

**COMMONWEALTH OF MASSACHUSETTS**

**SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT** F

BROWN & BROWN, INC., HAYS COMPANIES, )  
INC., BROWN & BROWN INSURANCE )  
SERVICES, INC., )

Plaintiffs, )

v. )

HOWDEN US SERVICES, LLC, et al., )

Defendants. )

Case No: 2584-CV-03548

**DEFENDANT HOWDEN US SERVICES, LLC'S MEMORANDUM OF LAW  
IN OPPOSITION TO PLAINTIFFS' MOTION FOR A  
PRELIMINARY INJUNCTION**

Defendant Howden US Services, LLC (“Howden”) respectfully submits this Memorandum of Law in Opposition to the Motion for a Preliminary Injunction filed by Plaintiffs Brown & Brown, Inc., Hays Companies, Inc., and Brown & Brown Insurance Services, Inc. (collectively, “B&B”).

### **PRELIMINARY STATEMENT**

B&B’s Motion sets forth an entirely false and inflammatory narrative that should not be entertained by the Court. The truth is not conducive to injunctive relief: Howden lawfully hired each of the Individual Defendants from B&B on or about December 18, 2025. As established by the declarations submitted by the Individual Defendants, Howden did not “target,” let alone “raid,” these employees – they sought out employment with Howden due to unhappiness at B&B. Because of this fact, B&B’s application for extraordinary injunctive relief consists of speculative allegations about Howden largely made “upon information and belief” with no actual evidence of any wrongdoing. The Complaint is accompanied by a *single* declaration setting forth the circumstances by which *one* B&B was recruited for potential employment with Howden. This exceedingly thin evidentiary reed does not support the “extreme” remedy of imposing injunctive relief on Howden (or the 29 Individual Defendants as to whom limited allegations are also offered) to stem the business impact of lawful competition.

The unsupported claims against Howden underlying B&B’s Motion sound in: (i) tortious interference with the contracts of the Individual Defendants to the extent they contain restrictions on use/disclosure of confidential information, solicitation of employees, and solicitation of clients; (ii) misappropriation of trade secrets; and (iii) unfair competition. Logically one would expect – and legally it is required – that verified allegations be made by B&B demonstrating that Howden directed the Individual Defendants to obtain B&B confidential information, to solicit other employees to join Howden, or to solicit clients to migrate to Howden. But that does not exist here – even the four “bullets” at page 6 of the Complaint summarizing B&B’s “best” allegations do not

concern Howden. The unavoidable fact is that Howden comported itself lawfully and simply hired a large number of B&B employees who are not subject to non-compete agreements. The declarations of the Individual Defendants bear this out.

Even the allegations B&B does offer in an attempt to manufacture a compelling narrative are, upon minimal scrutiny, revealed to be entirely hollow. B&B trumpets the alleged misappropriation of its “confidential information” repeatedly – but there is no mention of what, precisely, this confidential information is outside of a passing reference to “the contents of [B&B’s] electronic devices,” without further elaboration. B&B repeats claims of client solicitation, but does not tether even the lone example it offers to the conduct of any Individual Defendant, or account for the fact that clients in this industry typically follow the broker with whom they have worked for years based upon long-standing personal and professional relationships. And B&B decries unfair competition, but the decision of at-will employees to resign employment with which they are unhappy does not give rise to an actionable claim.

This allegorical shortfall forecloses B&B from meeting its burden to demonstrate that the elements necessary to obtain injunctive relief are satisfied. In order to prevail in its request for preliminary injunctive relief, B&B bears the burden of showing a substantial likelihood of success on the merits; that they will suffer irreparable harm if the injunctive relief sought is not granted; and that its harm, without the injunction, outweighs any harm to the Defendant, from their being enjoined. *See GTE Products Corp. v. Stewart*, 414 Mass. 721, 722-3 (1993). It cannot do so.

