

BUY™

SELL™

SHOP™



Downloaded From
www.TextBookDiscrimination.com



SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)



BUY™

SELL™

SHOP™

www.TextBookDiscrimination.com

Get **Booked Up** on Justice!

© TBD Corporation. All Rights Reserved.

Filing # 63273582 E-Filed 10/24/2017 05:20:24 PM

**IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA**

Case No.: 16-2017-CA-004428

Division CV-B (Civil)

J.L. NIEMAN, INDIVIDUALLY

Plaintiff/Appellant

vs.

SOUTHEASTERN GROCERS, LLC.,
BI-LO HOLDING, LLC.,
WINN-DIXIE STORES, INC.,
STEVEN C. STRACHOTA,

Defendants/Appellees

SOUTHEASTERN GROCERS, LLC.,

Counter-Plaintiff Appellee

vs.

J.L. NIEMAN, INDIVIDUALLY

Counter-Defendant Appellant

Case No.: 16-2017-CA-5356
(Consolidated/Closed on 9/29/2017)

NOTICE OF APPEAL

NOTICE IS GIVEN THAT J.L. Nieman Plaintiff, counterclaim Defendant, and Appellant *Pro Se*, hereby appeals the following Orders of the Duval County Court:

- (1) An order in consolidated case 16-2017-CA5356 (10/19/2017) docketed in case 2017-CA-4428 as filing number 65 granting the motion of Southeastern Grocers, LLC for emergency ex parte preliminary injunction. (See copy of order attached as NOA exhibit A). The nature of the order is an interlocutory order granting emergency "temporary injunction" (expressly ordered effective until further order of the Duval county court, or

July 10, 2022, whichever is sooner). Immediate interlocutory appeal of this injunction is permitted as to such order under Florida Rule of Appellate Procedure 9.130(a)(3)(B).

(2) An order of September 22, 2017 (Filing #: 61992921, e-filed 9/26/2017) granting protective order and stay of discovery until closing of pleadings. (See copy of order attached as NOA exhibit B). Plaintiff/Counterclaim Defendant/Appellant seeks review of the trial court's discovery stay in this case under basis of common law certiorari, pursuant to *Maris Distributing Co. v. Anheuser-Busch, Inc.*, 710 So.2d 1022 (1st DCA 1998) and related authority that such discovery stays may only be granted for good cause and none has been shown in this case.

(3) A case management order dated September 29, 2017 (Filing #: 62219647 E-Filed 9/29/2017) confirming and continuing the stay of discovery until close of pleadings. (See copy of order attached as NOA exhibit C). Plaintiff/Counterclaim Defendant/Appellant seeks review of the trial court's discovery stay in this case under basis of common law certiorari, pursuant to *Maris Distributing Co. v. Anheuser-Busch, Inc.*, 710 So.2d 1022 (1st DCA 1998) and related authority that such discovery stays may only be granted for good cause and none has been shown in this case.

Respectfully submitted this October 24, 2017

/s/ J.L. Nieman
J.L. Nieman, *Pro Se*
832 Chanterelle Way
Fruit Cove, FL 32259
217 836 4103
JLNieman32259@yahoo.com

CERTIFICATE OF SERVICE

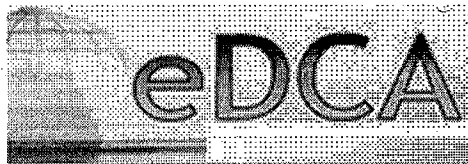
I HEREBY CERTIFY that on this date (October 24, 2017) that a true and correct copy of the forgoing has been filed with the court by way of the e-file portal and that a true and correct copy of same was served upon SEG. (Defendant, Counter Plaintiff, Appellee) and the related SEG Defendants' (Appellees') counsel of record by way of the Florida E-filing portal (electronic mail only):

Shankman Leone, Counsel for SEG et al.
David S. Shankman (dshankman@shankmanleone.com), Mitchell Fraley
(mfraley@shankmanleone.com),
707 N. Franklin Street, 5th Floor
Tampa, FL 33602

/s/ J.L. Nieman
J.L. Nieman, Nieman *Pro Se*
832 Chanterelle Way
Fruit Cove, FL 32259
217 836 4103
JLNieman32259@yahoo.com

10/24/2017

Confirmation Page



First District Court of Appeal

Case List	Case	Docket	File Document	Pending Filings	Rejected Filings	My Notifications	My Profile	Logoff	Briefs in Other Cases	Help & Support
---------------------------	----------------------	------------------------	-------------------------------	---------------------------------	----------------------------------	----------------------------------	----------------------------	------------------------	---------------------------------------	------------------------------------

eFiling Confirmation

Your Document has been received.
 The Clerk of the Court will process the document during regular business hours. Once processed you will be notified via email.
 You may print this page for your records.

