LP, Co. d/b/a Alta Convenience/Pester Marketing*, Case No. 19-cv-498 (D. Colo.) (collectively, the "ADA Complaints"). None of the data used to prepare these claims was stolen from Carlson Lynch by Henry or turned over to Sweet. (*See* Sweet Decl. ¶ 20.) Instead, Sweet was authorized by his clients (former clients of Carlson Lynch) to use their client file data on behalf of other, similarly situated clients who could better assert those claims. (*Id*. ¶ 21.) That underlying data was work product that Benjamin Sweet generated while at Carlson Lynch and which remains accessible to him under this Court's Order and the Partnership Agreement, and must remain accessible to Carlson Lynch's former clients that have retained Sweet as a matter of basic professional responsibility.

III. ARGUMENT

Carlson Lynch's Complaint and Motion present baseless and uninvestigated claims to this Court in service of their overreaching request for a sweeping injunction against their former partner and now competitor (whom the Firm's clients have flocked to in droves). Because the requested injunction fails to satisfy its burden of showing that it has met the six essential prerequisites set forth in *Warehime v. Warehime*, the motion must be denied. *See* 860 A.2d 41, 46 n.7 (Pa. 2004) (requiring that a litigant establish that "1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; 2) that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties

in the proceedings; 3) that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; 4) that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits; 5) that the injunction it seeks is reasonably suited to abate the offending activity; and, 6) that a preliminary injunction will not adversely affect the public interest.").

1. Carlson Lynch's Claims Will Fail On The Merits

First and foremost, Carlson Lynch is not entitled to a preliminary injunction because it has not shown that it is likely to prevail on the merits of its claims. To succeed on a claim for misappropriation of trade secrets under Pennsylvania law, a plaintiff must establish "(1) the existence of a trade secret (2) which was communicated in confidence to the defendant and (3) was used by the defendant in breach of that confidence (4) to the detriment of the plaintiff." *See Camelot Technology, Inc. v. RadioShack Corp.*, 2003 WL 403125, at *5 (E.D. Pa. Feb. 13, 2003). Here, there is no trade secret. Nor did Carlson Lynch require confidentiality with respect to this data. Carlson Lynch did not even *own* the data.

At bottom, Carlson Lynch cannot own or control the investigative data at issue because that data belongs, at least in part, to Sweet's current clients as part of their client files. Once the vast majority of these clients in active ADA litigation decided to follow Mr. Sweet following his expulsion and fired Carlson Lynch, the Firm was obligated to transfer all client files to Mr. Sweet for his continued representation of the clients. These obligations are imposed by (1) the January 28, 2019 order of this Court prohibiting Carlson Lynch from preventing Mr. Sweet from accessing his former case files; (2) Carlson Lynch's professional obligations to its former clients; and (3) the explicit terms of the Partnership Agreement with Mr. Sweet that require that expelled

partners may continue to access their former case and client files.

As a result, Carlson Lynch cannot assert exclusive ownership of any trade secret, nor can it establish that Sweet improperly accessed any such information. Indeed, in cases where a defendant obtains purportedly trade secret information through proper means, there can be no claim for either trade secret misappropriation or improper procurement. *See WellSpan Health v. Bayliss*, 869 A.2d 990, 997 (Pa. Super. 2005) ("if a competitor could obtain the information by legitimate means, it will not be given injunctive protection as a trade secret"); *see also Iron Age Corp. v. Dvorak*, 880 A.2d 657, 664 (Pa. Super. 2005) (holding that where "compiled information is available to competitors through legitimate means [it] cannot be declared a trade secret"); *Source Healthcare Analytics, Inc. v. SDI Health LLC*, No. 2290 FEB.TERM 2011, 2014 WL 8864942, at *17-18 (Pa. Com. Pl. Jan. 14, 2014) (dismissing trade secret misappropriation and improper procurement claims when plaintiffs' information was lawfully given to defendant).

a. The Investigative Files At Issue Are Work Product That Carlson Lynch's Current And Former Clients Are Entitled To Receive

Here, each of Carlson Lynch's current and former ADA clients (i.e., clients who would have standing to assert claims under the ADA) signed a retainer agreement with Carlson Lynch. Each retainer agreement specifically recited that the Firm would undertake a factual investigation on behalf of each of the client in connection with the client's ADA claims. (*See* Sweet Decl. ¶¶ 4, 5, Exs. B, C.) This investigative data consists of documents, photographs, and other factual evidence that support the clients' eventual assertion of claims under the ADA regarding parking lot accessibility against non-compliant businesses. (*See id*. ¶ 5.) It would likewise consist of any documents or materials that would assist in managing or prosecuting those ADA claims. *See* PA Eth. Op. 2007-100 (Pa. Bar. Assn. Comm. Leg. Eth. Prof. Resp.), 2007 WL 1170779, at *4 ("A

client is entitled to receive all materials in the lawyer's possession that relate to the representation and that have potential utility to the client and the protection of the client's interests."). Thus, this investigative data was collected and compiled on behalf of Carlson Lynch's clients, and not on behalf of Carlson Lynch itself.

Indeed, as a matter of basic professional ethics, Carlson Lynch's current and former clients are entitled to demand that Carlson Lynch turn over such files as part of their client file. Pennsylvania's legal ethics require an attorney to provide to a former client its entire client file upon demand, including any materials that might be useful to protect that client's interests. *See* PA Eth. Op. 2007-100 (Pa. Bar. Assn. Comm. Leg. Eth. Prof. Resp.), 2007 WL 1170779, at *4 ("A client is entitled to receive all materials in the lawyer's possession that relate to the representation and that have potential utility to the client and the protection of the client's interests."). As a result, these client files cannot obtain trade secret status, nor can Carlson Lynch prevent Sweet from accessing his own clients' files.

Consequently, Sweet's clients are and were entitled to receive access to the investigative data Carlson Lynch now claims is a trade secret. Because Sweet was authorized by those clients to receive the investigative data, these data are not eligible for trade secret protection (as Carlson Lynch has no ability to enforce confidentiality obligations on those clients). *See Tyson Metal Prod., Inc. v. McCann*, 546 A.2d 119, 122 (Pa. Super. 1988) (price lists were ineligible for trade secret status where they were "known to the supplier, who has every right to disclose this information, if it so chooses, to inquiring competitors of the plaintiff").

There is a reason that Carlson Lynch has not cited a single case involving a claim brought by a law firm against a former partner, and that is that law firms do not generate investigative data as intellectual property that they can own in their own right; instead, the data is generated on

behalf of and at the behest of a client with specific needs. Those clients control the ownership of that data, not the law firm, meaning that the law firm cannot exercise the kind of control and secrecy over the information necessary to establish trade secret status.

Moreover, the investigative data at issue here could be easily recreated through legitimate means, precluding any assertion that it is entitled to trade secret protection. Carlson Lynch is not contending—and cannot contend—that the data contained in the observations of any investigators with respect to any particular parking lot are a secret; they are facts that are readily observable by passersby. Nor is it contending that any compilation of potential investigative targets is protected. Thus, the data contained within the compilation is simply a list of publicly discernable facts, exactly the kind of data at issue in *Iron Age*, which was not entitled to trade secret protection. *See Iron Age*, 880 A.2d at 665-66 ("information will not be given injunctive protection as a trade secret if it can be obtained through legitimate means by a competitor").

b. The Investigative Data Was Never Meant To Remain A Secret In Carlson Lynch's Possession

At no point did Firm management ever declare that the investigative information at issue was confidential, a trade secret, or proprietary information. The Partnership Agreement provides for the Firm's ownership of real and personal property, but not intellectual property. (*See* Sweet Decl. Ex. A § 1.05.) The Partnership Agreement imposes no other obligations of confidentiality on a partner or investigator. Nor do the complaint and moving papers identify any other obligation of confidentiality with respect to the investigative data. No non-disclosure agreements, no trainings, no labels, no nothing. As a result, Carlson Lynch has not established that the information was subject to reasonable efforts to keep the information secret, as required under PUTSA. *See* 12 Pa.C.S.A. § 5302; *see also Source Healthcare*, 2014 WL 8864942, at

*17.

