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December 2, 2019

VIA FIRST CLASS MAIL

Jared P. Hirt, Esq.
Evans Fox LLP
100 Meridian Centre Boulevard
Suite 300
Rochester, New York 14618

Re: *Kristi Wright*

Dear Mr. Hirt:

This office represents Kristi Wright in connection with your letter dated November 14, 2019. As you know, Ms. Wright is now employed at Stache Grooming Lounge on Monroe Avenue in Brighton.

Ms. Wright intends to continue working at Stache Grooming Lounge notwithstanding the allegations in your letter and the alleged non-competition agreement she may have signed after she was initially hired.

First, upon information and belief, The Men's Room has never sought to enforce agreements with ex-employees, allowing them to freely pursue employment in the area. Indeed, when Ms. Wright notified the owners that she would be leaving The Men's Room for another opportunity, she was told that she could work anywhere else at any other men's grooming shops except for her current employer. There are only two other men's salons in Rochester (like The Men's Room) and both are within a one-mile radius of The Men's Room. Thus, the agreement essentially bars her from doing the job that she wants to do, *i.e.*, working at a men's salon. The Men's Room did not provide Ms. Wright with a copy of the alleged non-competition agreement at any time, including upon her resignation.

Most notably, however, is the fact that The Men's Room materially changed the compensation structure for Ms. Wright and other employees from a commission-based compensation package to an hourly, plus bonus compensation package. This, specifically, was the reason for her leaving.

These facts show that the alleged non-competition is unenforceable on two grounds. First, Ms. Wright was an at-will employee for her entire tenure at The Men's Room and,

therefore, is not currently bound by the alleged employment contract. She was hired before she signed the alleged employment contract, which contained the alleged non-competition agreement, and her compensation was changed unilaterally. Consequently, the employment contract did not govern the employment relationship. *See Carver v. Apple Rubber Prods. Corp.*, 558 N.Y.S.2d 379, 380 (4th Dep't 1990) ("[A]bandonment may be inferred from the conduct of the parties and the attendant circumstances.").

Second, even if the employment contract governed the Ms. Wright's employment with The Men's Room, the non-competition provision within it is unenforceable. As you may know, in New York, a non-competition agreement is enforceable only if it is reasonable and is reasonable only if three conditions are met: (1) the agreement's scope is no greater than is required for the protection of the legitimate interest of the employer; (2) the agreement does not impose undue hardship on the employee; and (3) it is not injurious to the public. *Bdo Seidman v. Hirshberg*, 93 N.Y.2d 382, 388-89 (1999).

Here, the non-competition provision is unreasonable and, thus, unenforceable, for two reasons. First, The Men's Room has not shown that the agreement protects its legitimate interests. Protecting confidential customer information and retaining an employee's services which are "unique or extraordinary" are legitimate interests. *Reed, Roberts Assocs., Inc. v. Strauman*, 40 N.Y.2d 303, 308 (1976). But customer lists are generally not considered confidential information and are not protected in any event if the employer does not show its customers "are discoverable only by extraordinary efforts." *H. Meer Dental Supply Co. v. Commisso*, 269 A.D.2d 662, 664 (3d Dep't 2000). Moreover, hairdressers' services are not considered "unique or extraordinary." *Family Affair Haircutters v Detling*, 110 A.D.2d 745, 748 (2d Dep't 1985).

Second, the agreement imposes undue hardship on Ms. Wright. All the men's salons in Rochester are within a one-mile radius of The Men's Room. Consequently, Ms. Wright is effectively barred from working in a men's salon in Rochester, rendering the non-competition agreement unreasonable. *Long Island Minimally Invasive Surgery, P.C. v. St. John's Episcopal Hospital*, 164 A.D.3d 575, 577 (2d Dep't 2018) (finding employee made a prima facie showing that geographic restriction was unreasonable where it "effectively barred him from performing" his chosen profession in the New York metropolitan area).

I have also attached a recent decision from Supreme Court Justice Matthew A. Rosenbaum in which Justice Rosenbaum denied a motion for a preliminary injunction based on facts similar to the situation here.

Accordingly, based on the facts at hand and the strong legal support Ms. Wright enjoys, she intends to continue working at Stache Grooming Lounge.

Very truly yours,

BOND, SCHOENECK & KING, PLLC

Edward P. Hourihan, Jr.