J.L. Nieman
 vs
Southeastern Grocers, LLC, Winn-Dixie Stores, Inc., BI-LO Holding, LLC, Steven C. Strachota

Jon S. Wheeler, Clerk

Filer:	Jason Nieman
Bar No.:	
E-Mail:	jlnieman32259@yahoo.com
Type:	Notice
Document:	Notice of Appeal Filed
Title:	
On Behalf of:	Plaintiff/Counterclaim-Defendant/Appellant
Date Filed:	10/24/2017
Time Filed:	05:06

NOTE: The clerk's office is not currently serving a copy of your document to the other parties. It is your responsibility to continue to serve a copy to all parties.

A copy of the filed document may be obtained from the 'Pending Filings' page for service to the other parties.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

J.L. NIEMAN, INDIVIDUALLY

1ST DIST #: _____

Plaintiff/Appellant

vs.

Duval County Case #(s):
16-2017-CA-4428
16-2017-CA-5356*
(*Consolidated/closed 9/29/2017)

SOUTHEASTERN GROCERS, LLC.,
BI-LO HOLDING, LLC.,
WINN-DIXIE STORES, INC.,
STEVEN C. STRACHOTA,

Defendants/Appellees

SOUTHEASTERN GROCERS, LLC.,

Counter-Plaintiff /Appellee

vs.

J.L. NIEMAN, INDIVIDUALLY

Counter-Defendant/ Appellant

NOTICE OF APPEAL

NOTICE IS GIVEN THAT J.L. Nieman Plaintiff, counterclaim Defendant, and Appellant *Pro Se*, hereby appeals the following Orders of the Duval County Court:

- (1) An order in consolidated case 16-2017-CA5356 (10/19/2017) docketed in case 2017-CA-4428 as filing number 65 granting the motion of Southeastern Grocers, LLC for emergency ex parte preliminary injunction. (See copy of order attached as NOA exhibit A). The nature of the order is an interlocutory order granting emergency “temporary injunction” (expressly ordered effective until further order of the Duval county court, or July 10, 2022, whichever is sooner). Immediate interlocutory appeal of this injunction is permitted as to such order under Florida Rule of Appellate Procedure 9.130(a)(3)(B).

- (2) An order of September 22, 2017 (Filing #: 61992921, e-filed 9/26/2017) granting protective order and stay of discovery until closing of pleadings. (See copy of order attached as NOA exhibit B). Plaintiff/Counterclaim Defendant/Appellant seeks review of the trial court's discovery stay in this case under basis of common law certiorari, pursuant to *Maris Distributing Co. v. Anheuser-Busch, Inc.*, 710 So.2d 1022 (1st DCA 1998) and related authority that such discovery stays may only be granted for good cause and none has been shown in this case.
- (3) A case management order dated September 29, 2017 (Filing #: 62219647 E-Filed 9/29/2017) confirming and continuing the stay of discovery until close of pleadings. (See copy of order attached as NOA exhibit C). Plaintiff/Counterclaim Defendant/Appellant seeks review of the trial court's discovery stay in this case under basis of common law certiorari, pursuant to *Maris Distributing Co. v. Anheuser-Busch, Inc.*, 710 So.2d 1022 (1st DCA 1998) and related authority that such discovery stays may only be granted for good cause and none has been shown in this case.

Respectfully submitted this October 24, 2017

/s/ J.L. Nieman
J.L. Nieman, *Pro Se*
832 Chanterelle Way
Fruit Cove, FL 32259
217 836 4103
JLNieman32259@yahoo.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date (October 24, 2017) that a true and correct copy of the forgoing has been filed with the court by way of the e-file portal and that a true and correct copy of same was served upon SEG. (Defendant, Counter Plaintiff, Appellee) and the related SEG Defendants' (Appellees') counsel of record by way of the Florida E-filing portal (electronic mail only):

Shankman Leone, Counsel for SEG et al.
David S. Shankman (dshankman@shankmanleone.com), Mitchell Fraley
(mfraley@shankmanleone.com),
707 N. Franklin Street, 5th Floor
Tampa, FL 33602

/s/ J.L. Nieman
J.L. Nieman, Nieman *Pro Se*
832 Chanterelle Way
Fruit Cove, FL 32259
217 836 4103
JLNieman32259@yahoo.com

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR DUVAL COUNTY
CIVIL DIVISION

SOUTHEASTERN GROCERS, LLC,

Plaintiff,

Case No.: 16-2017-CA-005356-XXXX-MA
Division: CV-H

vs.

JAY NIEMAN, a/k/a JASON L.
NIEMAN, a/k/a J. L. NIEMAN, a/k/a
JASON LEE NIEMAN, a/k/a JASON
"JAY" NIEMAN,

Defendant.