If anything, the Firm provided that such investigative materials would be presumptively *accessible* to Sweet once he left the Firm. Article 7.05(a) of the Partnership Agreement provides:

> ***All files, documents, and records of the withdrawing/expelled Partner's clients shall, unless otherwise directed by the client***, remain in the possession of the Partnership, but such former Partner ***shall have access to such files, documents, and records in existence*** at the Partner's departure date, for purposes of inspection and/or copying at any time during business hours . . .

(Sweet Decl. Ex. A § 7.05(a).) Likewise, the Court's January 28, 2019 Order acknowledges the simple fact that Sweet is contractually entitled (and ethically obligated) to continue to access his files, including the investigative data at issue, in order to continue to serve his clients.

Thus, Carlson Lynch cannot meet its burden of showing that it had a confidential relationship sufficient to impose a duty of confidentiality on Sweet or anyone else with respect to this investigative data. Again, because Sweet is entitled to lawfully access the investigative data, Carlson Lynch's claims will fail on the merits and do not support an injunction. *See Iron Age*, 880 A.2d at 665-66.

c. Carlson Lynch's Contention That Henry Disclosed Any Data To Sweet Is False

The only evidence Carlson Lynch offers that its purported trade secret has been misappropriated by Defendant Henry is a bare allegation that Henry stole the spreadsheet to give to Sweet so that he could draft the ADA Complaints. (*See* Complaint ¶ 29.) However, that theory is belied entirely by the fact that Sweet sent copies of the draft ADA Complaints to clients and colleagues well before Henry resigned from Carlson Lynch and joined the Sweet Law Firm. (*See* Sweet Decl. ¶ 20.) Without any evidence that Defendants actually used the purportedly

trade secret information, Plaintiff has failed to meet its burden of demonstrating a clear right to relief on the merits, and the preliminary injunction must be denied.

2. Carlson Lynch's Proposed Injunction Would Substantially Harm The Third-Party Clients Who Need The Investigative Data To Prosecute Their Own Claims

Carlson Lynch cannot obtain the requested injunction, as a refusal to provide Sweet with his clients' investigative data would impair his litigation of those clients' currently pending claims and further impede him from advancing their interests in yet-unfiled actions. The damage to these clients, most of whom are blind or live with mobility disabilities, would be far greater than any purported injury Carlson Lynch contends it would suffer, especially given that Carlson Lynch has no legitimate interest in depriving these clients of the data to which they are entitled. This isn't a matter of Sweet "directly compet[ing] with Carlson Lynch in its ADA legal practice" (Plaintiff's Mem. at 10), which is itself borderline incoherent given that ADA cases require clients to assert claims, while nebulous investigative information cannot create independent value. This is a matter of representing actual clients with actual needs.[3] Thus, the interests of these innocent third parties weigh heavily against the Court granting the requested injunction.

3. Carlson Lynch's Proposed Injunction Is Far Broader Than Necessary

Illustrating the Firm's true intentions in bringing this complaint and emergency motion, Carlson Lynch has asked for an injunction that would nebulously restrain Defendants "from using Plaintiff Carlson Lynch's trade secret information, and must return or destroy any copies of that information" without any further specificity as to what "trade secret information" even means in this context. (*See* Proposed Order.) At a bare minimum, Carlson Lynch should be

[3] To be clear, Sweet is not requesting that Carlson Lynch destroy any copies of the investigative data such that Carlson Lynch would experience any detriment to its own ability to practice law or represent clients.

required to specify what exactly it contends is within the scope of the "trade secret information," especially given the problematic overlap between that and the information that belongs to its current and former clients.

Next, Carlson Lynch asks for the Court to order Defendants to "escrow all fees or income derived from the [ADA Cases], until appropriate royalties or damages to Plaintiff for the misappropriation of Plaintiff's trade secrets are determined." (*Id.*) At no point has Carlson Lynch even argued why the drastic relief is necessary or appropriate to remedy any harm. There is no suggestion that Sweet is insolvent or that he might be unable to pay a judgment should Carlson Lynch obtain one in due course. As a result, Carlson Lynch cannot overcome the presumption that damages may be remedied with a money judgment. *See Heilman v. Union Canal Co.*, 37 Pa. 100, 103 (1860) (to justify injunctive relief, "[t]here must be the absence of an adequate remedy at law").

IV. CONCLUSION

For the foregoing reasons, Defendants Benjamin J. Sweet and the Sweet Law Firm, P.C. respectfully request that the Court deny Plaintiff Carlson Lynch's Emergency Motion for Preliminary Injunction.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

Date: February 26, 2019

By: */s/ William Pietragallo, II*
William Pietragallo, II, Esquire
PA ID No 16413
Peter St. Tienne Wolff, Esquire
PA ID No 208433
Dasha Gorlov, Esquire.
PA ID No. 323160

One Oxford Centre - 38th Floor
301 Grant Street
Pittsburgh, PA 15219
Counsel for Plaintiff

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:	William Pietragallo, II
Signature:	*/s/ William Pietragallo, II*
Name	William Pietragallo, II
Attorney No:	16413

EXHIBIT 1

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BENJAMIN J. SWEET,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No. GD-19- 674
	)	
v.	)	
	)	
CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP.	)	
	)	
Defendant.	)	

ORDER OF COURT

AND NOW, this 28th day of January, 2019, upon consideration of Plaintiff Benjamin J. Sweet's Amended Motion for Preliminary Injunction and the evidence presented, it is hereby ORDERED, ADJUDGED and DECREED that the Motion is GRANTED. It is further ORDERED that

a. Defendant Carlson Lynch Sweet Kilpela & Carpenter, LLP ("Carlson Lynch") is enjoined from preventing Sweet from accessing his emails, calendar, ECF Login Information, and case files.

b. Defendant Carlson Lynch is enjoined from failing to send client election letters

c. By 4:00 p.m. on Friday, January 18, 2019, Defendant Carlson Lynch shall:

   i. Send client election letters to all clients identified on the spreadsheet provided to Jeffrey Ward (counsel for Carlson Lynch), by Peter St. Tienne Wolff (counsel for Sweet) on Thursday, January 17, 2019, with a cc of the letters to Sweet at ben@sweetlaw.com;

   ii. Provide Sweet, through his counsel, with all of his log-in information in his possession for attorney accounts with courts throughout the United States, including all CM/ECF Login Information;

   iii. Provide Sweet, through his counsel, with a printout of his calendar for the 12 month period beginning January 2019 (i.e. January 2019-January 2020);

iv. Cause all emails sent to Sweet at Carlson Lynch to be immediately forwarded to him at ben@sweetlawpc.com, and cause that to occur for the next thirty (30) days.

d. If Defendant Carlson Lynch fails to comply with its obligations under paragraph c of this Order, it shall pay Sweet $10,000 per hour until it has complied with the provisions of paragraph a.

BY THE COURT

J.