EPH/car
Enclosure

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

PHARAOH'S HAIRUM, INC.,
Plaintiff,
v. Index #: E2019009203
TORY HARRINGTON,
Defendant.

Special Term October 24, 2019

APPEARANCES

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DECISION

Rosenbaum, J.

Plaintiff by order to show cause seeks an order

1. restraining and enjoining defendant from directly or indirectly performing duties or providing services similar to the services offered by Pharaoh's Hairum within a 10-mile radius of 4112 W. Henrietta Rd., Rochester, NY 14623 for nine (9) months from the entry of this order; (b) restraining and enjoining

defendant from, on her own behalf or on behalf of any other person, firm or corporation, contacting or assisting anyone else to contact through any means (including but not limited to, telephone calls, text messages, e-mails, social media, or any messaging apps) any of the plaintiff's customers that defendant met or served during her employment at plaintiff for the purpose of soliciting business from them or providing services to them for a period of nine (9) months from the entry of this order; (c) restraining and enjoining defendant from directly or indirectly, for herself or on behalf of any other person, firm or corporation, soliciting, diverting or taking away any of the plaintiff's customers that defendant met or served during her employment at plaintiff for a period of nine (9) months from the entry of this order; and (d) restraining and enjoining defendant from using or disclosing any of the plaintiff's confidential or proprietary information, including customer lists, customer preferences, and customer contact information;

2. Requiring defendant to maintain all records, including electronic records, relating to (i) any communications from April 1, 2019 to the present between defendant (or anyone acting on defendant's behalf) and any customers that defendant met or served during her employment at plaintiff, including e-mails, text messages, phone records, social media posts, messages or content, messages using any internet page or app and (ii) any services or products provided by defendant (or anyone acting on defendant's behalf) from August 28, 2019 to the present to any customers that defendant met or served during her employment at plaintiff;

3. Requiring defendant to produce to plaintiff's counsel the following documents and records in native format, covering the period of April 1, 2019 to present or any part thereof:

A. A copy of all postings and other content on any of defendant's Facebook and Instagram pages from April 1, 2019 to the present relating to hair, salon or spa services, Pharoah's Hairum, or defendant's place of work (whether as an employee, contractor, owner or in any other capacity);

B. All documents relating to all communications between defendant (or anyone acting on defendant's behalf) and any of the plaintiff's customers that defendant met or served during her employment at plaintiff, including, but not limited to, telephone calls, text messages, e-mails, social media, or any messages sent over the internet through apps;

C. All documents relating to any communications regarding defendant's obligations under her employment agreement;

D. Defendant's phone records, including lists of any calls made or received and any text messages sent or received;

E. All documents relating to any income received by defendant after her resignation from plaintiff;

F. All documents reflecting any arrangement for defendant to provide any hair, salon or spa services after her resignation from plaintiff at any location as an employee, contractor, owner or in any other capacity;

G. All documents relating to any appointments for defendant to provide any hair, salon or spa services after her resignation from plaintiff, including, but not limited to, any calendar entries

for such appointments.

Defendant opposes plaintiff's order to show cause and request for a preliminary injunction.

Discussion

Defendant is a twenty three year old hairstylist who signed an employment agreement with plaintiff on July 29, 2014, 10 days after turning 18 years old, and a month and a half after graduation. (Harrington aff'd 10-17-19). According to defendant she was advised that signing the agreement was a condition of employment, and she was not provided an opportunity to review it with counsel. (Id. ¶3).

Defendant submits that on August 27, 2018 she underwent heart surgery to repair an aortic valve malfunction which resulted in a stent being implanted. (Id. ¶6). She was out of work for two weeks, then returned working half-days for two weeks, but claims plaintiff required her to return to full hours. (Id.). In 2019 she began to experience panic attacks developing considerable stress and anxiety due to her work schedule. (¶7). She asserts that she met with the owner Ms. Minute to cut back on her overly booked schedule, but a couple of days later, her supervisor, Barbara Alongi, advised that she could not reduce her hours until after January 1, 2020. (7). She decided she could not keep up with the schedule, sought a medical examination, and ultimately provided her two week notice by letter, on August 29, 2019. (¶7; Ex. A medical report).

