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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
No. 2184CV0661 BLS 1

Needham Bank
v.

Guaranteed Rate, Inc. and Edward Coppinger

Decision on Plaintiff's Motion for Preliminary Injunction

The plaintiff, Needham Bank ("Needham"), has moved for a preliminary injunction enjoining its former employee, Edward Coppinger ("Coppinger"), and his current employer, Guaranteed Rate, Inc. ("GRI"), from: (a) "violating, or, in the case of [GRI], inducing, encouraging and benefitting from Coppinger's violation" of "confidentiality, non-disclosure and non-solicitation provisions of [his] Residential Loan Officer Commission Agreement ("Agreement")" and (b) "continuing to misappropriate Needham Bank's confidential and proprietary business information and trade secrets to solicit and convert [its] customers."[1] After review of all of the parties' submissions and a hearing, the motion is **allowed in part and denied in part.**

Factual Background

The material facts in the record are as follows. Needham is a local community bank. Through 10 branch offices in Eastern Massachusetts, it offers personal and business banking services, including residential mortgages primarily to Massachusetts home buyers. The majority of its residential mortgage clients are Massachusetts homebuyers.[2]

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[1] Among other things, Needham's proposed TRO seeks to enjoin: (1) Coppinger from "directly or indirectly, on behalf of GRI or any competitor of Needham [ ], soliciting business from, selling to, rendering services to, or working with others to solicit business from, sell to, or render services to, any Needham [] customers..." and (2) GRI from (a) "directly or indirectly, soliciting business from, selling to, or rendering services to, or managing others to solicit business from, sell to, or render services to, any of the customers whose names, contact information, or mortgage-related information was contained on the lists that ...Coppinger misappropriated from Needham" and (b) encouraging, inducing or aiding ...Coppinger to violate the terms of his Agreement." Plaintiff Needham Bank's Motion for a Temporary Restraining Order (*Ex Parte*) and a Preliminary Injunction, Ex. A.

[2] Sinclair Aff., ¶ 4.

GRI is in the business of originating, closing and selling residential mortgage loans. [3] Founded in 2002 in Chicago, Illinois, it now has over 400 locations throughout the United States, including 26 in Massachusetts. It offers residential loans in the form of fixed-rate or adjustable-rate mortgages and jumbo loans, and competes with Needham for the same Massachusetts customers.

Needham has taken significant and reasonable steps to protect, maintain and secure its confidential business information, including trade secrets, and to guard against its misappropriation. Among other measures, it uses third party service providers to host certain data on their secure networks, including a mortgage platform for loan-origination information and Needham's core processor, "COCC." Each of its Vice Presidents of Residential Lending ("VPs") only has access to customer information on the mortgage platform regarding his or her own customers. Needham also requires each of its VPs to sign a Residential Loan Officer Commission Agreement ("Agreement"). [4]

Between 2003 and 2009, Coppinger was an outside residential loan officer with various Massachusetts lenders, the last of which was Leader Bank ("Leader"). As an outside residential loan officer, he was compensated primarily through commissions on closed loans. His compensation depended on the volume of residential loans he generated and closed and he did so primarily through his personal and professional connections and referrals therefrom.

On December 12, 2013, Coppinger signed an offer letter from Needham that contained a covenant under which Needham agreed to buy out Coppinger's "current pipeline at 50 basis points per loan with documentation of the loan." [5] While Coppinger was still working as an outside residential mortgage loan officer at Leader, Needham requested that he forward his pipeline report, which identified the Leader customer, the type of loan for which the customer had applied, the amount of the loan, the interest rate to be charged by Leader, and more.

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[3] Athanasiou Aff., ¶ 3.

[4] Needham also implemented other measures to protect its confidential information and trade secrets, including requiring all employees to comply with its Employee Handbook, which sets forth its Code of Ethics and Business Conduct, Confidential Business and Customer Information policy, and Information Technology Security Policy, and with its Temporary Telecommuting Policy and Procedures. Sinclair Aff., ¶ 24, Exs. B and C. Coppinger electronically verified his understanding of, and agreement to comply with Needham's 2020 Employee Handbook, on or about August 23, 2020. *Id.* at ¶ 33.

[5] Coppinger Aff., ¶ 17. The term "pipeline" refers to the period between the borrower's submission of a loan application and the loan's closing. *Id.*. Typically, it takes forty-five (45) to sixty (60) days to close a residential mortgage loan, whether it is an original loan or a refinancing. Sinclair Aff., ¶ 6.