Counsel for Carlson Lynch promised good faith prompt compliance with relief requested dismissing the case without prejudice to be represented if not complied

Zoom-In Zoom-Out

Case Details - GD-19-000674

Sweet vs Carson Lynch Sweet Kilpela & Carpenters L

Filing Date:
01/15/2019

Filing Time:
14:10:00

Related Cases:

Consolidated Cases:

Judge:
McVay Jr. John T

Amount In Dispute:
$ 0

Case Type:
Equity

Court Type:
General Docket

Current Status:
Emergency Motion

Jury Requested:
No

− Parties Count : 5

--Litigants--

Search

LName	FName	MI	Type	Address	Initial Service Completion	Attorney
Sweet	Benjamin	J.	Plaintiff	186 Mohawk Drive Pittsburgh PA 15228	--	William Pietragallo II
Carson Lynch Sweet Kilpela & Carpenters LLP			Defendant	36 North Jefferson Street New Castle PA 16101	--	--

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--Attorney--

Search

LName	FName	MI	Type	Address	Phone
Pietragallo II	William		Plaintiff's Attorney	38th Floor One Oxford Centre Pittsburgh PA 15219	4122632000

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--Non Litigants--

Search

LName	FName	MI	Type	Address	Phone
Ignelzi	Philip	A	Judge		
McVay Jr.	John	T	Judge		

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− Docket Entries Count : 7

Search

Filing Date	Docket Type	Docket Text	Filing Party	Redacted Document
2/25/2019	Emergency Motion	EMERGENCY MOTION TO ENFORCE JANUARY 28, 2019 ORDER	Benjamin Sweet J.	Document 7

Filing Date	Docket Type	Docket Text	Filing Party	Redacted Document
2/25/2019	Exhibits		Benjamin Sweet J.	Not Viewable from the Internet
2/19/2019	Order of Court	Dated 02/19/19. The partnership agreement attached as Exhibit 1 to the complaint shall be placed under seal and shall not be publicly reported or otherwise published. Ignelzi J See Order for Specifics Copies Sent	Philip Ignelzi A	Document 5
2/19/2019	Consent	Motion to seal partnership agreement	Carson Lynch Sweet Kilpela & Carpenters LLP	Document 4
1/30/2019	Order of Court	Dated 01/28/19. Plaintiff's Amended Motion for Preliminary Injunction is granted. McVay J. See Order for specifics. Copies sent.	John McVay Jr. T	Document 3
1/29/2019	Amended	Motion for preliminary injunction	Benjamin Sweet J.	Document 2
1/15/2019	Complaint	Returnable 2/13/19.	Benjamin Sweet J.	Document 1

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− Event Schedule Count : 0

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No matching records found

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EXHIBIT 2

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP,	)	CIVIL DIVISION
	)	
	)	No. GD-19-002790
Plaintiff,	)	
	)	
v.	)	
	)	
BENJAMIN J. SWEET, THE SWEET LAW FIRM, P.C., and DEAN P. HENRY,	)	
	)	
	)	
Defendants.	)	

DECLARATION OF BENJAMIN J. SWEET IN OPPOSITION TO CARLSON LYNCH'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

I, Benjamin J. Sweet, declare as follows:

1. I am a party in the above-entitled action. I have firsthand, personal knowledge of the facts set forth below and if called as a witness could competently testify thereto.

2. I am an attorney and have been practicing law since 2001. I specialize in plaintiff-side litigation, especially with regard to claims arising under the Americans with Disabilities Act ("ADA").

3. In April 2014, R. Bruce Carlson ("Carlson"), Gary F. Lynch ("Lynch"), Edwin J. Kilpela, Jr. ("Kilpela"), and I agreed to form a partnership then called Carlson Lynch Sweet & Kilpela LLP ("Carlson Lynch" or the "Firm"). In January of 2016, Todd D. Carpenter ("Carpenter") joined the Firm, and the name was changed to Carlson Lynch Sweet Kilpela &

Carpenter LLP. A true and correct copy of the Partnership Agreement dated January 1, 2016 is attached hereto as Exhibit A.[1]

Carlson Lynch Performs Factual Investigations On Behalf Of Its Clients And Not For Itself

4. For years, I solely directed and supervised the ADA parking practice area within Carlson Lynch, including all investigations related to those claims. Both investigators who investigated potential parking claims reported directly to me. In order to properly represent clients asserting ADA claims, a certain amount of factual investigation is required to satisfy one's professional obligations. For example, in connection with claims regarding the accessibility of parking under the ADA, such an investigation might include having an investigator go to the site of a parking lot that might or might not comply with the ADA's requirements, take pictures and measurements of the parking lot, and fill out a questionnaire with other factual data that might bear on the question of whether the parking lot is sufficiently accessible under the ADA.

5. While I was a partner at Carlson Lynch, the Firm's regular practice was to perform such ADA investigations on behalf of the clients who might assert such claims. ***In fact, Carlson Lynch's standard ADA client retention agreement – which I drafted myself – specifies that the Firm would undertake to perform a factual investigation on behalf of the client.*** The terms of the scope of the investigations were kept broad because often one client would have claims against multiple defendants. True and correct copies of two examples of these retention agreements are attached hereto as Exhibits B and C.

6. Carlson Lynch has apparently taken the position that my client's investigative files are the trade secrets of the Firm, despite the fact that at no point did Carlson Lynch ever

[1] This Exhibit is filed under seal pursuant to the Court's February 18, 2019 Order.

inform its clients that the investigative work performed in connection with ADA claims might be the property of the Firm, nor did Carlson Lynch request that either its clients or its investigators keep those investigations confidential. Carlson Lynch did not require its employees to sign or agree to non-disclosure agreements. Nor did it provide its employees with instructions that any particular category of information was to remain confidential apart from our ordinary professional obligations. Nor did the Firm provide its employees with any training apart from basic legal education on the handling of the Firm's investigative materials or even confidential materials. Nor did the Firm have a practice of using "Confidential" labels on its investigative data.

7. Apart from the papers filed in the above-captioned litigation, to date, the Firm has never requested that any departing employee return any supposedly confidential papers or materials upon that employee's termination or departure, including with respect to me and Dean Henry, the investigator I recently hired from Carlson Lynch.

The Other Partners At Carlson Lynch Expel Me From The Firm, And Impede Clients Who Elected To Have Me Represent Them

8. In late 2018, Carlson and Carpenter each approached me and demanded that I vote to deprive Kilpela of his equity in the partnership, which required a unanimous vote under the terms of the Partnership Agreement. I rejected those proposals, and explained that no partner's equity should be reduced without an opportunity to improve his performance. I immediately took Kilpela to lunch to alert him that such an effort was being directed at him.

9. On January 3, 2019, the other partners of the Firm voted to expel me from the Firm. On the same day, Carpenter and Kilpela admitted to me that they acted out of a

combination of duress (imposed by Carlson and Lynch) and the strong financial incentives to increase their share of significant receivables the Firm was expecting to receive in 2019.

10. Under the Partnership Agreement, within thirty (30) days of my departure, the Firm was obligated to send letters to each of the clients of Carlson Lynch for whom I had been the originating, responsible, or billing attorney to notify them of my departure and to invite them to elect to either keep their representation handled by Carlson Lynch or to allow me to continue their representation. *See* Exhibit A § 7.04.

11. My attorneys negotiated an agreement as to the form of the client election letter required under the Partnership Agreement with the attorney for Carlson Lynch on January 11, 2019. However, Carlson Lynch failed to actually send all of the letters to each of my clients for several days thereafter.

12. Carlson Lynch was also obligated to allow me to continue to access my emails and other client records under the Partnership Agreement. *See* Exhibit A § 7.05. Carlson Lynch agreed to provide those emails and client records on January 11, 2019. However, Carlson Lynch failed to deliver the agreed-upon emails and client files for several days thereafter.

13. In order to have the Firm follow through on its agreement with my attorneys, I was forced to seek preliminary injunctive relief in this Court in the above-captioned case on January 15, 2019. The Court granted the motion and entered the proposed order on January 28, 2019. *See* Order of Court dated January 28, 2019. Among other things, that Order required Carlson Lynch to provide me with access to correspondence sent to or on behalf of the clients who had elected to have me continue to represent them or the investigative case files relevant for my continued representation of those clients.

