

2018-59518 / Court: 011

NO. _____

NATIONAL HEAT TREAT, LLC	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff</i>	§	
	§	
v.	§	
	§	
ROBERT GUTIERREZ, FERNANDO	§	HARRIS COUNTY, TEXAS
GUTIERREZ, AND WORLDWIDE	§	
HEAT TREAT, LLC DBA GLOBAL HEAT	§	
TREAT, OLIVERIO MONTOYA PEREZ,	§	
EDUARDO PEREZ, AND BRIAN C.	§	
TAYLOR	§	
	§	
<i>Defendants</i>	§	___ JUDICIAL DISTRICT COURT

TEMPORARY RESTRAINING ORDER

National Heat Treat, LLC (“NHT”) has filed an Original Petition, Application for Injunctive Relief, and Request for Expedited Discovery (the “Application”) against Defendants Robert Gutierrez, Fernando Gutierrez, Worldwide Heat Treat, LLC (“WHT”), Oliverio Montoya Perez and Eduardo Perez (collectively referred to herein as “Defendants”). In the Application, NHT seeks a temporary restraining order against Defendants.

THE COURT FINDS THAT NHT has demonstrated a probable right to relief on its claims as well as probable, imminent, and irreparable harm in the event this order does not issue. It appears from the facts set forth in the Application, and the declarations attached thereto, that Defendants have converted NHT’s personal property; that Defendants are using misappropriated confidential and proprietary information belonging to NHT concerning clients of NHT, its customers, and pricing; and that Defendants are improperly soliciting or otherwise initiating contact or communication with the clients of NHT for the purpose of inviting, encouraging, or requesting the transfer of accounts and/or business patronage from NHT to WHT. Before notice can be given and a hearing is had on Plaintiff’s Motion for Temporary Injunction, and that if the

commission of these acts is not restrained immediately, NHT will continue to suffer irreparable injury because of Defendants' acts.

IT IS THEREFORE ORDERED that Defendants, directly or indirectly, together with their agents, representatives, and all others in concert or participation with them, are temporarily restrained from performing, directly or indirectly, any of the following activities:

- (a) Accessing, using, or disclosing any of NHT's Confidential Information;
- (b) Calling upon, soliciting, or otherwise communicating with NHT's customers, vendors, suppliers, and business contacts, except to the extent that Defendants can demonstrate with written evidence that they obtained information about such customers from sources other than NHT;
- (c) Processing, consummating, or otherwise transacting business with or from any of the persons or entities who are existing ~~or prospective customers~~ of NHT, except to the extent that Defendants can demonstrate with written evidence that they obtained information about such person or organization from sources other than NHT;
- (d) Accessing or using NHT's Confidential Information to market, solicit, communicate or otherwise transact business with any of the persons or entities who are existing or prospective customer of NHT;
- (e) Altering, deleting, destroying, hiding, secreting, or otherwise removing from the jurisdiction of this Court any document, record, disk or other written or electronically stored information, including those contained on or in any personal or business computer, hard drive, cellular phone, tablet, cloud storage, or other electronic communication or storage device which Defendants used at any time during their employment with NHT;
- (f) Altering deleting, destroying, hiding, secreting, or otherwise removing from the jurisdiction of this Court any document, record, disk, or other written or electronically stored information which contain or describe any of the Defendants' communications, including email, text messages, and/or instant messages with any of the following persons or entities:
 - (i) Each other;
 - (ii) NHT;
 - (iii) Any person or entity from whom any of the Defendants have solicited business since July 28, 2017; and

- (g) Selling, transferring, loaning, using, accessing, or otherwise destroying NHT's personal property, any NHT property located at WHT's places of business, and any NHT property located at Defendants' residences.

~~IT IS FURTHER ORDERED that NHT is entitled to conduct an inspection of WHT's facility located at 5723 Cunningham Road, Houston, Texas 77041 immediately following notice to Defendants or their counsel of the terms of this order for the purpose of identifying any personal property owned by NHT.~~

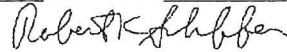
IT IS FURTHER ORDERED that the Application for Temporary Injunction be heard before the Honorable Kristen Hawkins, Judge of the 11th Judicial District Court, on September 18, 2018, at 1:30 o'clock p.m., in the courtroom of the above-named Court in Harris County, Texas, then and there to show cause, if any thereby, why a Temporary Injunction should not be issued as requested by Plaintiff. The Clerk of the Court is directed to issue a show cause notice to Defendants to appear at the injunction hearing.

The Clerk of the Court shall forthwith, on the filing by Plaintiff, of the bond hereinafter required, and on approving the same according to the law, issue a Temporary Restraining Order in conformity with the law and the terms of this Order.

This order shall not be effective unless and until Plaintiff executes and files with the Clerk a bond, in conformity with the law, in the amount of one thousand and 00/100 dollars (\$ 1,000.00).

SIGNED this _____ day of _____, 2018, at 6:21 o'clock, p.m.

Signed:
8/31/2018



PRESIDING JUDGE

CAUSE NO. 2018-59518

NATIONAL HEAT TREAT, LLC

Plaintiff

v.

ROBERT GUTIERREZ, FERNANDO
GUTIERREZ, WORLDWIDE
HEAT TREAT, LLC DBA GLOBAL HEAT
TREAT, OLIVERIO MONTOYA
PEREZ, AND EDUARDO PEREZ

DEFENDANTS

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

11TH JUDICIAL DISTRICT COURT

ORDER EXTENDING TEMPORARY RESTRAINING ORDER

On this day came to be heard the Unopposed Motion to Extend Temporary Restraining Order. The Court has determined that the request should be GRANTED. It is therefore,

ORDERED that the Temporary Restraining Order entered in the above-numbered and styled cause is hereby extended through Tuesday, September ~~18~~²⁸, 2018 at 6:21 p.m.