Coppinger began working as a Vice-President of Residential Lending at Needham in March 2014 and remained employed there until he resigned in January of 2021.[6] In this position, he originated and closed mortgage loans primarily by drawing on his existing network of contacts and referral sources, including customers for whom he had previously closed mortgage loans.[7] Through his personal and professional connections, and referrals therefrom, he generated the overwhelming majority of the hundreds of residential loans he closed.[8] At no time during his employment did anyone at Needham instruct Coppinger not to solicit or communicate with borrowers whose mortgage loans he had originated and closed while working for other lenders.[9]

At various times during his Needham employment, including at the start of his employment and in 2019, Needham required Coppinger to sign the Agreement. Under paragraph 9, Coppinger agreed:

> at all times ***during his...employment with [Needham] and thereafter,*** to hold in strictest confidence and not to use, except for the benefit of the Bank to the extent necessary to perform his/her job duties to [Needham] during his...employment, and not to disclose to any bank, person, or other entity, without written authorization from [Needham] in each instance, any Confidential Information (as defined below) that the Employee obtains, accesses or creates during or otherwise in conjunction with his ... employment with [Needham and] not to make or retain copies of such Confidential Information except as authorized by [Needham].

Agreement at p. 4 (emphasis added).

In paragraph 10, Coppinger further agreed that when his employment terminated, he would "deliver to [Needham] (and... not keep in his...possession, recreate or deliver to anyone else) any and all Confidential Information..."

Id. at ¶ 10.

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[6] According to Coppinger, Needham recruited him in 2013 for the position of "outside mortgage loan originator," consistent with his prior positions at other lenders since 2003, and that Needham made clear that it expected him to "bring to Needham [his] book of business, *i.e.*, the customers for whom [he] had closed loans while working at his [former employers]." Coppinger Aff., ¶ 13.

[7] *Id.*, ¶ 21

[8] *Id.*

[9] *Id.*, ¶ 23.

The Agreement defines "Confidential Information" to mean "information and electronic and physical material entrusted to the Bank in confidence by third parties" and cited as "examples" thereof:

> ***customer lists***; customer credit information; ***pricing***; commission rates and structures; the ***identity of and information related to the Bank's customers***; information and documents provided by the Bank's actual and potential customers; and any statutorily-protected "personal information" ...of any of the Bank's actual or potential customers.

Id. (emphasis added). Paragraph 4 provides:

> Solicitation of Bank Loan Customers is Prohibited. The Employee is prohibited from any direct solicitation of the Bank's Loan customers whether the customer's Loan is retained by the Bank or has been sold or transferred to another entity. As set forth herein, the Employee is eligible for a commission with respect to any Loan to refinance an existing Loan of a Bank customer only if the new Loan is closed more than nine months after the closing of the existing Loan.

Id. at ¶4.

Coppinger understood, based on communications from Needham's representatives, that paragraph 4's purpose was to ensure that Needham employees did not solicit borrowers whose loans Needham had sold to national banks and that it applied only while Needham employed him.[10]

Beginning in 2019, Coppinger grew increasingly frustrated that Needham's mortgage loan rates were too high.[11] Potential customers had frequently advised him that they had learned about rates from other lenders that were significantly lower, as a result of which they could not move forward with him or Needham.[12] According to Coppinger, he responded in some cases that he would contact other lenders to determine if the rates to which the borrowers had referred were legitimate and to ensure the borrower dealt

[10] *Id.*, ¶ 27.
[11] *Id.*, ¶ 29.
[12] *Id.*, ¶ 30.

with a reputable loan officer.[13] In some instances, the borrower elected to use one of the lenders whose rates Coppinger had communicated to the borrower, and those lenders, appreciative of the referrals, reciprocated and referred to Needham loans that the other lenders could not make. [14]

Coppinger most frequently contacted former Leader colleagues and Shant Banosian ("Banosian"), a branch manager at GRI's Waltham location, for such quotes. Banosian referred to Needham commercial and construction loans that GRI did not handle.[15] According to Coppinger, Needham was not harmed, but benefitted, from Coppinger's efforts on behalf of borrowers who had decided not to proceed with loans from Needham.[16]

Coppinger decided to leave Needham in December of 2020. On December 28, 2020, GRI offered Coppinger a position as a loan officer in its Waltham branch office starting on January 11, 2021. Coppinger accepted the position in late December and notified Needham on January 4, 2021 that he would resign, effective January 11, 2021. Coppinger was out of the office from December 21, 2020 until January 4, 2021 due to winter holidays and paid time off and, as a result, his last day of work at Needham was December 18, 2020.[17]