14. Many of my former clients elected to have me continue to represent them, including the vast majority of clients asserting ADA claims in active litigation, and asked that I handle the transition from Carlson Lynch to my new firm, The Sweet Law Firm, P.C. Of the 18 ADA website accessibility cases pending in the Western District of Pennsylvania and the District of Massachusetts at the time of my expulsion, all 18 chose to have me continue to represent them at the Sweet Law Firm. Of 11 pending ADA parking cases, nine migrated with me (cases against defendants Urban Edge, Bridgestone Tire, Speedway, Advance Auto, U-Haul, Aldi, Casey's, Tanger Outlets, and Steak 'n Shake (co-lead with Carlson Lynch)). For example, Tom Brown, Rachel Gniewkowski, Stephen Theberge, and Antoinette Suchenko elected to terminate Carlson Lynch's representation of them, and instead opted to have me represent them. True and correct copies of an email sent by John Bosco (co-counsel to both Carlson Lynch and myself depending on the case or client) regarding the election made by Tom Brown, Rachel Gniewkowski, Stephen Theberge, and Antoinette Suchenko is attached hereto as Exhibit D. The only cases that did not follow me are AutoZone (a case I originated but where Carlson Lynch was already appointed lead counsel of the certified class) and Texas Roadhouse, a case I filed while at Carlson Lynch but on behalf of a client referred to me by a local Baltimore attorney allied with Bruce Carlson.

15. To date, Carlson Lynch still has not provided me with complete records of the client files for each of the clients who has elected to have me continue to represent them. For example, I am aware that Carlson Lynch had not provided me with all copies of correspondence with opposing counsel purportedly sent on behalf of clients who elected to have me continue to represent them because Carlson Lynch's referring counsel/co-counsel sent me copies of some of that correspondence. In addition, some of the defense counsel who had received correspondence

from Carlson Lynch contacted me to inquire whether I was continuing to handle the matter or whether Carlson Lynch was taking over. Because Carlson Lynch failed to provide me with all of the extant correspondence, I was unable to respond to opposing counsel in an informed fashion.

16. Some of the undisclosed correspondence is particularly alarming. Specifically, on January 31, 2019, Carlson Lynch purported to send demand letters to several businesses who may be in violation of the ADA. However, Carlson Lynch did so on behalf of clients ***who had already elected to terminate their relationship with Carlson Lynch and to have me represent them instead.*** Even more egregious was the fact that ***Carlson Lynch sent the demand letters under my name, identified me as a partner who was still at Carlson Lynch, and forged my signature or used a digital signature without my authorization on this correspondence***, despite the fact that the Firm had expelled me four weeks earlier. I am informed that Carlson Lynch did this in ***twenty-five (25) separate demand letters*** on the same day. True and correct copies of examples of these demand letters are attached hereto as Exhibits E, F, G, and H.

17. In addition, contrary to the terms of this Court's Order, Carlson Lynch has failed to turn over the pleadings for the cases I am currently handling on behalf of clients who elected to leave Carlson Lynch.

18. Finally, despite my repeated demands and the efforts of my counsel, Carlson Lynch has refused to provide me with any of the investigative data needed to represent my current clients who are asserting ADA claims relevant to parking lot accessibility. A true and correct of a letter from Carlson Lynch's attorney dated February 13, 2019 is attached hereto as Exhibit I.

Carlson Lynch's Trade Secret Misappropriation Claims Are Cynical Fabrications

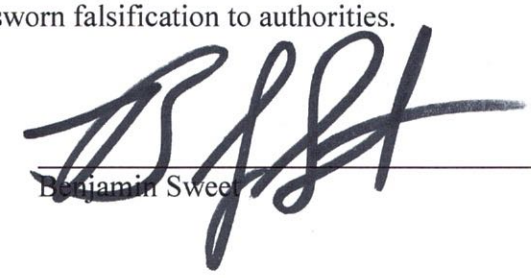
19. On February 22, 2019, Carlson Lynch filed a Complaint and Emergency Motion for Preliminary Injunction against me, the Sweet Law Firm, P.C., and Dean Henry. It posits that we are liable for trade secret misappropriation because Henry allegedly stole documents from Carlson Lynch and provided them to me so that I could draft ADA complaints. That assertion is untrue, and demonstrably so.

20. For each of the cases identified by Carlson Lynch, I have possession of time-stamped emails wherein I transmitted a draft of the relevant complaint, which contained the very data Carlson Lynch contends was stolen, ***prior to Henry's departure from Carlson Lynch*** and before I hired him to work for the Sweet Law Firm, P.C. I can state categorically that Henry did not provide me or the Sweet Law Firm with any data of any kind. I would be willing to allow the Court to conduct an *in camera* inspection of these emails, given the obviously privileged nature of the communications and draft contents, provided that no privileges are waived.

21. Moreover, before Carlson Lynch informed me of its theory that the investigative data was trade secrets, I was expressly authorized by my clients (former clients of Carlson Lynch) many of whom are accessibility activists committed to broadening access for people throughout the country, to both seek any and all investigative data Carlson Lynch may have retained and not provided to me and, further, to use that data for the benefit of whatever additional clients could make use of their investigative information. At least two current clients of mine (and former clients of Carlson Lynch) have informed me that they are willing to testify under oath to that effect.

Executed this 25th day of February 2019, at Pittsburgh, Pennsylvania.

I certify that the statements of fact set forth above are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S.A. 4904 relating to unsworn falsification to authorities.



Benjamin Sweet

EXHIBIT A

(FILED UNDER SEAL)

EXHIBIT B

CARLSON
LYNCH
SWEET
KILPELA
CARPENTER

CARLSON
LYNCH

February 28, 2018

VIA EMAIL

R. David New
President
Access Now, Inc.
1616 Michigan Avenue Unit 1
Miami Beach, FL 33139

Dear David:

This letter serves as confirmation of my representation of Access Now, Inc. and its members in existing and future claims against various entities in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA") and other applicable statutes. Access Now has retained me and my firm to investigate, on behalf of your members, all public accommodations for access and entry barriers.

It is our understanding that Access Now is an advocacy organization that uses litigation to enforce laws that protect the rights of individuals with disabilities. Our representation is intended to further this mission.

Counsel and Access Now have previously agreed to this representation on a contingent basis. This means we will advance, on Access Now's behalf, all out-of-pocket costs and expenses associated with the litigation and investigation of your claims and the claims of your members. Our right to reimbursement of these costs and expenses will also be contingent, meaning that we will be reimbursed for these costs and expenses out of the ultimate recovery, only. Access Now will not have any responsibility for the payment of fees or expenses except to the extent of the reimbursement provided above.

Access Now agrees to promptly return all phone calls and respond to all correspondence. Access Now will advise us of any changes of its situation, such as change in membership of the board or leadership positions. Access Now additionally agrees to update Counsel on an annual basis of any changes to its membership lists, including members who have joined or left the organization and the contact information for said members.

At our expense, we may employ another attorney, or attorneys, in such place or places as may appear desirable to assist us in our work.

If this letter accurately summarizes our agreement, please sign below and return it to me.

Very truly yours,

CARLSON LYNCH SWEET KILPELA & CARPENTER LLP

By: _____
Benjamin J. Sweet

ACKNOWLEDGED AND ACCEPTED:

_____
Access Now, Inc. by President R. David New

Date: 2-28-18

EXHIBIT C

1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
412.322.9243 (p)
412.231.0246 (f)

July 15, 2016

Sent via email

Josie Badger

Dear Ms. Badger:

This letter serves as confirmation of our representation of you in your claims against various entities in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. You have retained the law firm of Carlson Lynch Sweet Kilpela & Carpenter LLP to investigate, on your behalf, all public accommodations for architectural barriers.

Counsel are prepared to undertake the representation of this matter on a contingent basis. Because the matter is being pursued as a class action, and we fully expect that the Court will ultimately treat it as such, our compensation will be set by the court from the proceeds of any recovery, whether by settlement or judgment. We always attempt to negotiate our counsel fee amount separate from, and in addition to, any amount awarded to or negotiated for the benefit of the class. We will advance all costs and expenses associated with the litigation and our right to reimbursement of these costs and expenses will also be contingent, and we shall receive such reimbursements as permitted by the Court out of the ultimate recovery. You will not have any responsibility from fees or expenses, except to the extent that your *pro rata* share of any court-approved award of attorneys' fees and costs out of the total class recovery.

We agree to indemnify and hold you harmless for any costs or fees that may be incurred by you that arise out of your involvement as a named plaintiff in the above-referenced litigation.