**ORDER GRANTING PLAINTIFF'S EMERGENCY MOTION FOR
EX PARTE TEMPORARY INJUNCTION**

THIS CAUSE came before the Court on August 31, 2017, on Plaintiff, SOUTHEASTERN GROCERS, LLC's ("SEG") Emergency Motion for *Ex Parte* Temporary Injunction (the "Motion")¹. The Court, having reviewed and considered the Complaint, the Motion, its supporting affidavits and materials, as well as the authority and legal argument submitted, and being otherwise fully advised in the premises, hereby makes the following findings of fact and conclusions of law:

1. SEG filed its Complaint and the Motion on August 23, 2017.
2. On August 24, 2017 the Defendant was properly served with the Complaint and Motion. On August 28, 2017, the Defendant was properly served with the Notice of Hearing for the hearing on the Motion, which is scheduled for August 31, 2017.

¹ SEG originally filed the Motion on August 23, 2017 as an *Ex Parte* motion. Subsequently, this Honorable Court advised SEG that it would not conduct a hearing on the Motion until the Defendant was properly served with the Motion. At the time of the hearing on the Motion, the Defendant was properly served with the Motion and the Notice of Hearing for the hearing on the Motion. Therefore, in effect, the Motion is no longer an *Ex Parte* Motion.

FILED 10/19/17 M1112 FISELL

- NOA Ex A -

FINDINGS OF FACT

3. SEG is the parent company of Winn-Dixie Stores, Inc., Harveys Supermarket, BLO, LLC, and Fresco y Mas (the "Affiliated Grocery Store Chains") (together, "SEG" and the "Affiliated Grocery Store Chains" referred to as the "SEG Network"). The SEG Network operates throughout the southeastern region of the United States, including Florida. Together, the SEG Network employs more than 53,000 associates in more than 700 grocery stores, liquor stores and pharmacies. The SEG Network is headquartered in Jacksonville, Florida.

4. The SEG Network retains a significant portion of their general liability, workers compensation and auto liability insurance risk. SEG's Risk Management Department is responsible for managing the liability claims made against the SEG Network.

5. Defendant was employed by SEG as a Senior Claims Manager and then as its Director of Claims Management from June 2015 through July 2017.

6. While employed by SEG, Defendant was responsible for, among other things:

a. Supervising and managing threatened and actual claims made against companies within the SEG Network resulting from general and automotive liability incidents;

b. Supervising and managing the investigations of those incidents, including the collection and analysis of witness information and facts relating to the claims;

c. Analyzing the SEG Network's actual or potential risk for the claims;

d. Determining if the claim and/or lawsuit was the responsibility of the SEG Network or that of a third party;

- e. Communicating with the SEG Network's attorneys, SEG Network employees, and the third-party claims administration ("TPA") team regarding legal strategy and legal settlement;
- f. Recommending reserve levels based on risk analysis;
- g. Preparing analysis of legal claims and/or lawsuits against the SEG Network;
- h. The overall success of the general and auto liability claims administrations programs;
- i. Providing direction regarding liability claims to the company's internal claims service team and guidance to the dedicated TPA team, in conjunction with agreed upon client service instructions;
- j. Developing, implementing and monitoring claims management programs to protect SEG Network assets and minimize impact on balance sheet reserves;
- k. Resolving claims and incidents through management of the SEG Network's balance sheet and actuarial reserves for customer claims;
- l. Collaborating with external and internal legal counsel in conjunction with the TPA to create the litigation strategy;
- m. Attending mediation, settlement conferences, trials and arbitration for high exposure claims;
- n. Representing the SEG Network Claims Management group within a cross-functional team to achieve overall claims cost reductions and meet business objectives;
- o. Developing and monitoring policies, procedures and programs designed to assist in claims handling, such as cost containment, vendor selection, staffing, budgeting,

expenses and claims-related service specifications; ensure alignment with overall business strategies and compliance with audit requirements;

p. Recommending claims-related goals and performance expectations for inclusion in the department budget planning and reporting;

q. Establishing metrics and reports for evaluation of the claims management programs and perform summary analysis of risk management strategies and resources to minimize claims frequency and severity;

r. Selecting, managing, developing, motivating, evaluating and retaining personnel in accordance with company policies and procedures; and

s. Performing other job-related duties as assigned.

7. On July 12, 2016, Defendant signed that certain Covenant Agreement (the "Covenant Agreement") wherein he agreed, among other things, that for a period of five (5) years after his employment ended he would not disclose SEG's "valuable confidential business information or professional information ... and all other similar and related information of" SEG.

8. In the course of his employment, SEG provided Defendant with confidential and proprietary information, including results of internal investigations, analysis, legal strategies, strategic planning, settlement discussions, attorney-client privileged information and information prepared in anticipation of litigation (the "Confidential Information").


9. In Section 4 of the Covenant Agreement, Defendant also agreed that "[i]f [Defendant] breaches any of the aforementioned covenants, [SEG] shall have any and all legal remedies as may be available to it, and [SEG] shall be entitled to an immediate injunction from a court of competent jurisdiction to prevent the continuation of the breach without further having to show damage. Furthermore, [Defendant] agrees that damages for any such breach will be

difficult to calculate and that should he/she breach either of the aforementioned covenants, [SEG] shall be entitled to both stop payment of any funds owed [Defendant] and bring legal action against [Defendant] in a court of competent jurisdiction for each such breach.”