Prior to making its offer, GRI required Coppinger to sign an "Affidavit of All Candidates" attesting that he had not misappropriated or transmitted to GRI any confidential, proprietary or trade secret information from any former employer and that he would not use any such information at any time during his GRI employment.[18] He further attested that if his employment agreement with his former employer contained a provision restricting his "ability to solicit past clients or contacts after termination" of such employment, he "shall [not] solicit a loan application from any consumer covered by the provision or otherwise violate" it.[19] On December 29, 2020, Coppinger signed Compensation Terms relating to his GRI employment containing similar attestations.[20] Further, GRI's data onboarding policy required Coppinger to confirm that any contact information he provided to be uploaded into GRI's client relations management

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[13] *Id.*, ¶ 31. According to Coppinger, "[b]ecause 85-90% of [his] income was based upon closing loans, [he] never simply gave away a loan that [he] could have closed at Needham." Coppinger Aff., ¶36.
[14] Id., ¶ 33.
[15] *Id.*, ¶ 34.
[16] *Id.*, ¶ 36.
[17] Sinclair Aff., ¶ 36.
[18] Athanasiou Aff., ¶ 7, Ex. A
[19] *Id.*, Ex. B
[20] *Id.*, ¶ 9, 10, Ex. B.

("CRM") system was not confidential or proprietary to a former employer.[21] GRI also strictly limits the types of data that GRI may accept to include only contact information such as names, email addresses, mailing addresses, and/or phone numbers of individual consumers or referral sources," and the form of their entry into its CRM.[22]

After Coppinger's resignation, Needham determined that between December 8, 2020 and January 2, 2021, Coppinger had sent at least 6 emails to his personal Yahoo! email address with customer lists and information about closed loans, including customer names, customer personal contact information, loan amounts, product information (*i.e.*, loan type and term) and interest rates, without the consent of Needham or its customers.[23] One of the emails forwarded a report of "closed pipeline loans showing loan amounts and interest rates."[24] The email string reflects that Coppinger requested that report on December 18, 2020, to "see who could potentially refinance."[25] Together, the lists included information relating to more than 1,000 unique Needham customers.[26]

Needham further determined that on several occasions between June 22 and October 10, 2020, Coppinger had sent emails to Banosian in which he provided the property type, (*ie.*, condo or single family home), loan type, (*i.e.*, purchase or refinance), loan amount, down payment, total property value, location of property, and/or borrower credit score and asked Banosian to calculate the interest rate that GRI could offer to the potential customer. [27] Coppinger states that each email related to an existing or potential Needham customer who had decided not to do business with Needham because its rates were too high.[28] On at least four occasions, Coppinger introduced, or confirmed that he would introduce, the customer to Banosian and GRI.[29]

According to Coppinger, prior to his departure from Needham, he emailed to his personal email account two, and possibly three, lists of customers for whom he had

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[21] *Id.*, ¶ 11-13. Coppinger signed a "Permitted Marketing Affidavit" in which he attested that he "has all legal rights, consents, and authorizations necessary to disclose and use" the date he uploaded to GRI's marketing systems, and that such disclosure and use did not violate any legally enforceable post-employment obligations to a former employer." *Id.*, ¶ 13, Ex. B at p. 35.

[22] *Id.*, ¶ 11-12.

[23] Sinclair Aff., ¶ 38-39, Exs. D through I.

[24] *Id.*, Ex. F.

[25] *Id.*

[26] *Id.* at ¶ 39.

[27] *Id.* at ¶ 41.

[28] It is not clear from the record how Coppinger determined that the customer had decided not to do business with Needham as of the time of his emails, that is, before the customer received GRI's responses to Coppinger's inquiry.

[29] *Id.*, ¶ 43, Exs. L, N, O, and Q.

closed loans while at Needham.[30] Coppinger considered the customers on the lists, which were not marked "confidential," as his customers because he had originated the overwhelming majority of them from his network.[31] One of the lists, and, according to Coppinger, the only one that he reviewed and used after his departure, contained a spreadsheet listing the names and street addresses of persons for whom Coppinger had closed loans while at Needham ("Coppinger Mail List").[32] The other customer lists, which Coppinger did not review, likely contained more detailed information about mortgage loans Coppinger closed at Needham.[33]

Before joining GRI, Coppinger edited the Coppinger Mail List to: (1) delete the names of at least some customers whom he did not recognize as being in his network of personal and professional connections; (2) add former customers with whom he had worked before he went to Needham and others in his network; and (3) add the email addresses, most of which were in his personal contacts, of the listed persons.[34] After joining GRI, Coppinger provided this amended list ("Email List") to GRI's marketing department.