As you know, as a representative of the class, you and your lawyers have obligations to protect the interests of the entire class. You and counsel must act in the best interests of the entire class. Once the suit has been commenced, you are not free to settle or dismiss the action for your own exclusive benefit. You must be treated the same as any other class member although the possibility exists that the Court would exercise its discretion to award you an incentive payment out of any proceeds for helping to bring about a favorable result for the class.

If this letter accurately summarizes our agreement, please sign below and return it to me.

Very truly yours,

CARLSON LYNCH SWEET KILPELA
& CARPENTER LLP

By:

Benjamin J. Sweet

ACKNOWLEDGED AND ACCEPTED:

Josie Badger

Date: 7-18-16

EXHIBIT D

From: John Bosco <jbosco@leoncosgrove.com>
Sent: Friday, January 25, 2019 9:12 AM
To: ekilpela@carlsonlynch.com; bcarlson@carlsonlynch.com
Subject: ADA Clients

Ed & Bruce:

This email is to confirm that the following clients have confirmed that they want to be represented by The Sweet Law Firm on all pending matters (lawsuits and demands). Each of these individuals no longer wish to be represented by Carlson Lynch for any matters:

- Tommy Brown
- Rachael Gniewkowski
- Stephen Theberge
- Daniel Mellenthin
- Access Now, Inc.
- R. David New
- Antoinette Suchenko

Do not contact any of these individuals directly and do not make any representations on their behalf, including to any opposing counsel or Court. Please withdraw your appearances in all matters where these individuals are serving as plaintiffs. In addition, please provide Leon Cosgrove and The Sweet Law Firm all correspondence concerning these individuals', including all demand letters, any correspondence with defense counsel and any other documentation. I will provide a Secure File Transfer link for the documents to be transferred. Any future communications you receive regarding these individuals should be forwarded to my attention.

At this point, other clients have elected to be jointly represented by both Carlson Lynch and the Sweet Law Firm while others have not made an election. I will keep you updated with additional information regarding elections and ask that you continue to update me also.

Thank you,
John

John D. Bosco
León Cosgrove, LLP
8117 Preston Road – Suite 300
Dallas, TX 75225
O 305.740.1985 | M 214.578.3529
jbosco@leoncosgrove.com

255 Alhambra Circle – 800
Coral Gables, FL 33134
Assistant Krystal Vasquez
kvasquez@leoncosgrove.com

EXHIBIT E

CARLSON LYNCH SWEET KILPELA CARPENTER | CARLSON LYNCH

January 31, 2019

SENT VIA FEDERAL EXPRESS

Alicia Werle, CEO
Wee Blessing, LLC.
1049 US HWY 27
Cataula, GA 31804

Re: www.weeblessing.com ADA Compliance; Notice of Preservation Obligation

Dear Ms. Werle,

This letter is sent on behalf of Rachel Gniewkowski, Stephen Théberge, and other visually impaired individuals throughout the United States who use screen-reader technology and who have been unable to fully and equally access your website.[1]

Your website violates several statutes that prohibit disability discrimination and unfair and deceptive business practices, including, *inter alia*, the Americans with Disabilities Act ("ADA"), the Pennsylvania Human Relations Act ("PHRA"), the Massachusetts Public Accommodations Act ("MPAA"), and the Massachusetts Consumer Protection Law.

There are approximately seven million Americans living with a visual disability. Like many other visually impaired individuals, our clients rely on screen-reader software to convert website text to audio. "Screen-reader software provides the primary method by which a blind person may independently use the Internet and without these programs, blind and visually impaired individuals cannot access the Internet." *Access Now, Inc. v. Otter Products, LLC*, 2017 WL 6003051, at *1 (D. Mass. Dec. 4, 2017).

There is no dispute that your website is a public accommodation pursuant to the ADA. *See* Title III of the ADA, 42 U.S.C. § 12181(7). There is also no doubt the ADA requires public accommodations to make their websites compatible with screen-reader software. "In a society in

[1] Access Now, Inc. is a non-profit organization that "provides advocacy services on behalf of blind individuals" throughout the United States. *See, e.g., Gniewkowski v. Lettuce Entertain You Enterprises, Inc.*, 251 F. Supp. 3d 908, 913 (W.D. Pa. 2017). Ms.Gniewkowski, Mr. Theberge are visually impaired individuals who attempted to use your website using screen-reader technology and were unable to do so; they reside in Pittsburgh, Pennsylvania and Attleboro, Massachusetts, respectively.

which business is increasingly conducted online, excluding businesses that sell services through the Internet from the ADA would run afoul of the purposes of the ADA in that it would prevent individuals with disabilities from fully enjoying the goods, services, privileges and advantages, available indiscriminately to other members of the general public." *See Access Now, Inc. v. Blue Apron, LLC*, 2017 WL 5186354, at *3 (D.N.H. Nov. 8, 2017).[2]

Your website contains significant failures that block visually impaired individuals (including our clients) who use screen-reader software from accessing its online content. These failures include, but are not limited to:

1. The website does not provide a text equivalent for non-text elements. Providing text alternatives allows the information to be rendered in a variety of ways by a variety of users. For example, a person who cannot see a picture can have the text alternative read aloud using synthesized speech. A person who cannot hear an audio file can have the text alternative displayed so that he or she can read it. Below is an example of a non-text element from your website that blind users cannot understand because it is missing a sufficient text equivalent.

2. Links on the website do not describe their purpose. As a result, blind users cannot determine whether they want to follow a particular link, making navigation an exercise in trial and error.

3. The website does not include labels or instructions when content requires a user to submit information. Without these instructions, for example, users cannot select items to purchase or complete the payment process.

These access barriers violate the ADA and its state corollaries, the PHRA and MPAA. Because you are in violation of these state anti-discrimination laws, you also have committed an unfair and deceptive act in violation of the Massachusetts Consumer Protection Law. *See* M.G.L. ch. 93A, §

[2] This is true for public accommodations that offer goods and services exclusively on the Internet. *See e.g.*, *Carparts Distrib. Ctr., Inc. v. Automotive Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12, 19 (1st Cir. 1994) ("The plain meaning of the terms [of the ADA] do[es] not require 'public accommodations' to have physical structures to enter."); *Gniewkowski v. Lettuce Entertain You Enterprises, Inc.*, 251 F. Supp. 3d 908, 918 (W.D. Pa. 2017) ("[T]he alleged discrimination has taken place on property that AmeriServ owns, operates and controls—the AmeriServ website."); *Del-Orden v. Bonobos, Inc.*, 2017 WL 6547902, at *4 (S.D.N.Y. Dec. 20, 2017) ("[T]he ADA applies to commercial websites.") ; *see also* Memorandum and Order, *Gathers v. 1-800 Flowers.com, Inc.*, 2018 WL 839381, *1 (D. Mass. Feb. 12, 2018) ("Defendant does not dispute that its websites are places of public accommodation subject to regulation by Title III of the ADA.").

9; 940 C.M.R. § 3.16(3) ("an act or practice is a violation of M.G.L. c.93A, § 2 if "[i]t fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection."); *see also Klairmont v. Gainsboro Restaurant, Inc.*, 465 Mass. 165 (2013) (regulatory violations may serve as a basis for liability under M.G.L. Ch. 93A).

In an effort to avoid costly and time-consuming litigation, our clients have directed us to seek a pre-litigation solution to their claims and those of other similarly-situated individuals. Courts have endorsed this approach, describing it as "the most expedient and cost-effective means of resolving" website accessibility claims. *Sipe v. Am. Casino & Ent. Properties, LLC*, 2016 WL 1580349, at *3 (W.D. Pa. Apr. 20, 2016).

Based on the foregoing, our clients demand that you immediately remediate your website so that it complies with the ADA, PHRA, and MPAA, and adopt a policy that protects against such discrimination, indefinitely. Pursuant to Section 9 of M.G.L. ch. 93A, we are affording you the opportunity to make a written offer of settlement of our clients' claims **within 30 days** of receipt of this letter. If you fail to make a good faith offer of settlement in response to this pre-litigation demand, you may be subject to treble damages (possibly on a class-wide basis), attorneys' fees, costs, and other sanctions based on our clients' Chapter 93A claims, in addition to the injunctive relief requested herein. If we are unable to resolve these issues within thirty (30) days, we retain the right to file a lawsuit on behalf of our clients and other similarly-situated visually impaired individuals.