Plaintiff submits that defendant did not honor the two week notice portion of the contract after her resignation as defendant admits that on August 30, 2019 she began working with her mother at Shear Perfection in Henrietta. (Defendant aff'd ¶11; Ms. Minute reply aff'd 10-22-19; See also aff'd of Alongi and Horsey dated 10-22-19). Her employment terminated on

September 7, 2019 after Shear Perfection received a letter from plaintiff's counsel. (Id. ¶11). Defendant is now employed at MySalon in Avon which is outside the 15 mile radius. (11, 12).

Defendant denies using Pharaoh's Hairum's time, facilities or confidential information during her employment to solicit customers. (14). Defendant admits:

> Since I left my employment at Pharaoh's Hairum, I have serviced approximately fifteen customers who were formerly my customers at Pharaoh's Hairum. Three of these customers were sent communications by me on Facebook and Instagram in which I indicated to them that I would be providing hair styling services and I gave them my telephone number. A copy of that communication is attached thereto as Exhibit C. These three customers had been customers of mine for many years at Pharaoh's Hairum and included: Jennifer Haefele, Patricia Lamb and Carrie Ann Hare. The other twelve customers who I have serviced since I left Pharaoh's Hairum came to me as a result of Pharaoh's Hairum sending them a letter advising them that I was no longer employed there or by Plaintiff calling clients that had appointments with me after I left during which call Plaintiff informed them of my departure. As a result, these customers sought me out and successfully located me. I did not solicit those customers. A copy of the letter Pharaoh's Hairum sent to my customers is attached hereto as Exhibit D.

(Id. ¶13). Defendant denies the allegations asserted by Ms. Alongi that she accessed password protected programs and that she solicited and continues to solicit customers. (¶¶17-20). Ms. Minute, the owner, in reply claims that defendant is not being truthful, and submits electronic proof purportedly evidencing defendant's improper use of someone else's password to access

confidential information. (Minute reply aff'd 10-22-19).

Currently, defendant is working outside the 10 mile temporal restriction, mooting the necessity of the preliminary injunction. However, it appears defendant would like to return to the salon where her mother works which is within the 10 mile radius.

Preliminary Injunctive Relief

Since preliminary injunction relief "'is a drastic remedy that is not routinely granted,'" the movant must demonstrate by clear and convincing evidence "(1) a likelihood of success on the merits, (2) irreparable injury in the absence of injunctive relief, and (3) a balance of equities in its favor." (Sutherland Global v. Stuewe, 73 AD3d 1473, 1474 (4th Dept. 2010); Eastman Kodak Co. v. Carmosino, 77 AD3d 1434, 1435 (4th Dept. 2010). This relief "should be awarded sparingly, and only where the party seeking it has met its burden of providing both the clear right to the ultimate relief sought and the urgent necessity of preventing irreparable harm." City of Buffalo v. Mangan, 49 A.D.2d 697, 697 (4th Dept. 1975).

Initially, it is important to consider defendants' factual averments, that the employment agreements containing the restrictive covenants were signed as a condition of initial employment, not bargained for, nor offered as a promotion or higher level of responsibility. (accord Scott, Stackrow & Co., C.P.A.'s, P.C., 9 AD3d 805, 807-08 (3rd Dept. 2004); Ashland Mgt. Inc. v Altair Investments NA, LLC, 59 AD3d 97, 114-15 [1st Dept 2008] [dissent]; compare BDO Seidman, 93 NY2d 387, 395 (1998)). Defendant is currently a twenty three year old hairstylist who initially signed the employment agreement with defendant on July 29, 2014, 10 days after turning 18 years old, and a month and a half after graduation. (Harrington aff'd 10-17-19).

This Court assumes, despite defendant's claims, for the sake of otherwise evaluating the enforceability of the restrictive covenants that the agreement is valid. The Court must then analyze the first prong, "likelihood of success" which is dependent upon the validity and enforceability of the restrictive covenants.