10. On July 10, 2017, SEG terminated Defendant’s employment.

11. On July 13, 2017, Defendant filed a complaint against SEG alleging that SEG terminated his employment for illegal reasons. That action is captioned J. L. Nieman v. Southeastern Grocers, LLC, et al., and bears case number 16-2017-CA-004428 (the “Defendant’s Case”).

12. On August 7, 2017, Defendant made a settlement demand of two hundred twenty-five thousand dollars (\$225,000.00) to SEG.

13. On August 16, 2017, Defendant forwarded a communication to SEG’s counsel, among others, advising SEG that he received a subpoena to testify (the “Valencia Email”) on September 13, 2017 from the plaintiff in the matter of *Valencia Eve v. Winn-Dixie Stores, Inc.*, Case No., 15-000151, Circuit Court, 17th Judicial Circuit, Broward County, Florida (the “Valencia Case”). ~~Defendant does not have factual knowledge relevant to the Eve Case based on his employment with SEG, however.~~ 

14. In the Valencia Email, Defendant states that he believes he is permitted to disclose SEG’s Confidential Information protected by the Covenant Agreement “if asked a direct question.” He states:

Cole, Scott, Kissane, while being defense counsel, is not my counsel and I am not asking for them to defend my deposition. That said, I believe I am bound by a certain degree of confidentiality such that I cannot voluntarily reveal any confidential information I learned or viewed while in the employ of SEG Grocers, LLC et al. However, I also believe, based on my training, that if asked a direct question I must tell the truth and that

the Defendants' [sic] cannot object based upon such confidentiality claims. (Emphasis added)

15. On August 17, Defendant forwarded a second communication to SEG's counsel advising SEG that he received a second subpoena to testify (the "Kelly Email") on September 6, 2017 from the plaintiff in a different matter -- *Antoinette Kelly v. Winn-Dixie Stores, Inc.*, Case No., 2016-CA-007527, Circuit Court, 15th Judicial Circuit, Palm Beach County, Florida (the "Kelly Case"). Defendant's knowledge relevant to the Antoinette Kelly case is limited to his affidavit concerning Winn-Dixie's historical retention policies and procedures that existed prior to his employment.

16. On August 17, 2017, Defendant sent counsel for SEG a settlement demand (the "Settlement Demand"). In the Settlement Demand, Defendant states, among other things, that he would move from the State of Florida in order to avoid testifying against Winn-Dixie in the two matters under the apparent belief that doing so would take him beyond Florida Courts' subpoena powers if SEG settled the Defendant's Case by, *inter alia*, paying Defendant four hundred twenty five thousand dollars (\$425,000.00).

17. As relevant, the Settlement Demand states:

In light of certain recent developments it seems appropriate to update my settlement offer. While opinions can differ it is arguable that the events of the last two days have potentially briefly aligned the interests of my family and I and the Defendants in this action.

As we are both now aware, I have been served with two deposition subpoenas in less than 24 hours. Both have come from members of the South Florida plaintiff's bar, a group that is responsible for an oversized ratio of claims and legal expense to SEG et al. and the liability aspects of their retail operations. Both have also come out of courts in the 4th DCA (Broward and Palm Beach) where the Plaintiff's bar seems to be given the greatest level of latitude against large corporate defendants like SEG/Winn-Dixie.

Right now, I am a target of subpoenas because I live in Florida and fall under the jurisdiction of any Florida court. However, if we relocated out of Florida, this would no longer be true. I cannot ever recall any federal court case in Florida on the liability side. Accordingly, if we moved out of state, those who would seek to subpoena me would no longer be able to.

As you know, I previously made what I believed to be a very reasonable settlement offer. I withdrew it prior to deadline as I was getting no indication of serious consideration as well as an appropriate action in light of the Department of Justice opening an investigation. It is also my understanding that a state court subpoena has no power outside of that state.

I would propose this: I hereby update my settlement offer with certain caveats and additions.

(1) The settlement number would be \$400,000. \$225,000 of this would be for lost wages, benefits, bonus and related past and future compensation. (Taxable). SEG would be permitted to take federal withholding on such items.

(2) \$100,000 would be paid in lieu of relocation expense. Our house is worth about \$325k and 6% commission is about \$20k. Adding closing costs and the cost of a commercial out of state truck move and average incidentals we easily have another \$55,000. That number would be taxable and accounts for a gross up for such taxes.

(3) \$100,000 would be paid for bodily injury (medically documented blood pressure aggravation, sleep disruption, etc.) which occurred beginning on or about 10/1/2015 through the date of the settlement. This amount would be specifically noted in the release as such and I would be responsible for dealing with the IRS as to any potential disputes over taxability of such amount.