Finally, as this letter is sent in contemplation of potential litigation, you are required to take immediate action to preserve all information relevant to this dispute, including, without limitation, electronically stored information and the metadata associated with such information.

To discuss this matter further, please contact Kevin Tucker at (412) 322-9243 or ktucker@carlsonlynch.com. We look forward to your response.

Benjamin J. Sweet
Kevin W. Tucker
CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
T. (412) 322.9243

(Licensed in the Commonwealth of Pennsylvania)

Jason M. Leviton
Bradley J. Vettraino
BLOCK & LEVITON LLP
155 Federal Street, Suite 400
Boston, MA 02110
T. (617) 398-5600

(Licensed in the Commonwealth of Massachusetts)

EXHIBIT F

CARLSON LYNCH SWEET KILPELA CARPENTER | CARLSON LYNCH

January 31, 2019

SENT VIA FEDERAL EXPRESS

Sean Callahan
CEO
YDesign Group, LLC
1850 Mount Diablo Blvd., Ste. 470
Walnut Creek, CA 94596

Re: www.ylighting.com, www.yliving.com and www.lumens.com ADA Compliance; Notice of Preservation Obligation

Dear Mr. Callahan:

This letter is sent on behalf of Antoinette Suchenko, Stephen Théberge and other visually impaired individuals throughout the United States who use screen-reader technology and who have been unable to fully and equally access your website.[1]

Your websites violate several statutes that prohibit disability discrimination and unfair and deceptive business practices, including, *inter alia*, the Americans with Disabilities Act ("ADA"), the Pennsylvania Human Relations Act ("PHRA"), the Massachusetts Public Accommodations Act ("MPAA"), and the Massachusetts Consumer Protection Law.

There are approximately seven million Americans living with a visual disability. Like many other visually impaired individuals, our clients rely on screen-reader software to convert website text to audio. "Screen-reader software provides the primary method by which a blind person may independently use the Internet and without these programs, blind and visually impaired individuals cannot access the Internet." *Access Now, Inc. v. Otter Products, LLC*, 2017 WL 6003051, at *1 (D. Mass. Dec. 4, 2017).

There is no dispute that your website is a public accommodation pursuant to the ADA. *See* Title III of the ADA, 42 U.S.C. § 12181(7). There is also no doubt the ADA requires public accommodations to make their websites compatible with screen-reader software. "In a society in which business is increasingly conducted online, excluding businesses that sell services through

[1] Ms. Suchenko and Mr. Théberge are visually impaired individuals who attempted to use your website using screen-reader technology and were unable to do so; they reside in Pittsburgh, Pennsylvania and Attleboro, Massachusetts, respectively.

the Internet from the ADA would run afoul of the purposes of the ADA in that it would prevent individuals with disabilities from fully enjoying the goods, services, privileges and advantages, available indiscriminately to other members of the general public." *See Access Now, Inc. v. Blue Apron, LLC*, 2017 WL 5186354, at *3 (D.N.H. Nov. 8, 2017).[2]

Your websites contain significant failures that block visually impaired individuals (including our clients) who use screen-reader software from accessing its online content.

The websites do not provide a text equivalent for non-text elements. Providing text alternatives allows the information to be rendered in a variety of ways by a variety of users. For example, the websites' payment portals include an image illustrating that PayPal may be used by consumers to purchase your products. The image is not accompanied by alternative text leaving our clients unaware that is an acceptable method of payment.

Links on the websites do not describe their purpose. As a result, blind users cannot determine whether they want to follow a particular link, making navigation an exercise in trial and error.

These access barriers violate the ADA and its state corollaries, the PHRA and MPAA. Because you are in violation of these state anti-discrimination laws, you also have committed an unfair and deceptive act in violation of the Massachusetts Consumer Protection Law. *See* M.G.L. ch. 93A, § 9; 940 C.M.R. § 3.16(3) ("an act or practice is a violation of M.G.L. c.93A, § 2 if "[i]t fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection."); *see also Klairmont v. Gainsboro Restaurant, Inc.*, 465 Mass. 165 (2013) (regulatory violations may serve as a basis for liability under M.G.L. Ch. 93A).

In an effort to avoid costly and time-consuming litigation, our clients have directed us to seek a pre-litigation solution to their claims and those of other similarly-situated individuals. Courts have

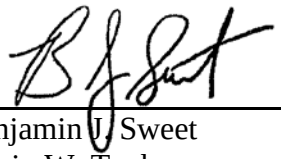
[2] This is true for public accommodations that offer goods and services exclusively on the Internet. *See e.g., Carparts Distrib. Ctr., Inc. v. Automotive Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12, 19 (1st Cir. 1994) ("The plain meaning of the terms [of the ADA] do[es] not require 'public accommodations' to have physical structures to enter."); *Gniewkowski v. Lettuce Entertain You Enterprises, Inc.*, 251 F. Supp. 3d 908, 918 (W.D. Pa. 2017) ("[T]he alleged discrimination has taken place on property that AmeriServ owns, operates and controls—the AmeriServ website."); *Del-Orden v. Bonobos, Inc.*, 2017 WL 6547902, at *4 (S.D.N.Y. Dec. 20, 2017) ("[T]he ADA applies to commercial websites.") ; *see also* Memorandum and Order, *Gathers v. 1-800 Flowers.com, Inc.*, 2018 WL 839381, *1 (D. Mass. Feb. 12, 2018) ("Defendant does not dispute that its websites are places of public accommodation subject to regulation by Title III of the ADA.").

endorsed this approach, describing it as "the most expedient and cost-effective means of resolving" website accessibility claims. *Sipe v. Am. Casino & Ent. Properties, LLC*, 2016 WL 1580349, at *3 (W.D. Pa. Apr. 20, 2016).

Based on the foregoing, our clients demand that you immediately remediate your website so that it complies with the ADA, PHRA, and MPAA, and adopt a policy that protects against such discrimination, indefinitely. Pursuant to Section 9 of M.G.L. ch. 93A, we are affording you the opportunity to make a written offer of settlement of our clients' claims **within 30 days** of receipt of this letter. If you fail to make a good faith offer of settlement in response to this pre-litigation demand, you may be subject to treble damages (possibly on a class-wide basis), attorneys' fees, costs, and other sanctions based on our clients' Chapter 93A claims, in addition to the injunctive relief requested herein. If we are unable to resolve these issues within thirty (30) days, we retain the right to file a lawsuit on behalf of our clients and other similarly-situated visually impaired individuals.

Finally, as this letter is sent in contemplation of potential litigation, you are required to take immediate action to preserve all information relevant to this dispute, including, without limitation, electronically stored information and the metadata associated with such information.

To discuss this matter further, please contact Kevin Tucker at (412) 322-9243 or ktucker@carlsonlynch.com. We look forward to your response.



Benjamin J. Sweet
Kevin W. Tucker
CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
T. (412) 322.9243

(Licensed in the Commonwealth of Pennsylvania)

Jason M. Leviton
Bradley J. Vettraino
BLOCK & LEVITON LLP
155 Federal Street, Suite 400
Boston, MA 02110
T. (617) 398-5600

(Licensed in the Commonwealth of Massachusetts)

EXHIBIT G

CARLSON LYNCH SWEET KILPELA CARPENTER | CARLSON LYNCH

January 31, 2019

SENT VIA FEDERAL EXPRESS

EMusic.com, Inc.
215 Lexington Ave., Floor 18
New York, NY 10016

Re: www.emusic.com ADA Compliance; Notice of Preservation Obligation

Dear Sir or Madam:

This letter is sent on behalf of Rachel Gniewkowski, Stephen Théberge and other visually impaired individuals throughout the United States who use screen-reader technology and who have been unable to fully and equally access your website.[1]

Your website violates several statutes that prohibit disability discrimination and unfair and deceptive business practices, including, *inter alia*, the Americans with Disabilities Act ("ADA"), the Pennsylvania Human Relations Act ("PHRA"), the Massachusetts Public Accommodations Act ("MPAA"), and the Massachusetts Consumer Protection Law.