Likelihood of Success

Although a likelihood of success does not require the movant to prove their case, it does require the demonstration of a prima facie case. (Invar Intern., Inc. v. Zorlu Enerji Elektrik Uretim Anonim Sirketi, 86 A.D.3d 404, 405 (1st Dept. 2011)). Since this case involves enforcement of a restrictive covenant in an employment agreement, plaintiff has the burden to show that the agreement is valid, and that the restrictive covenant is reasonable in that it (1) is no greater than is required for the protection of the legitimate interests of the employer; (2) does not impose undue hardship on the employee; and (3) is not injurious to the public. *See* BDO Seidman v. Hirshberg, 93 N.Y.2d 382, 388-89 (1999). See also, D&W Diesel, Inc. v. McIntosh, 307 A.D.2d 750, 750-51 (4th Dept. 2003). "'In this context, a restrictive covenant will only be subject to specific enforcement to the extent that it is reasonable in time and area, necessary to protect the employer's legitimate interests, not harmful to the general public and not unreasonably burdensome to the employee.'" Id. at 389, *quoting* Reed, Roberts Assoc., Inc. v. Strauman, 40 N.Y.2d 303, 307 (1976). A restriction is necessary to protect legitimate business interests if the employer demonstrates that the restriction is required: (1) to protect its trade secrets; (2) to protect other confidential information, or (3) because the employee's services are special or unique. (See Reed, Roberts Assoc., Inc. v. Strauman, 40 N.Y.2d at 308; Sutherland Global Services, Inc., 73 A.D.3d at 1473).

As the Court of Appeals has observed, "in *Reed, Roberts*

Associates, *supra*, we limited the cognizable employer interests under the first prong of the common-law rule to the protection against misappropriation of the employer's trade secrets or of confidential customer lists, or protection from competition by a former employee whose services are unique or extraordinary." (BDO Seidman, 93 N.Y.2d at 389).

Here, as recited above, plaintiff just 18 and out of high school was required to sign a restrictive covenant as a term of employment for a position as an $8.00 per hour trainee, purportedly without the opportunity to have the agreement reviewed by counsel. Five years later plaintiff suffering from stress and anxiety following heart surgery, requested workload accommodations which were not mutually resolved resulting in her resignation. Immediately thereafter plaintiff resumed employment at a competitor within the restrictive zone, resulting in plaintiff notifying the competitor that litigation would ensue unless defendant was terminated. Defendant was terminated, and now works outside the restrictive zone.

In reply, plaintiff Ms. Minute, the owner, disputes many of the factual allegations alleged by defendant. She states that defendant's requests were accommodated, but despite the accommodations, and plaintiff's request that defendant continue to work, defendant submitted notice and immediately resigned without honoring the two week notice as required under the agreement. (Minute aff'd 10-22-19).

As set forth, defendant signed the agreement as an associate designer which was defined as "working in Pharaoh's Hairum training program" to become a hairdresser earning $8.00 per hour, and the ability to earn a small bonus. (Pl Ex. 1). The agreement contains a confidentiality/non disclosure clause, non solicitation clause and a restrictive covenant. The agreement also contained a liquidated damages clause if an employee breached the agreement. (Id.). The covenant not to compete

provides:

> (a) Employee acknowledges:
>
> i. That the Employer's products and services have a unique reputation for excellence and quality in the Greater Rochester market;
> ii. That the Employer has a proprietary interest in its Confidential Information, including the individualized service and product preferences of its customers; and
> iii. That Confidential Information and trade secrets regarding the Employer's services, products, business, advertising and marketing programs, sales, pricing, costs, and the specialized requirements of the Employer's customers are highly valuable to the Employer's business and provide it with a competitive advantage.
>
> (b) Employee acknowledges that this Confidential Information is owned solely by the Employer. To preserve and protect the Employer's Confidential Information and trade secrets, Employee promises that, for nine (9) months following the date of her/his termination, Employee shall not by any means, either directly or indirectly, perform duties or provide services in any way similar to the services offered by the Employer within a ten (10) mile radius of any of the Employer's locations where Employee serviced customers in the last year of his/her employment.

The agreement also required defendant to acknowledge and agree that:

> (i) in the event Employees employment with Pharaoh's Hairum terminates for any reason, Employee will be able to earn a livelihood without violating the foregoing

> restrictions, (ii) due to Employee's unique skills, position, exposure to Confidential Information, and substantial contact with customers, the time limitation of (9) months established by Paragraphs 8 and 9 is reasonable under the circumstances, and (iii) Pharaoh's Hairum would not have hired Employee or continued her/his employment without the protection of the restrictive covenants included in this Agreement.

(Agreement Pl. Ex. 1 ¶11 Enforcement)

Defendant as an employee also agreed a confidentiality clause.