On or about January 14, 2021, GRI uploaded the contact information it received from Coppinger on the Email List onto its CRM system ("Uploaded Contact List"). On January 21, 2021, GRI then sent an email to approximately 580 individuals on the Uploaded Contact List, announcing that Coppinger had joined GRI. Among other things, the email stated that Coppinger was "excited to join [GRI]" because he could "now give [his] clients the best mortgage experience possible." The email also described GRI as "one of the most trusted lenders in the business", which "stand[s] above national banks in overall customer satisfaction and boast[s] a 96% customer satisfaction rating."[35] Thereafter, GRI's system sent automated birthday greetings to two individuals on the Uploaded Contact List, one on January 24, 2021, and the other on January 25, 2021.

On January 25, 2021, Coppinger received a cease and desist letter from Needham alleging

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[30] Coppinger Aff., ¶ 48.

[31] *Id.*

[32] *Id.*at ¶ 49. Coppinger's best recollection is that Needham had provided him with this list because it was planning to send post cards to the customers on it in connection with a marketing campaign.

[33] *Id.* at ¶ 50.

[34] *Id.* at ¶ 59. Coppinger's affidavit does not specify the actual source of the email addresses he had in his "personal contacts." During the hearing, Needham's counsel emphasized that: (1) two of three versions of a customer list that Coppinger sent to his personal email included email addresses and (2) Coppinger's affidavit does *not* say that he did *not* use his Needham-issued cellphone to recover email addresses of listed customers.

[35] *Id.* at ¶ 60.

that he had breached the Agreement and forwarded a copy to GRI.[36] GRI instructed Coppinger not to access or use the Coppinger Mail List or any other allegedly confidential information of Needham pending its further investigation and reached out to Needham's counsel to inform her that it was investigating Needham's allegations.[37] Among other things, GRI's counsel confirmed that Coppinger had provided a list of contact information to be uploaded to its CRM system after attesting that he had not misappropriated any former employer's confidential information. [38] She advised Needham's counsel that, as of February 2, 2021, GRI had "quarantined" the Uploaded Contact List and would not access or use the information further pending the results of its investigation.[39] She also requested information from Needham relating to its allegation that the information on the Uploaded Contacts List was confidential.[40] GRI restricted use of the Uploaded Contact List for any further marketing activities by suspending any email or other marketing campaigns to the Uploaded Contacts List and by further limiting marketing access to that list to only select individuals handling administration of its CRM system.

On March 2, 2021, an individual, who had held a residential mortgage loan from Needham since 2015 and whose name appeared on lists Coppinger had emailed to himself, refinanced his loan with Coppinger at GRI.

On March 3, 2021, Needham, represented by new counsel, sent a further cease and desist letter to GRI's counsel following up on Needham's earlier one. Among other things, new counsel alleged that Needham had determined that Coppinger and GRI had continued to solicit Needham's customers in violation of the Agreement and "ha[d] even closed loans for existing Bank customers," notwithstanding GRI's "commitment to 'quarantine' data."

On March 16, 2021, Needham learned that GRI had closed another mortgage refinancing transaction on March 10, 2021, for Needham customers who had initially secured a loan at Needham with Coppinger in 2018. Information regarding these customers was also included on the customer lists that Coppinger had emailed to

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[36] The cease and desist letter made no reference to any alleged violation of a non-solicitation clause of the Agreement.

[37] Hoeppner Aff., ¶ 5. According to Coppinger, he and GRI agreed that Coppinger would not access the Coppinger Mail List, or any other customer list that he emailed to his private account and Coppinger has not accessed them.

[38] *Id.*, ¶6.

[39] *Id.*, ¶ 7.

[40] *Id.*, ¶ 9, 16.

himself. Needham filed its Verified Complaint and motion for a temporary restraining order and preliminary injunction on March 22, 2021.

The borrowers whose loans GRI closed in March are persons with whom Coppinger has had personal relationships since before his Needham employment. In both cases the customers approached him regarding the refinancing of their mortgages at GRI.

GRI has already sequestered the Uploaded Contact List.[41] Coppinger has offered to delete the Needham customer lists and other information that he retained, but did not use, after his employment ended.