*First*, B&B cannot establish irreparable harm flowing from its claims against Howden. B&B points to the loss of customers, but if proven to be true on the merits, the revenue shortfall is readily compensated by easily calculable monetary damages. B&B also points to a presumption of harm flowing from the alleged misappropriation of trade secrets. However, as set forth above, B&B has offered no allegations concerning what information constitutes a trade secret – a pleading

deficiency which dooms B&B's underlying claim as a matter of Massachusetts law. Thus, the only harms identified by B&B do not support injunctive relief.

*Second*, B&B cannot establish a likelihood of success on the merits of its claims against Howden. While Howden submits that B&B's claims fail for a variety of reasons expanded upon further below – including the absence of personal jurisdiction over Howden – three deficiencies stand out among the rest:

- B&B's tortious interference claims against Howden depend largely upon restrictive covenants that prohibit "servicing" clients who choose to transfer their business to Howden – whether or not solicited – which are not enforceable under Massachusetts law.
- B&B's trade secret claim is untenable based upon the demanding standards under Massachusetts law compared to the vacant allegations offered in support.
- B&B's unfair competition claim is entirely derivative and falls with each of the other claims.

*Third*, the balance of the harms and the public interest weigh decidedly against injunctive relief. If B&B is financially harmed, it is only through the ordinary consequences of lawful competition. Howden, however, would be materially harmed by the grant of injunctive relief in being denied the opportunity to recruit dissatisfied B&B employees and from being prevented from conducting lawful and revenue-generating business activities as a consequence of lawful competitive conduct. More importantly, third-party clients would suffer greatly in being denied the opportunity to work with the insurance brokers with whom they have entrusted their financial well-being. These consequences cannot be given short-shrift where, as here, money damages are available if B&B prevails on the merits of its claims.

For these reasons, and the reasons that follow, Howden respectfully submits that B&B's Motion should be denied and the Parties should proceed with the litigation in the ordinary course.

## **BACKGROUND**

### **I. THE PARTIES & THE INSURANCE BROKERAGE INDUSTRY**

Howden is a global insurance brokerage firm that provides insurance solutions for clients by acting as an intermediary with insurance companies that offer the underlying policies. (Declaration of Richard M. Blades (“Blades Decl.”) ¶4). B&B is a competitor of Howden. (*Id.* ¶4).

Howden, B&B, and other firms in this industry, generally do not provide the insurance products themselves, but instead assess client needs, find and compare policies from various carriers, and help secure the purchase of insurance for clients. (*Id.* ¶5). Howden and B&B generate revenue from commissions allowed by underwriters as a function of the cost of the underlying policies procured for clients and/or by an agreed upon fee paid by clients. (*Id.* ¶6).

Neither Howden nor B&B offer a “product” to clients. (*Id.* ¶7). Instead, brokerage firms offer services through the brokers they employ. (*Id.*). Brokers incept, develop, and manage relationships with their clients. (*Id.*). The brokers are the “assets” of a brokerage firm. (*Id.*). They are the source of client relationships and possess the knowledge of client needs, preferences, and risk tolerance to assess their clients’ insurance requirements. (*Id.*). In the eyes of a client, the relationship with the broker is primary over the brokerage firm employing the broker. (*Id.*).

### **II. B&B EMPLOYEES APPROACH HOWDEN ABOUT EMPLOYMENT**

Howden did not target the Individual Defendants for recruitment. In or around late October/early November 2025, Donald McGowan (“McGowan”) approached a Howden contact about leaving B&B due to deep unhappiness at B&B. (Declaration of Donald McGowan (“McGowan Decl.”) ¶¶ 7-16,17, 21). From there, through word of mouth, B&B employee after B&B employee expressed a desire to go wherever others went to avoid continuing at B&B for similar reasons. (*Id.* ¶¶ 21-24). At no point did Howden “orchestrate a raid” or engage in

“predatory” conduct. The Individual Defendants joined Howden on December 19, 2025. (Declaration of Colin McDonough (“McDonough Decl.”) ¶5).