> Employee acknowledges that (s)he occupies a position of trust and confidence with the Employer and that (s)he will have access to, and may acquire confidential information of actual or potential value or use to the Employer. Employee agrees that, during and after her/his employment, Employee will treat as confidential and will not, without the Employer's express authorization, disclose or use any confidential or proprietary information about Employer's present or future business, sales, services, products, operations, processes, or personnel. The term "confidential information" includes, but is not limited to, information concerning Pharaoh's Hairum's customers which is not generally available to the public, including their individualized preferences for services and products, customer lists, customer contact information and addresses (including customer email addresses, cellular telephone numbers, web pages, and social media pages and accounts), appointment/scheduling preferences, service and product price discount programs, customer service policies, and other business information which Pharaoh's Hairum considers

and treats as confidential (hereinafter "confidential Information").

In addition, the agreement also restricts plaintiff's private life by imposing restrictions regarding social media posting for example: "Posting information about a new job or new position on a personal Facebook page or on another social media platform is prohibited if that posting is delivered to any customer that Employee met or served during her/his employment. ...." (9(d)).

Here, although on its face, the temporal limitation of nine months and geographical limitation of 10 miles are not necessarily unreasonable, plaintiff has not met its burden of establishing by clear and convincing evidence that the broad, sweeping restrictions are "'necessary to protect the employer's legitimate interests, not harmful to the general public and not unreasonably burdensome to the employee.'" (BDO Seidman supra, at 389 citing Reed, Roberts Assoc., Inc., supra)). Plaintiff has failed to establish that the restrictions are no greater than those necessary to protect the interests of their business. For example, based on the broad language of the agreement, plaintiff seeks to improperly restrain defendant from "directly or indirectly" providing any similar services to any customers of plaintiff which includes those defendant never serviced or those defendant retained through no effort of the employer. (Agreement 8(b); 9(b)). Restrictive covenants which extend to plaintiff's past and present customers, which defendant may have had no contact with, or to those who are no longer customers of plaintiff, are manifestly over broad and clearly conflict with these well established principles. See Zinter Handling, Inc. v. Britton, 46 A.D.3d 998, 1001 (3d Dept. 2007) ("since plaintiff's covenant not to compete seeks to bar defendants from soliciting customers with whom it never had an established relationship and clients recruited through defendants' independent efforts the covenant not to compete is manifestly over broad"). The employment agreement in this matter for an $8.00 per hour trainee was one

of the most extensive and restrictive agreements this Court has reviewed. Currently, the evidence before the Court does not justify nor support the broad nature of the restrictive covenants.

Aside from the agreement being overly broad, plaintiff has failed to establish that the customer lists, alleged scheduling, processes and sales qualify as trade secrets or that enforcement is necessary to protect plaintiff's "legitimate interests." (Citation omitted Eastman Kodak v. Carmosino, 77 AD3d 1434 (4th Dept. 2010)). Although Ms. Minute in her reply affidavit more fully explains the company's alleged unique business model and training program, and the development of unique color formulas for each customer, this Court does not find that such claims sufficiently establish those techniques as trade secrets. (Id.). Plaintiff's failure to meet its initial burden of demonstrating that enforcement is necessary to protect its business interests is fatal to its application for a preliminary injunction. (Genesis II Hair v. Vallar, 251 AD2d 1082 (4th Dept. 1998)).

Despite plaintiff's claims that defendant accessed confidential information from a password protected computer, defendant denies such claims which results in a disputed fact issue. It also appears that since defendant is no longer an employee, access is no longer available if in fact, defendant improperly accessed the information. No proof has been submitted that she copied plaintiff's database before leaving her employment. Defendant's recollection of customer lists and/or customer needs and habits do not constitute trade secrets or confidential information. (Walter Karl, Inc. v. Wood, 137 AD2d 22, 27 (2nd Dept. 1988)).

Restrictive covenants will be enforced only so far as necessary to protect trade secrets or in cases where the employee's services are so unique or extraordinary as to be irreplaceable. (Citation omitted, Savannah Bank v. Savings Bank of the Fingerlakes, 261 AD2d 917 (4th Dept., 1999)). Again,

plaintiff has failed to establish by clear and convincing evidence that defendant's hair dressing services are unique or extraordinary. Hairdresser's services have been found not to be unique or extraordinary per se. (Family Affair Haircutters v. Detling, 110 AD2d 745, 748 (2nd Dept. 1985)). This Court finds that hairdressing much like hair loss treatment services are not unique or extraordinary. (Genesis II Hair v. Vallar, supra)). Moreover, here at the time defendant signed the agreement she was an $8.00 per hour "Associate Designer" not a hairdresser, and the agreement was never updated to her new role.