Discussion

- **Standard of Review**

"A preliminary injunction is an extraordinary remedy never awarded as of right," *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008), and "should not be granted unless the plaintiffs have made a clear showing of entitlement thereto." *Student No. 9 v. Board of Ed.*, 440 Mass. 752, 762 (2004). A plaintiff moving for one must demonstrate: "(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) in light of the plaintiff's likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction." *Tri-Nel Mgmt, Inc. v. Bd of Health of Barnstable, 433 Mass 217, 219 (2001)*, citing *Packaging Indus. Grp., Inc. v. Cheney*, 380 Mass. 609, 621 (1981).

A plaintiff is not entitled to preliminary injunctive relief if it cannot prove it is likely to succeed on the merits of its claims. See *e.g., Fordyce v. Town of Hanover*, 457 Mass. 248, 265 (2010) (vacating preliminary injunction); *Wilson v. Commissioner of Transitional Assistance*, 441 Mass. 846, 858059 (2004) (same). Further, "[w]here the moving party has failed to demonstrate that denial of the injunction would create any substantial risk that it would suffer irreparable harm, the injunction must be denied, no matter how likely it may be that the moving party will prevail on the merits." *Packaging Indus. Grp., Inc.*, 380 Mass. at 621. "Economic harm alone...will not suffice as irreparable harm unless 'the loss threatens the very existence of the movant's business.'" *Tri-Nel Mgmt, Inc.*, 433 Mass. at 228 (quoting *Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co.*, 399 Mass. 640, 643 (1987)).

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[41] *Id.*, ¶ 19.

A. Likelihood of Success on the Merits

- **Misappropriation of Trade Secrets**

Needham has not demonstrated a likelihood of success on the merits of its claims for misappropriation of trade secrets.[42] In particular, it has not shown that the borrowers' names and addresses on the Coppinger Mail list are trade secrets within the meaning of § 42(4) of the Massachusetts Uniform Trade Secrets Act, G.L. c. 93, § 42 *et seq.* ("MUTSA").[43]

Based on the Paton Affidavit, it appears that such names and addresses are "readily ascertainable by proper means" from publicly-available websites of the registries of deeds where those mortgages are recorded. MUTA, § 42(4). Other courts have concluded that bank loan customer names and addresses do not constitute trade secrets, and at least one has denied a preliminary injunction, on this basis. See *National City Bank N.A. v. Prime Lending, Inc.*, 737 F. Supp. 2d 12157 (2010) (finding bank was unlikely to succeed on its claim that former loan officers misappropriated bank's customer list under Washington's Uniform Trade Secrets Act because it was publicly available, even if it is expensive to acquire); *Charter Oak Lending Grp, Inc. v. August*, No. CV054009529, 2013 WL 2923319 (Conn. Super. Ct. May 7, 2013) (finding customer name and contact information not "trade secret" under Connecticut Uniform Trade Secrets Act where mortgage broker industry contemplates such information travels with loan originator and information is "readily ascertainable by proper means").[44]

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[42] In the memorandum in support of its motion, Needham addressed its likelihood of success on only those claims asserted in the Complaint against: (a) Coppinger for breach of contract; (b) GRI for tortious interference with contractual relations; and (c) both defendants for misappropriation of trade secrets.

[43] The MUTSA defines "trade secret" as:

...specified or specifiable information, whether or not fixed intangible form or embodied in any tangible thing, including but not limited to a formula, pattern, compilation, program, device, method, technique, process, business strategy, ***customer list***, invention, or scientific, technical, financial or customer data that (i) at the time of the alleged misappropriation, provided economic advantage, actual or potential, from ***not being generally known to, and not being readily ascertainable by proper means*** by, others who might obtain economic advantage from its acquisition, disclosure or use; and (ii) at the time of the alleged misappropriation was the subject of efforts that were reasonable under the circumstances, which may include reasonable notice, to protect against it being acquired, disclosed or used without the consent of the person properly asserting rights therein or such person's predecessor in interest. G.L. c. 93, § 42 (4) (emphasis added).

[44] The Sinclair Affidavit reflects that each Vice President of Residential Lending at Needham Bank "only has access to customer information on the mortgage platform regarding his or her own customers." Sinclair Aff. At ¶ 20. Similarly, in *Charter Oak*, "loan originators could only access information related to

To the extent that Needham's claims are based on misappropriation of information contained on documents other than the Coppinger Mail List, Needham has not shown that Coppinger accessed or used them.[45]