With the settlement we would agree to leave the state of Florida and not return as to ownership of a home for at least 5 years. (Frankly, it is unlikely we would ever return but just in case I would not want to be barred forever, including a future potential vacation home). Upon receipt of the settlement funds

we would immediately place our home on the market and would agree to move out of state within 120 days from that date.

This is an unorthox [sic] situation to be sure and one that I never expected to be in. However, if I am correct it is in my best interest, my family's, and the SEG Defendants to conclude our disputes quickly and for my family and I to move out of state, and out of the jurisdiction of these attorneys and their subpoena power. (emphasis added).

18. The Covenant Agreement is a valid and enforceable agreement supported by good and sufficient consideration. SEG has fully performed its obligations under the Covenant Agreement.

19. The Covenant Agreement prohibits Defendant from, among other things, disclosing SEG's Confidential Information.

20. The Covenant Agreement contains reasonable restrictions on Defendant's conduct that are reasonably designed to protect SEG's legitimate business information, including the Confidential Information provided to Defendant while employed by SEG.

21. Defendant's statements in the Valencia Email and the Settlement Demand demonstrate that Defendant has or intends to disclose SEG's Confidential Information in material breach of the Covenant Agreement and the law by disclosing the Confidential Information to third-parties engaged in litigation with the SEG Network either in communications with third-parties or through testimony.

22. It appears from the specific facts set forth above and as shown by affidavit and SEG's counsel certification in writing that immediate and irreparable injury, loss, or damage will result to SEG because Defendant's conduct demonstrates that he intends to and will disclose SEG's Confidential Information.

CONCLUSIONS OF LAW

23. In order to obtain a temporary injunction, “the movant must establish four criteria: (1) the likelihood of irreparable harm, (2) the unavailability of an adequate remedy at law, (3) substantial likelihood of success on the merits, and (4) that the public interest supports the injunction.” School Board of Hernando County v. Rhea, 213 So.3d 1032, 1040 (Fla. 1st DCA 2017) (internal citation omitted).

24. The Defendant was properly served with the Complaint and Motion on August 24, 2017. The Defendant was also properly served with the Notice of Hearing for the hearing on this Motion on August 28, 2017. Therefore, the Defendant was provided adequate notice of the Motion and hearing on the Motion. Defendant appeared at the hearing.

25. SEG will suffer irreparable harm if Defendant is not enjoined from disclosing the Confidential Information because plaintiffs in the Valencia Case and the Kelly Case (together, the “Third-Party Cases”), among others, will have access to the highly sensitive Confidential Information that is both confidential and subject to the attorney-client privilege and work-product doctrine. See Ford Motor Co. v. Hall-Edwards, 997 So.2d 1148, 1153 (Fla. 3d DCA 2008) (holding that the attorney-client privilege “protects confidential communications between a lawyer and client, as well as third persons to whom disclosure is in furtherance of the rendition of legal services and those reasonably necessary for the transmission of the communication”); United States Sugar Corp. v. Estate of Mullins, 211 So.3d 110, 113 (Fla. 4th DCA 2017) (“[w]ork-product protection extends to information gathered in anticipation of litigation by corporate non-attorney employees, including employees of a corporation's risk management department. Internal investigative reports are also covered by the rule. A lawsuit need not be

filed for information gathered in an accident investigation to qualify for work-product protection") (internal citation omitted).

26. Disclosure of the Confidential Information constitutes irreparable harm because of the confidential, proprietary, and privileged nature of the information and because of the economic and competitive disadvantage it will cause SEG. See Allstate Ins. Co. v. Langston, 655 So.2d 91, 94 (Fla. 1995) (holding that disclosure of "material protected by privilege, trade secrets, work product, or involving a confidential informant" may cause irreparable injury if disclosed); Diaz-Verson v. Walbridge Aldinger Co., 54 So.3d 1007, 1009 (Fla. 2d DCA 2010) ("[t]he disclosure of various types of information can result in irreparable harm, including material protected by privilege, trade secrets, or work product").

27. Moreover, violation of a restrictive covenant constitutes irreparable harm as a matter of law and, here, disclosure of the Confidential Information will violate the restrictive covenant in the Covenant Agreement. "The violation of an enforceable restrictive covenant creates a presumption of irreparable injury to the person seeking enforcement of a restrictive covenant."² Florida Statutes ¶ 542.335(1)(j); Environmental Services, Inc. v. Carter, 9 So.3d 1258, 1262 (Fla. 5th DCA 2009) (granting a temporary injunction to employer preventing former employees from divulging confidential information in violation of their confidentiality agreements); US1 Ins. Services of Florida Inc. v. Pettineo, 978 So.2d 763, 766 (Fla. 4th DCA 2008) ("[a]ny violation of an enforceable agreement gives rise to a presumption of irreparable injury, and shifts the burden to the party opposing enforcement to establish the absence of such injury. § 542.335(1)(j); Am. II Elecs., Inc. v. Smith, 830 So.2d 906, 908 (Fla. 2d DCA 2002)

² Florida case law holds that the term "restrictive covenants" as referenced in Florida Statutes ¶ 542.335 includes confidentiality agreements. Environmental Services, Inc. v. Carter, 9 So.3d 1258, 1262 (Fla. 5th DCA 2009) ("Section 542.335 employs the term "restrictive covenants" and includes all contractual restrictions such as noncompetition/nonsolicitation agreements, confidentiality agreements, exclusive dealing agreements, and all other contractual restraints of trade") (internal citation omitted).