Although plaintiff cites a case in their reply brief, L & C Hair Designers v. Balestrieri stating that the Appellate Court affirmed a preliminary injunction restraining a hairdresser, the facts of that case have not been submitted nor has it been shown that the employee was an $8.00 per hour trainee at the time of signing the agreement as presented here. It is unclear whether defendant was a hairdresser or provided other services or whether the covenant was in regards to the sale of a business. (277 AD2d 427 (2nd Dept. 2000); Ulman v. BCK Partners, supra (4th Dept. 2016)–Appellate Division determined lack of proof that financial advisors provide unique or extraordinary services).

Accordingly, plaintiff has not established a likelihood of success on the merits.

Irreparable Injury

Plaintiff has made conclusory assertions that it will suffer irreparable harm to good will and the loss of customers. Defendant asserts that she has 15 prior customers with 12 of those customers seeking her out after receiving a call from plaintiff. As the Fourth Department has held, conclusory allegations that the goodwill of the business will be irreparably harmed is insufficient for injunctive relief. (Ulman supra 139 AD3d 1359). Additionally, plaintiff has not alleged that its

business will likely be decimated by the loss of 15 customers or 80 customers as now alleged, and more importantly, since the numbers are known, monetary damages can be calculated.

Lastly, despite plaintiff's claims that the parties contractually agreed that an employees' departure and servicing clients would result in irreparable harm, such agreement is not dispositive on that issue. (Alpha Capital Aktiengesellschaft v. Advanced Viral Research Corp., 2003 WL 328302, *5 (SDNY 2003)). As alleged, defendant is serving a small number of her former clients, fifteen, with twelve finding her through social media after being advised by plaintiff that defendant terminated her employment. Plaintiff has not submitted any factual information regarding the number of clients the salon services nor that this small number has caused financial hardship likely to jeopardize the salon's going concern.

Accordingly, plaintiff has not met by clear and convincing evidence the irreparable injury prong to support injunctive relief.

Balancing the Equities

"[T]he 'balancing of the equities' usually simply requires the court to look to the relative prejudice to each party accruing from a grant or a denial of the requested relief." (Ma v. Lien, 198 A.D.2d 186,186-87 (1st Dept. 1993), *lv to app dismissed* 83 N.Y.2d 847 (1994). In so doing, a court must balance the relative hardship suffered by the parties in the event the relief is granted. (See Rockland Dev. Assoc. v. Village of Hillburn, 172 A.D.2d 978, 979 (3d Dept. 1991). Denial of a preliminary injunction will not be disturbed where the movant fails to establish "'the harm to plaintiff from denial of the injunction as against the harm to defendant from granting it'" tips in movant's favor. (Citation omitted, Delphi Hospitalist Services LLC v. Patrick, 163 AD3d 1441, 1442 (4th Dept. 2018)).

Here, the harm to plaintiff a large, successful well branded local company in potentially losing a few customers versus defendant's likely inability to maintain employment in her field for which plaintiff has not established the services, are "unique or extraordinary" tips in favor of the defendant.

Plaintiff has failed to establish by clear and convincing evidence either a likelihood of success or irreparable injury, and the equities tip in favor of defendant. Plaintiff has failed to show the restrictive covenants were necessary to "protect its legitimate business interest" or that defendants were a learned profession and/or provided "unique or extraordinary" services. (John G. Ullman & Assoc. v. BCK Partners, 139 AD3d 1358 (4th Dept. 2016); .

Accordingly, plaintiff's motion seeking a preliminary injunction is denied. The request under paragraphs two and three of the order to show cause relate to preservation of evidence and scheduling issues. The attorneys involved in this matter are very experienced attorneys well aware of their obligations regarding preservation of evidence. Since there is no proof that anything has occurred regarding the destruction of electronic discovery, the Court will not issue a pre-emptive order. Lastly, in regards to discovery, the parties should attempt to work out those issues, and as always the Court is available if assistance is required.

This constitutes the opinion and decision of the Court pursuant to CPLR 4213. Any relief requested by the Parties, but not specifically granted herein is denied. Counsel for Defendant shall submit the order on notice.

Dated: 11/8/19

HON. MATTHEW A. ROSENBAUM
Supreme Court Justice