- **Breach of Contract**

a. Confidentiality and Non-Disclosure Provisions

Coppinger argues that Needham will not succeed on its claim that he breached the non-disclosure provision of the Agreement because (1) prior to the adoption of MUTSA, Massachusetts law made clear that non-disclosure agreements "cannot make secret that which is not," *Dynamics Research Corp. v. Analytic Sciences*, 9 Mass. App. Ct. 254, 277 (1980)(citations omitted), and (2) after MUTSA, contractual nondisclosure obligations are enforceable only if the information subject to the obligation constitutes a trade secret.[46] Specifically, § 42F of the MUTSA, in relevant part, provides:

> (a) Except as provided in subsection (b), sections 42 to 42G, inclusive, shall supersede any conflicting laws of the commonwealth providing civil remedies for the misappropriation of a trade secret.
>
> (b) Sections 42 to 42G, inclusive, do not affect:
>
> *(1)* contractual remedies, ***provided that, to the extent such remedies are based on an interest in the economic advantage of information claimed to be confidential, such confidentiality shall be determined according to the definition of trade secret in section 42,*** where the terms and circumstances of the underlying contract shall be considered in such determination....

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the specific loans that they had brought in and contact information for persons they had put into the system." *Id.* at *2.

[45] I note, however, that the defendants have not suggested that the interest rates for closed pipeline loans, which Coppinger requested for the purpose of identifying refinancing prospects, received from Needham, and then emailed to his personal account on December 18, 2020, are readily ascertainable by proper means. See Sinclair Aff., Ex. F. Nor have they addressed how GRI obtained the birth dates of the two Needham customers to whom GRI sent birthday greetings shortly after Coppinger's arrival or exactly how Coppinger obtained the email addresses of the 581 customers uploaded to GRI's CRM.

[46] *Fid. Brokerage Servs, LLC v. Callinan*, No. 1884CV02098 BLS 1, 2019 WL 1576097 (Mass. Super. Feb. 11, 2019), on which plaintiff relies, is factually distinguishable given that the parties in that case "agree[d] that... the defendant "did not develop his client base through his own contacts or leads." *Id.* at *1.

MUTSA, § 42F (a) and (b)(1).

Properly construed, this means that the MUTSA supersedes a claim for breach of a nondisclosure agreement intended to protect economically valuable information unless the information sought to be protected by the agreement meets the statute's definition of a trade secret. Thus, to the extent Needham's claim is based on disclosure of information readily ascertainable by proper means, it is likely superseded.

With respect to information included in the other Needham customer list or lists that Coppinger emailed to himself, Coppinger argues Needham is unlikely to succeed because he has not accessed them and he did not use them to originate the loans with the two former Needham customers GRI closed. The evidence shows that Coppinger had longstanding personal relationships with those customers even before his Needham employment. According to Coppinger, both customers approached him regarding those refinancings.[47]

However, Needham's claim for breach of contract is not based solely on Coppinger's disclosure of information on the Coppinger Mail List to GRI. Needham has demonstrated that, without its authorization, Coppinger disclosed confidential customer information, including the property type (*i.e.*, condo or single family home), loan type (*i.e.*, purchase or refinance), loan amount, down payment, total property value, property location, and/or borrower credit score of Needham customers with GRI prior to his departure from Needham. It also has shown, and defendants have not denied, that Coppinger emailed to his personal account "at least six separate emails with customer lists and information about closed loans including... product information (*i.e.*, type and term of loan) and interest rates," at least one of which he used to contact customers on behalf of GRI, and retained that information after his employment without Needham's written consent.[48] Coppinger himself has admitted that the other list or lists that he emailed to himself "likely contained more detailed information about mortgage loans he closed at Needham" than the Coppinger Mail List.[49] Moreover, Coppinger also has effectively conceded that not all of the customers whose loans he closed on the Coppinger Mail List were customers whom he originated.[50]

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[47] Coppinger Aff., ¶68, 71.

[48] Sinclair Aff., ¶38.

[49] Coppinger Aff., ¶50.

[50] Coppinger "originated the overwhelming majority of the customers" on the Needham customer lists he emailed to himself. He originated "the great majority" of the customer names and addresses on the Coppinger Mail List. Coppinger Aff., ¶ 48.

Thus, Needham has shown a likelihood of success on its breach of contract claim to the extent that it is based on paragraphs 9 and 10 of the Agreement.

- **Non-Solicitation Provision**

"An employer may enforce a ...non-solicitation agreement against a former employee only to the extent necessary to protect its legitimate business interests – which include guarding against the release or use of trade secrets or other confidential information, or harm to the employer's goodwill, but do not include merely avoiding lawful competition." *Robert Half Int'l, Inc. v. Simon*, 2020 WL 1218988 (Mass. Super. January 29, 2020).