(recognizing that "a party seeking to enforce a restrictive covenant by injunction need not directly prove that the defendant's specific activities will cause irreparable injury if not enjoined").

28. SEG has no adequate remedy at law if Defendant discloses the Confidential Information because if Defendant discloses the SEG Network's Confidential Information to the third-parties, including the plaintiffs in the Third-Party Cases, those Plaintiffs will have access to internal investigation, analysis, legal strategies, settlement discussions, information prepared in anticipation of litigation, and communications subject to the attorney-client privilege. The repercussions and resulting damages would be impossible to calculate. Thus, money damages could not adequately compensate SEG. See Milner Voice and Data, Inc. v. Tassy, 377 F.Supp.2d 1209, 1221 (S.D. Fla. 2005) (finding that a former employer lacked an adequate remedy at law other than injunctive relief where a former employee was continuing to breach his restrictive covenant and soliciting the former employer's clients).

29. Defendant acknowledged and agreed in Section 4 of the Covenant Agreement that any breach of the Covenant Agreement would result in SEG not having an adequate remedy at law. As relevant, Section 4 of the Covenant Agreement states "[i]f [Defendant] breaches any of the aforementioned covenants, [SEG] shall have any and all legal remedies as may be available to it, and [SEG] shall be entitled to an immediate injunction from a court of competent jurisdiction to prevent the continuation of the breach without further having to show damage. Furthermore, [Defendant] agrees that damages for any such breach will be difficult to calculate and that should he/she breach either of the aforementioned covenants, [SEG] shall be entitled to both stop payments of any funds owed [Defendant] and bring legal action against [Defendant] in a court of competent jurisdiction for each such breach."

30. SEG is likely to succeed on the merits of its breach of contract complaint against Defendant.

31. Under Florida law, "the elements of a breach of contract action are: (1) a valid contract; (2) a material breach; and (3) damages." J.J. Gumberg Co. v. Janis Services, Inc., 847 So.2d 1048, 1049 (Fla. 4th DCA 2003).

32. Here, the Covenant Agreement is a valid contract and the restrictive covenant at issue is reasonable under the law.

33. Pursuant to Florida Statutes ¶ 542.335(1)(b), "[t]he person seeking enforcement of a restrictive covenant shall plead and prove the existence of one or more legitimate business interests justifying the restrictive covenant. The term "legitimate business interest" includes, but is not limited to: (1) Trade secrets, as defined in s. 688.002(4); (2) Valuable confidential business or professional information that otherwise does not qualify as trade secrets . . ."

34. SEG's Confidential Information qualifies, at a minimum, as "valuable confidential business or professional information."

35. In addition, the Covenant Agreement's temporal restriction of five (5) years is presumed to be reasonable under Florida law for a covenant barring disclosure of confidential and/or trade secret information. Florida Statutes, § 542.335(1)(e) ("[i]n determining the reasonableness in time of a post term restrictive covenant predicated upon the protection of trade secrets, a court shall presume reasonable in time any restraint of 5 years or less and shall presume unreasonable in time any restraint of more than 10 years. All such presumptions shall be rebuttable presumptions").

36. Defendant has or will materially breach the Covenant Agreement by disclosing the Confidential Information which, as set forth above, will cause irreparable harm and damage to SEG.

37. The issuance of an injunction enforcing Defendant's obligations under the Confidentiality Agreement will serve the public interest. See Environmental Services, Inc. v. Carter, 9 So.3d 1258, 1262 n. 3 (5th DCA 2009) ("[t]he courts also recognize that the public has an interest in the enforcement of valid restrictive covenants"); Hilb Rogal & Hobbs of Florida, Inc. v. Grimmel, 48 So.3d 957, 962 (4th DCA 2010) ("the public has a cognizable interest in the protection and enforcement of contractual rights. This interest is particularly strong with respect to non-compete agreements, as the Florida Legislature has determined that the enforcement of such agreements is in the public's best interest").

38. Entry of this Temporary Injunction will serve the public interest because the public has an interest in enforcing contracts, enforcing reasonable restrictive covenants, and protecting confidential and privileged information. Moreover, entry of this Temporary Injunction will not hinder the Defendant's ability to earn a living.