There are approximately seven million Americans living with a visual disability. Like many other visually impaired individuals, our clients rely on screen-reader software to convert website text to audio. "Screen-reader software provides the primary method by which a blind person may independently use the Internet and without these programs, blind and visually impaired individuals cannot access the Internet." *Access Now, Inc. v. Otter Products, LLC*, 2017 WL 6003051, at *1 (D. Mass. Dec. 4, 2017).

There is no dispute that your website is a public accommodation pursuant to the ADA. *See* Title III of the ADA, 42 U.S.C. § 12181(7). There is also no doubt the ADA requires public accommodations to make their websites compatible with screen-reader software. "In a society in which business is increasingly conducted online, excluding businesses that sell services through the Internet from the ADA would run afoul of the purposes of the ADA in that it would prevent

[1] Ms. Gniewkowski and Mr. Théberge are visually impaired individuals who attempted to use your website using screen-reader technology and were unable to do so; they reside in Pittsburgh, Pennsylvania and Attleboro, Massachusetts, respectively.

individuals with disabilities from fully enjoying the goods, services, privileges and advantages, available indiscriminately to other members of the general public." *See Access Now, Inc. v. Blue Apron, LLC*, 2017 WL 5186354, at *3 (D.N.H. Nov. 8, 2017).[2]

Your website contains significant failures that block visually impaired individuals (including our clients) who use screen-reader software from accessing its online content.

The website does not provide a text equivalent for non-text elements. Providing text alternatives allows the information to be rendered in a variety of ways by a variety of users. For example, the website's payment portal includes an image of four logos illustrating the credit cards that consumers may use to purchase your products. The image is not accompanied by alternative text so that our clients can perceive what payment methods you accept. As a result, they must complete the entire purchase process before learning whether your website accepts their preferred method of payment, or whether they must start the entire checkout process over again.

Links on the website do not describe their purpose. As a result, blind users cannot determine whether they want to follow a particular link, making navigation an exercise in trial and error.

These access barriers violate the ADA and its state corollaries, the PHRA and MPAA. Because you are in violation of these state anti-discrimination laws, you also have committed an unfair and deceptive act in violation of the Massachusetts Consumer Protection Law. *See* M.G.L. ch. 93A, § 9; 940 C.M.R. § 3.16(3) ("an act or practice is a violation of M.G.L. c.93A, § 2 if "[i]t fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection."); *see also Klairmont v. Gainsboro Restaurant, Inc.*, 465 Mass. 165 (2013) (regulatory violations may serve as a basis for liability under M.G.L. Ch. 93A).

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[2] This is true for public accommodations that offer goods and services exclusively on the Internet. *See e.g., Carparts Distrib. Ctr., Inc. v. Automotive Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12, 19 (1st Cir. 1994) ("The plain meaning of the terms [of the ADA] do[es] not require 'public accommodations' to have physical structures to enter."); *Gniewkowski v. Lettuce Entertain You Enterprises, Inc.*, 251 F. Supp. 3d 908, 918 (W.D. Pa. 2017) ("[T]he alleged discrimination has taken place on property that AmeriServ owns, operates and controls—the AmeriServ website."); *Del-Orden v. Bonobos, Inc.*, 2017 WL 6547902, at *4 (S.D.N.Y. Dec. 20, 2017) ("[T]he ADA applies to commercial websites.") ; *see also* Memorandum and Order, *Gathers v. 1-800 Flowers.com, Inc.*, 2018 WL 839381, *1 (D. Mass. Feb. 12, 2018) ("Defendant does not dispute that its websites are places of public accommodation subject to regulation by Title III of the ADA.").

In an effort to avoid costly and time-consuming litigation, our clients have directed us to seek a pre-litigation solution to their claims and those of other similarly-situated individuals. Courts have endorsed this approach, describing it as "the most expedient and cost-effective means of resolving" website accessibility claims. *Sipe v. Am. Casino & Ent. Properties, LLC*, 2016 WL 1580349, at *3 (W.D. Pa. Apr. 20, 2016).

Based on the foregoing, our clients demand that you immediately remediate your website so that it complies with the ADA, PHRA, and MPAA, and adopt a policy that protects against such discrimination, indefinitely. Pursuant to Section 9 of M.G.L. ch. 93A, we are affording you the opportunity to make a written offer of settlement of our clients' claims **within 30 days** of receipt of this letter. If you fail to make a good faith offer of settlement in response to this pre-litigation demand, you may be subject to treble damages (possibly on a class-wide basis), attorneys' fees, costs, and other sanctions based on our clients' Chapter 93A claims, in addition to the injunctive relief requested herein. If we are unable to resolve these issues within thirty (30) days, we retain the right to file a lawsuit on behalf of our clients and other similarly-situated visually impaired individuals.

Finally, as this letter is sent in contemplation of potential litigation, you are required to take immediate action to preserve all information relevant to this dispute, including, without limitation, electronically stored information and the metadata associated with such information.

To discuss this matter further, please contact Kevin Tucker at (412) 322-9243 or ktucker@carlsonlynch.com. We look forward to your response.

Benjamin J. Sweet
Kevin W. Tucker
CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
T. (412) 322.9243

(Licensed in the Commonwealth of Pennsylvania)

Jason M. Leviton
Bradley J. Vettraino
BLOCK & LEVITON LLP
155 Federal Street, Suite 400
Boston, MA 02110
T. (617) 398-5600

(Licensed in the Commonwealth of Massachusetts)

EXHIBIT H

CARLSON LYNCH SWEET KILPELA CARPENTER | CARLSON LYNCH

January 31, 2019

SENT VIA FEDERAL EXPRESS

John Hoch
CEO & Founder
Power Equipment Direct, Inc.
969 Veterans Parkway, Ste. C
Bolingbrook, IL 60490

Re: ***www.powerequipmentdirect.com, www.electricgeneratosdirect.com, www.snowblowerdirect.com, www.mowersdirect.com, www.pressurewasherdirect.com, www.aircompressorsdirect.com, www.ecomfort.com ADA Compliance; Notice of Preservation Obligation.***

Dear Mr. Hoch,

This letter is sent on behalf of Rachel Gniewkowski, Stephen Théberge, and other visually impaired individuals throughout the United States who use screen-reader technology and who have been unable to fully and equally access your website.[1]

Your website violates several statutes that prohibit disability discrimination and unfair and deceptive business practices, including, *inter alia*, the Americans with Disabilities Act ("ADA"), the Pennsylvania Human Relations Act ("PHRA"), the Massachusetts Public Accommodations Act ("MPAA"), and the Massachusetts Consumer Protection Law.

There are approximately seven million Americans living with a visual disability. Like many other visually impaired individuals, our clients rely on screen-reader software to convert website text to audio. "Screen-reader software provides the primary method by which a blind person may independently use the Internet and without these programs, blind and visually impaired individuals cannot access the Internet." *Access Now, Inc. v. Otter Products, LLC*, 2017 WL 6003051, at *1 (D. Mass. Dec. 4, 2017).

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accommodations to make their websites compatible with screen-reader software. "In a society in which business is increasingly conducted online, excluding businesses that sell services through the Internet from the ADA would run afoul of the purposes of the ADA in that it would prevent individuals with disabilities from fully enjoying the goods, services, privileges and advantages, available indiscriminately to other members of the general public." *See Access Now, Inc. v. Blue Apron, LLC*, 2017 WL 5186354, at *3 (D.N.H. Nov. 8, 2017).[2]

Your website contains significant failures that block visually impaired individuals (including our clients) who use screen-reader software from accessing its online content.