Defendants do not argue that the blast email announcement GRI sent did not constitute a solicitation. Instead, they contend that the non-solicitation provision in paragraph 4 does not apply to *post-employment* conduct. More particularly, Coppinger argues that he understood, based on conversations with Needham, that paragraph 4 does not prohibit him from soliciting Needham customers after termination of his employment and was intended only to apply to the solicitation of customers whose loans Needham sold to national banks.

The language of paragraph 4 is ambiguous. Moreover, even if I were to construe paragraph 4 to apply to Coppinger after his employment ended, it would be unenforceable because it contains no temporal or geographic limitation on its scope.[51] See *Steelcraft, Inc. v. Mobi Medical, LLC*, No. 081934, 2008 WL 5146879 (Mass. Super. Nov. 13, 2008) (declining to grant preliminary injunction, in part, because alleged oral covenant did not contain any temporal or geographic limitations).

It also would not prohibit Coppinger from soliciting those customers with whom he had a relationship prior to his Needham employment or who contacted him. See *Sentry Ins. v. Firnstein*, 14 Mass. App. Ct. 706, 798 (1982) (affirming trial court ruling that former employee did not breach restrictive covenant where goodwill of insurance salesman rather than former employer was involved and customers sought out salesman and not vice versa). The customers on the Coppinger Mail List who closed loans at GRI in March approached Coppinger. Although it is unclear when, in relation to GRI's announcement they did so, Needham conceded at the hearing that it had no

[51] Unlike the non-solicitation provision in *Corporate Technologies, Inc. v. Hartnett*, 943 F. Supp. 2d 233, 238-46 (D. Mass., aff'd 731 F.3d 6 (1st Cir. 2013), cited by Needham, paragraph 4 contains no temporal limitation.

evidence that Coppinger had closed a loan at GRI with any Needham customer with whom he did not have a personal relationship prior to his Needham employment.

Thus, Needham has not shown a likelihood of success on its breach of contract claim to the extent it is based on paragraph 4 of the Agreement.

- **Interference with Contractual Relations**

Needham also has not demonstrated that it likely will succeed on its intentional interference with contractual relations claim. To prove this claim, a plaintiff must show: "(1) [it] had a contract with a third party; (2) the defendant knowingly induced the third party to break that contract; (3) the defendant's interference, in addition to being intentional, was improper in motive or means; and (4) the plaintiff was harmed by defendant's actions." *Draghetti v. Chmielewski*, 416 Mass. 808, 816 (1994). "Pursuit of a legitimate business interest, without more, fails to qualify as an improper means or motive in analyzing the elements necessary to support a claim for interference with contract." *Synergistics Tech., Inc. v. Putnam Invs., LLC*, 74 Mass. App. Ct. 686, 690 (2009).

The fact that the information from the Coppinger Mail List included on the Uploaded Contact List is readily ascertainable by proper means, Coppinger's multiple attestations that the information he provided to GRI was neither confidential nor proprietary to Needham, Needham's failure to show that paragraph 4's restriction on solicitation applies *post*-employment, and the steps taken by GRI after its receipt of Needham's initial cease and desist letter, all raise doubts about whether Needham will be able to prove that GRI knowingly or intentionally induced any breach by Coppinger or acted improperly.

- **Irreparable Harm**

Needham argues that substantial and irreparable harm to its customer relationships and goodwill will "continue" without the injunction requested. Coppinger and GRI respond that the only harm Needham claims it will suffer is economic and, therefore, not irreparable.[52] I disagree.

"[D]amage to client relationships and customer goodwill has been held to be 'irreparable harm' under Massachusetts law." *Bear, Stearns & Co., Inc. v. Sharon*, 550 F.

[52] Coppinger has offered to return or delete the documents he emailed to his personal account and GRI has stated that it has sequestered the Uploaded Contacts List.

Sup. 2d 174 178 (D. Mass. 2008), citing *All Stainless, Inc. v. Colby*, 364 Mass. 773, (1974). In particular, courts have found a risk of irreparable harm where they have found a "plausible risk of future customer defections and that the damages associated with those defections may escape accurate measurement." *Optos, Inc. v. Topcon Med. Sys., Inc.*, 777 F. Supp. 2d 217, 239 (D. Mass. 2011). See also *Barney v. Barcomb*, No. 02-J-692, 2003 WL 25932298, at *2 (Mass. App. Ct. Jan. 3, 2003) (disclosure of plaintiff's confidential information and subsequent loss of clients from former employee's solicitation on behalf of new employer would constitute irreparable harm); *Fidelity Brokerage Services, LLC v. Callinan*, No. 1884CV02098BLS1, 2019 WL 1576097 (Mass. Super. Feb. 11, 2019) (granting preliminary injunction where former employer's customer goodwill would otherwise be damaged in ways that are not easily quantifiable). At the very least, Needham has shown a plausible risk of future loss of customer goodwill, which would not be easily quantified, with those customers whose loans Coppinger did not originate.