39. Because the issuance of the Preliminary Injunction will not hinder the Defendant's ability to earn a living, the Court finds that a bond in the amount of \$ 2500⁰⁰ is reasonable.

IT IS THEREFORE, ORDERED AND ADJUDGED:

1. SEG's Emergency Motion for *Ex Parte* Temporary Injunction is hereby
GRANTED.

2. The Temporary Injunction is hereby entered and shall become effective immediately upon SEG's filing proof of the Injunction Bond in the amount set forth herein with the Clerk of Court.

3. Defendant is hereby enjoined from the following:

Disclosing SEG's confidential and proprietary information, including, but not limited to, all information related to internal investigations, all results of internal investigations, claim analysis, legal strategies, strategic planning, settlement strategy, settlement discussions, attorney-client privileged information and information prepared in anticipation of litigation (the "Confidential Information") to anyone until July 10, 2022, which is a period of five (5) years from the date of his termination from SEG.

4. The Temporary Injunction is entered with proper notice after the hearing on the Motion in which SEG and Defendant were both provided the opportunity to present evidence and both presented evidence.

5. The Temporary Injunction shall remain in full force and effect from the date of entry hereof and until further Order of this Court or July 10, 2022, whichever is sooner.

6. The issuance of the Temporary Injunction is conditioned on SEG posting an injunction bond in the amount of \$ 2500 and providing evidence of same to the Clerk of Court.

The Temporary Injunction is entered on this 18th day of

OCT, 2017 at 3:56 a.m./p.m.

DONE AND ORDERED in Chambers in Jacksonville, Duval County, Florida, this

18th day of OCT, 2017.


THE HONORABLE KEVIN A. BLAZ

Copies furnished to:

Mitchell L. Fraley, Esq.
Jay Nieman, Defendant

Filing # 61992921 E-Filed 09/26/2017 11:26:49 AM

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

J.L. NIEMAN, individually

Plaintiff,

Case #: 16-2017-CA-004428

v.

Division: CV-B

SOUTHEASTERN GROCERS, LLC.,
BI-LO HOLDING, LLC.,
WINN-DIXIE STORES, INC., and
STEVEN C. STRACHOTA,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION FOR PROTECTIVE ORDER CANCELING
THE DEPOSITION OF LYNN BOSTON AND STAYING DISCOVERY**

This case came before the Court for a hearing on August 24, 2017, on Defendants' Motion for Protective Order to Cancel the Deposition of Lynn Boston and Stay Discovery Pending Closing of the Pleadings and a Case Management Conference ("Motion"). The Court has considered argument of the parties.

It is **ORDERED** that:

1. Defendants' Motion for Protective Order to Cancel the Deposition of Lynn Boston and Stay Discovery Pending Closing of the Pleadings and a Case Management Conference is granted.
2. Plaintiff's Notice of Lynn Boston's deposition is stricken and Lynn Boston's deposition shall not take place on August 28, 2017.
3. Beginning on August 24, 2017 all discovery in this case is stayed until such time as the Court reopens discovery.

- NOA EX B -


4. The parties shall attend a Case Management Conference on September 29, 2017 at 10:30 a.m. and the attorney representing the Defendants and the *pro se* Plaintiff shall bring their calendars to the Case Management Conference for the purpose of scheduling hearings on pending motions.

5. Defendants shall file and serve their response(s) to Plaintiff's Amended Complaint no later than September 18, 2017.

6. Defendants' request for attorney's fees and costs incurred in filing and bringing this motion is denied.

7. The Court did not have the opportunity to hear arguments on Defendants' Objections to Plaintiff's Notice of Intent to Serve Subpoenas for Documents on Non-Parties Milliman, AON, Boston Consulting, and Shelter Island; therefore, the Court reserves ruling on Defendants' Objections to Plaintiff's Notice of Intent to Serve Subpoenas for Documents until an appropriate time.

ORDERED on September 22 2017, in Jacksonville, Florida.



Circuit Judge Karen K. Cole

Copies furnished to:

Mitchell L. Fraley, Esquire
Plaintiff J. L. Nieman, *pro se*

Filing # 62219647 E-Filed 09/29/2017 04:37:50 PM

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2017-CA-4428-XXXX-MA
DIVISION: CV-B

J.L. NIEMAN,

Plaintiff,

vs.

SOUTHEASTERN GROCERS, LLC, BELO
HOLDING, LLC, WINN-DIXIE STORES,
INC., and STEVEN C. STRACHOTA,

Defendants.

POST-CASE MANAGEMENT CONFERENCE ORDER
CONSOLIDATING CASES AND DIRECTING COURSE OF PLEADINGS

This case came before the Court on September 29, 2017, for a case management conference. The Plaintiff, Mr. J. L. Neiman, representing himself, attended, as did Mitchell Fraley, Esquire, counsel for Defendants Southeastern Grocers, LLC, *et al.*

Mr. Neiman seeks leave to consolidate this case with a newly-filed case, identified below, and to amend his current complaint in the action at bar. He does not seek to add causes of action, but does wish to add factual allegations and language addressing defects alleged by Defendants in their Motion to Dismiss Plaintiff's Amended Complaint as to Counts I, II, and III. The instant ("4428") action in Division CV-B was filed before the other ("5356") case in Division CV-H; therefore, the two cases will consolidated in Division CV-B in the older of the two cases.