Signed on this ____ day of September, 2018

Signed:
9/14/2018



**THE HONORABLE JUDGE
KRISTEN BRAUCHLE HAWKINS**

Unofficial Copy Office of Chris Daniel District Clerk

CAUSE NO. 2018-59518

NATIONAL HEAT TREAT, LLC	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff</i>	§	
	§	
v.	§	
	§	
ROBERT GUTIERREZ, FERNANDO	§	HARRIS COUNTY, TEXAS
GUTIERREZ, WORLDWIDE	§	
HEAT TREAT, LLC DBA GLOBAL HEAT	§	
TREAT, OLIVERIO MONTOYA	§	
PEREZ, AND EDUARDO PEREZ	§	
	§	
<i>Defendants</i>	§	11TH JUDICIAL DISTRICT COURT

**AGREED MOTION TO
EXTEND TEMPORARY RESTRAINING ORDER**

Pursuant to Rule 680 of the Texas Rules of Civil Procedure, National Heat Treat, LLC (“NHT”) and Defendants Robert Gutierrez, Fernando, Worldwide Heat Treat, LLC dba Global Heat Treat, Oliverio Montoya Perez and Eduardo Perez file this Agreed Motion to Extend the Temporary Restraining Order issued by the Court, and in support thereof, shows the Court the following:

1. On August 31, 2018, the Court entered a Temporary Restraining Order (“TRO”) restraining Defendants, Robert Gutierrez, Fernando Gutierrez, Worldwide Heat Treat, LLC, Oliverio Montoya Perez, and Eduardo Perez (collectively, “Defendants”) from:
 - a. Accessing, using, or disclosing any of NHT’s Confidential Information;
 - b. Calling upon, soliciting, or otherwise communicating with NHT’s customers, vendors, suppliers, and business contacts, except to the extent that Defendants can demonstrate with written evidence that they obtained information about such customers from sources other than NHT;
 - c. Processing, consummating, or otherwise transacting business with or from any of the persons or entities who are existing customers of NHT, except to the extent that Defendants can demonstrate with written evidence that

they obtained information about such person or organization from sources other than NHT;

- d. Accessing or using NHT's Confidential Information to market, solicit, communicate or otherwise transact business with any of the persons or entities who are existing or prospective customer of NHT;
- e. Altering, deleting, destroying, hiding, secreting, or otherwise removing from the jurisdiction of this Court any document, record, disk or other written or electronically stored information, including those contained on or in any personal or business computer, hard drive, cellular phone, tablet, cloud storage, or other electronic communication or storage device which Defendants used at any time during their employment with NHT;
- f. Altering deleting, destroying, hiding, secreting, or otherwise removing from the jurisdiction of this Court any document, record, disk, or other written or electronically stored information which contain or describe any of the Defendants' communications, including email, text messages, and/or instant messages with any of the following persons or entities:
 - (i) Each other;
 - (ii) NHT;
 - (iii) Any person or entity from whom any of the Defendants have solicited business since July 28, 2017; and
- (g) Selling, transferring, loaning, using, accessing, or otherwise destroying NHT's personal property, any NHT property located at WHT's places of business, and any NHT property located at Defendants' residences.

That same day, NHT paid the required bond. In the TRO, the Court set the hearing on NHT's request for a temporary injunction for 2:30 p.m. on Tuesday, September 18, 2018.

2. Pursuant to the parties' motion, on September 13, 2018, the Court extended the TRO through September 28, 2018 at 6:21 p.m.

3. The hearing on NHT's application for temporary injunction has since been reset to October 2, 2018 at 3:30 p.m.

4. Due to a scheduling conflict, the parties request that the Court reset the hearing on NHT's application for temporary injunction to October 23, 2018. Additionally, the parties

request that the Court extend the TRO until a time after the temporary injunction hearing on October 23, 2018.

5. A temporary restraining order may be extended by written order. The plaintiff may ask the trial court to extend the order by filing a motion before the order expires and showing good cause. TEX. R. CIV. P. 680; *In re Texas Nat. Res. Conserv. Comm'n*, 85 S.W.3d 201, 203 (Tex. 2002). Because this motion is agreed, the Court may grant this second extension. *See id.* Plaintiff asks that the Court execute the order extending the TRO.

PRAYER

Accordingly, the parties request that the Court enter an order extending the TRO until after the hearing on NHT's application for temporary injunction set for October 23, 2018. NHT also requests any such other and further relief at law or in equity to which it may be justly entitled.

Respectfully submitted,

By: /s/ Stephen H. Cagle, Jr.

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**ATTORNEYS FOR PLAINTIFF
NATIONAL HEAT TREAT, LLC**

CERTIFICATE OF CONFERENCE

I certify that on September 25, 2018, I conferred with counsel for Defendants concerning the relief requested in this motion. Defendants are unopposed to the relief requested in this motion.

/s/ Stephen H. Cagle, Jr.
Stephen H. Cagle, Jr.

CERTIFICATE OF SERVICE

I certify that on September 25, 2018, a true and correct copy of the above and foregoing document has been duly served upon all parties via hand delivery and/or facsimile and/or regular mail and/or certified mail, return receipt requested and/or by eService.

Gary F. Cerasuolo
7500 San Felipe, Suite 777
Houston, Texas 77063

Via Email: gary.cerasuolo@sbcglobal.net

COUNSEL FOR DEFENDANTS

/s/ Stephen H. Cagle, Jr.
Stephen H. Cagle, Jr.

Unofficial Copy Office of Chris Daniel District Clerk