- **Balance of Hardships**

Coppinger contends that Needham's requested injunction would impair his ability to earn a living and "cause erosion of the network of customers and referral sources" he established before his Needham employment. GRI claims that it would deprive it of the right to do business with GRI customers "who happen to be on the Uploaded Contact List" and impose a hardship on other borrowers on that list who would like to work with Coppinger and GRI. Needham responds that Coppinger freely entered into the Agreement, which expressly acknowledges that its breach would cause "substantial and irreparable harm to Needham" and that he cannot now be heard to complain about harm that may result from his own actions.

The balance of hardships, in light of Needham's chance of success based on the present evidentiary record, tips slightly in Needham's favor. However, the injunction requested by Needham is overbroad.

Further, notwithstanding Coppinger's agreement and acknowledgement, I am mindful of the interests of customers, particularly those whose loans he originated, in having the option of retaining his services. As other courts have recognized, it can sometimes be difficult to tell whether the goodwill at issue in enforcing a contract rightly belongs to the former employer or employee. See, *e.g.*, *BNY Mellon, N.A. v. Schauer*, 2010 WL 3326965 (Mass. Super. May 14, 2010) at *8 (noting unfairness in enforcing covenant that effectively appropriates client goodwill that rightly belongs to former employee); *Smith Barney Div. of Citigroup Glob. Markets Inc. v. Griffin*, 2008 WL 325269, at *3-4 (Mass. Super. Jan 23, 2008) (observing that: strict enforcement of confidentiality and non-solicitation provisions on requests for preliminary injunctions by brokerage firms

against departing financial advisors may harm clients; goodwill that "financial services company legitimately may preserve its own goodwill;" and "[t]he dilemma is, that to some degree, the company's goodwill and the employee's good will are inevitably intertwined"); *Getman v. USI Holdings Corp.*, No. 05-3286-BLS2, 2005 WL 2183159 (Mass. Super. September 1, 2005) at *5 (noting same dilemma in context of preliminary injunction request against insurance broker).

Thus, I will order Coppinger and GRI to return to Needham any and all copies of customer lists and other information, which Coppinger obtained from Needham while he was an employee, within their possession, custody or control. To reduce the risk of future irreparable harm to Needham's goodwill, I also will order GRI to continue to sequester, and not to use, the Uploaded Contact List, and preliminarily enjoin Coppinger for six months after his departure from Needham from soliciting directly or indirectly, including through GRI, any customer on the Coppinger Mail List. This period of time should be sufficient for Needham to convince any of its customers whom Coppinger served that such service "was more the result of the collective efforts" of Needham than of Coppinger's individual effort. *Getman v. USI Holdings Corp.*, at *4. After the six-month period, in which such customers have had the opportunity to see how their loans are handled in Coppinger's absence, Coppinger shall be free to solicit their business and to persuade them that it was his goodwill, and not that of Needham that they enjoyed.

Order

For the reasons stated, Needham's motion for a preliminary injunction is **allowed in part and denied in part.** Specifically, it is hereby ORDERED that:

1. By April 27, 2021, Coppinger and GRI shall return to Needham any and all copies of any customer list and other customer information, which Coppinger obtained from Needham while he was a Needham employee, that are within their possession, custody or control;

2. GRI shall continue to sequester, and neither it nor Coppinger shall use, the Uploaded Contacts List during the pendency of this action;

3. Until July 11, 2021, or the final adjudication of this case, whichever comes first, Coppinger is preliminarily enjoined from soliciting directly or indirectly, including through GRI, any customer on the Coppinger Mail List to transfer their loan business, including any refinancing, to GRI;

4. To ensure compliance with Item 3 above:

   (a) For each communication with any customer listed on the Coppinger Mail List, Coppinger shall prepare and maintain a log setting forth:

      i. the name of the customer contacted
      ii. the date of the communication
      iii. the method of communication (e.g., telephone call, email or text)
      iv. who initiated the contact (Coppinger or the former customer) and
      v. a summary of the substance of the communication.

The motion is otherwise **denied.**

April 17, 2021

/s/ Karen F. Green
Karen F. Green
Superior Court Justice