The case management order that follows is entered with the agreement of Mr. Neiman and Mr. Fraley.

- NO A EX C -

It is **ORDERED** that:

(1) The case of *Southeastern Grocers, LLC, v. Jay Neiman, et al.*, no. 16-2017-CA-5356-XXXX, currently in Division CV-H (Judge Kevin Blazs, presiding), is consolidated into the instant case, *Neiman v. Southeastern Grocers, LLC, et al.*, no. 16-2017-CA-4428-XXXX, in Division CV-B (Judge Karen K. Cole, presiding).

(2) Plaintiff Neiman is granted leave of court in this (4428) case to file a Second Amended Complaint. The Second Amended Complaint will allege the same causes of action as the Amended Complaint but may allege additional supporting facts, including those related to the filing of the other (5356) action. In addition, the Second Amended Complaint may address any pleading defects identified by Defendants in their pending Motion to Dismiss the Amended Complaint. The Second Amended Complaint shall be filed no later than ten (10) days from the date of this order.

(3) Defendants' Answer or responsive motion directed to the Second Amended Complaint shall be filed and served no later than fourteen (14) days from Defendants' counsel's receipt of the Second Amended Complaint.

(4) The Complaint of Plaintiff Southeastern Grocers, LLC, in the (5356) case shall be re-filed in this (4428) action as Southeastern Grocers, LLC's Counterclaim.

(5) Discovery in the now-consolidated cases remains stayed until the pleadings are set and an order has issued expressly permitting discovery.

(6) In light of the above, the Motion to Dismiss [Amended Complaint], filed by Defendants Southeastern Grocers, LLC, in the (4428) action is denied as moot. This ruling is not on the merits, and any issue raised as to the Amended Complaint may, if otherwise appropriate,

be raised as to the Second Amended Complaint.

(7) The style of the instant (4428) case remains unchanged. If in the future Southeastern Grocers, LLC, files a counterclaim against Mr. Nieman, it has leave to amend the style to reflect such counterclaim.

(8) The Clerk of the Court, after transferring the current contents of the (5356) case to the instant (4428) case, shall close the (5356) case.

ENTERED on Sept. 29, 2017, in Jacksonville, FL.



Circuit Judge Karen K. Cole

Copies to:

The Honorable Kevin Blazs

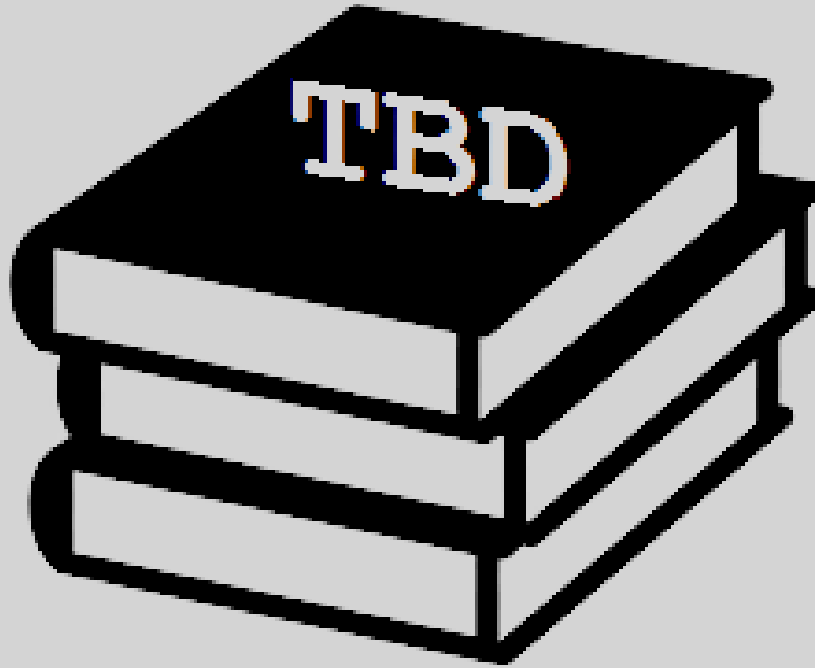
Mr. J. L. Nieman, *pro se*
jlnieman32259@yahoo.com

Mitchell L. Fraley, Esquire
dshankman@shankmanleone.com

BUY™

SELL™

SHOP™



Downloaded From
www.TextBookDiscrimination.com



SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)



BUY™

SELL™

SHOP™

www.TextBookDiscrimination.com

Get **Booked Up** on Justice!

© TBD Corporation. All Rights Reserved.