The website does not provide a text equivalent for non-text elements. Providing text alternatives allows the information to be rendered in a variety of ways by a variety of users. For example, the website's payment portal includes an image illustrating that Amazon Pay and PayPal may be used by consumers to purchase your products. The image is not accompanied by alternative text leaving our clients unaware that is an acceptable method of payment.

Links on the website do not describe their purpose. As a result, blind users cannot determine whether they want to follow a particular link, making navigation an exercise in trial and error.

These access barriers violate the ADA and its state corollaries, the PHRA and MPAA. Because you are in violation of these state anti-discrimination laws, you also have committed an unfair and deceptive act in violation of the Massachusetts Consumer Protection Law. *See* M.G.L. ch. 93A, § 9; 940 C.M.R. § 3.16(3) ("an act or practice is a violation of M.G.L. c.93A, § 2 if "[i]t fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection."); *see also Klairmont v.*

[2] This is true for public accommodations that offer goods and services exclusively on the Internet. *See e.g., Carparts Distrib. Ctr., Inc. v. Automotive Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12, 19 (1st Cir. 1994) ("The plain meaning of the terms [of the ADA] do[es] not require 'public accommodations' to have physical structures to enter."); *Gniewkowski v. Lettuce Entertain You Enterprises, Inc.*, 251 F. Supp. 3d 908, 918 (W.D. Pa. 2017) ("[T]he alleged discrimination has taken place on property that AmeriServ owns, operates and controls—the AmeriServ website."); *Del-Orden v. Bonobos, Inc.*, 2017 WL 6547902, at *4 (S.D.N.Y. Dec. 20, 2017) ("[T]he ADA applies to commercial websites.") ; *see also* Memorandum and Order, *Gathers v. 1-800 Flowers.com, Inc.*, 2018 WL 839381, *1 (D. Mass. Feb. 12, 2018) ("Defendant does not dispute that its websites are places of public accommodation subject to regulation by Title III of the ADA.").

Gainsboro Restaurant, Inc., 465 Mass. 165 (2013) (regulatory violations may serve as a basis for liability under M.G.L. Ch. 93A).

In an effort to avoid costly and time-consuming litigation, our clients have directed us to seek a pre-litigation solution to their claims and those of other similarly-situated individuals. Courts have endorsed this approach, describing it as "the most expedient and cost-effective means of resolving" website accessibility claims. *Sipe v. Am. Casino & Ent. Properties, LLC*, 2016 WL 1580349, at *3 (W.D. Pa. Apr. 20, 2016).

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T. (617) 398-5600

(Licensed in the Commonwealth of Massachusetts)

EXHIBIT I

cohen&grigsby® | *a culture of performance*

Jeffrey P. Ward
Direct Dial: 412.297-4961

jward@cohenlaw.com
Fax: 412.209-0672

February 13, 2019

via email to pross@bgrfirm.com

Peter Ross, Esquire
BROWNE GEORGE ROSS, LLP
2121 Avenue of the Stars
Suite 2800
Los Angeles, California 90067

RE: Sweet / Carlson Lynch

Dear Mr. Ross:

This letter is in response to your letter dated February 11, 2019. Carlson Lynch is in compliance with Judge McVay's Order dated January 28, 2019. The Order does not direct that Carlson Lynch provide "case files" to Mr. Sweet. Indeed, Mr. Sweet did not maintain either physical or digital "case files" while he was at Carlson Lynch. While he was at Carlson Lynch, Mr. Sweet never attempted to access the firm's electronic file database for any purpose and Carlson Lynch has no general files that correspond to the specific clients listed in your letter (i.e. Mellenthin, Badger, Sigmon, Dieter, Shetler and/or Heinzl).

The "preliminary investigative work" that you allude to consists of proprietary Carlson Lynch-owned trade secrets that is unrelated to any of Mr. Sweet's clients and is outside the scope of the January 28, 2019 Order in any event. This investigative information is the life-blood of Carlson Lynch's ADA practice. The list of 90 companies that you forwarded was created by a Carlson Lynch employee with no input whatsoever from any of Mr. Sweet's clients.

Any photographs, hand-written investigation forms, or spreadsheets were created at great expense by Carlson Lynch employees for use by Carlson Lynch and Carlson Lynch clients. Again, these closely guarded trade secrets were all created with no input whatsoever from any of Mr. Sweet's clients.

Carlson Lynch represented disabled clients for many years before Mr. Sweet joined the law firm in 2014. Carlson Lynch litigated hundreds of cases specifically involving parking access before Mr. Sweet joined the law firm in 2014. Carlson Lynch

employed in-house investigators in support of its parking access cases before Mr. Sweet joined the law firm in 2014. These investigators followed specific protocols regarding the investigation of potential access barriers at public accommodations--including the investigation of parking barriers. These protocols were developed by Bruce Carlson, with input from Carlson Lynch lawyers, Carlson Lynch investigative staff and third-party ADA consultants.

Carlson Lynch continues to represent many clients throughout the country with a wide variety of disabilities, specifically including clients with mobility disabilities in parking accessibility cases. Carlson Lynch continues to employ in-house investigators in support of its Title III ADA practice generally and it's parking accessibility practice specifically. Indeed, the size of the investigation department has increased since Mr. Sweet was separated from the firm on January 3, 2019.

The investigative trade secrets requested by Mr. Sweet are proprietary and were not created "on behalf of" his clients. These highly confidential materials were created at great expense for use by Carlson Lynch and its clients using protocols that were developed before Mr. Sweet arrived at the firm in 2014, and which continue to be in use since Mr. Sweet's separation from the firm on January 3, 2019. The January 28, 2019 Order does not direct that Mr. Sweet be given access to any of this closely guarded proprietary information.

Regarding "correspondence between Carlson Lynch and defense counsel in connection with any of the aforementioned clients," Carlson Lynch is not sure what Mr. Sweet is requesting. These former Carlson Lynch clients have participated in many matters, the overwhelming majority of which have been resolved. Does Mr. Sweet want all correspondence relating to all of these matters? While Carlson Lynch desires to provide the requested information, it is requesting that Mr. Sweet define this request more precisely.

You suggest that Mr. Sweet's "ability to represent his clients is being compromised." However, nothing that Carlson Lynch is currently doing should have any impact on Mr. Sweet's ability to represent his clients. The investigative information which Mr. Sweet seeks—which is outside the scope of the January 28, 2019 Order—is wholly unrelated to any of Mr. Sweet's clients. If he will identify the specific matters regarding which he seeks "all communications between counsel," Carlson Lynch will gladly provide that information as expeditiously as reasonably possible.

You are not going to intimidate my clients by attempting to create a false sense of urgency. Carlson Lynch desires to make the transition resulting from Mr. Sweet's

separation as seamless as possible, and will continue to cooperate with Mr. Sweet to the greatest extent reasonably possible.

Thank you,

Sincerely,

COHEN & GRIGSBY, P.C.

By:
Jeffrey P. Ward

JPW:kam

cc: Bruce Carlson, Esq.
Gary Lynch, Esq.

2948351.v1

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP,	)	CIVIL DIVISION
	)	No. GD-19-002790
Plaintiff,	)	
v.	)	
BENJAMIN J. SWEET, THE SWEET LAW FIRM, P.C., and DEAN P. HENRY,	)	
Defendants.	)	

ORDER

AND NOW, this _____ day of February, 2019, upon consideration of Plaintiff Carlson Lynch Sweet Kilpela & Carpenter, LLP's Emergency Motion for Preliminary Injunction and the Response in Opposition thereto of Defendants Benjamin J. Sweet and The Sweet Law Firm, P.C., it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff's Emergency Motion is DENIED.

BY THE COURT:

_____ J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served this 25th day of February, 2019, via email delivery upon the following:

Jeffrey P. Ward, Esquire
JWard@cohenlaw.com
Cohen & Grigsby, P.C.
625 Liberty Avenue
Pittsburgh, PA 15222

/s/ William Pietragallo, II
William Pietragallo, II