### **III. HOWDEN DIRECTED THE INDIVIDUAL DEFENDANTS TO COMPLY WITH LAWFUL CONTRACTUAL OBLIGATIONS TO B&B**

Howden has taken steps to ensure that the Individual Defendants did not bring any B&B confidential information to Howden. The Offer Letters issued by Howden emphasize its expectation that the Individual Defendants comply with any confidentiality obligations owed to B&B. (*Id.* ¶6). Further, in connection with their onboarding, Howden directed the Individual Defendants to comply with any lawful post-employment obligations they owe to B&B (or any other former employer), as set forth in its document titled “New Hires: Guidelines for New Joiners” (also referred to as Howden’s “Do’s and Don’ts” document). (*Id.* ¶7, Ex. A). The Individual Defendants echo what these documents illustrate: that Howden did not direct anyone to engage in any improper conduct. (McGowan Dec. ¶ 34; Declaration of Justin Kesner (“Kesner Decl.”) ¶ 13; Declaration of John Flaherty (“Flaherty Decl.”) ¶ 13; Declaration of Eric Kasen (“Kasen Decl.”) ¶ 39).

## **ARGUMENT**

### **I. B&B HAS NOT MET ITS BURDEN TO DEMONSTRATE THAT THE “EXTREME” REMEDY OF INJUNCTIVE RELIEF IS APPROPRIATE**

B&B has not and cannot demonstrate that it is entitled to the “extraordinary remedy” of injunctive relief. *See Athenahealth, Inc. v. Cady*, No. CIV.A. 13-1098-BLS1, 2013 WL 4008198, at \*3 (Mass. Super. May 2, 2013). B&B’s Motion should therefore be denied.

#### **A. Applicable Standards**

A preliminary injunction is ““an extraordinary remedy never awarded as of right”” and “should not be granted unless the plaintiff has made a clear showing of entitlement thereto.” *Riverhead Bldg. Supply Corp. v. Koopman Lumber Co.*, No. 2184CV02448, 2021 WL 7083013, at \*1 (Mass. Super. Dec. 4, 2021) (quoting *Student No. 9 v. Board of Educ.*, 440 Mass. 752, 762 (2004)). A party seeking a preliminary injunction must show: (i) a likelihood of success on the

merits; (ii) irreparable harm will result from denial of the injunction; and (iii) the risk of irreparable harm outweighs the potential harm to the non-moving party in granting the injunction. *Id.*

**B. B&B Has Not And Cannot Demonstrate Irreparable Harm**

B&B's Motion should be denied because it has not and cannot establish irreparable harm. *See Carroll v. Marzilli*, 915 N.E.2d 268, 272 (Mass. App. Ct. 2009). Where a moving party fails "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." *Needham Bank v. Guaranteed Rate, Inc.*, Nos. 146143, 2184CV0661-BLS1, 2021 Mass. Super. LEXIS 51, at \*14-15 (Apr. 17, 2021) (quoting *Packaging Indus. Grp., Inc. v. Cheney*, 405 N.E.2d 106, 114 (Mass. 1980)). "A finding of irreparable harm must be grounded on something more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store." *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004). Speculation and hypotheses do not carry a plaintiffs' burden. *See Bennett v. Pops*, 22 Mass. L. Rep. 676, 676 (Mass. Super. 2007). And economic harm is insufficient unless "the loss threatens the very existence of the movant's business." *Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co.*, 506 N.E.2d 140 (Mass. 1987).

B&B does not come close to meeting this demanding burden. Their Motion offers only conclusory assertions untethered to any evidence and nothing that suggests that any alleged harm could not be compensated by monetary damages. In two brief pages, B&B points only to: (i) the existence of contractual acknowledgments of irreparable harm; (ii) loss of customers; and (iii) a presumption of harm from the alleged loss of trade secrets.<sup>1</sup> This is insufficient and the Court should dismiss B&B's Motion without further inquiry.

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<sup>1</sup> B&B appears to passingly suggest irreparable harm arising from Howden's decision to hire at-will B&B employees who were not subject to non-compete agreements. (Pl. Mem. at 19). Beyond incorrectly (and without support) labeling Howden's hiring of B&B employees as a "raid," B&B provides no allegations of misconduct against

## 1. Contractual Acknowledgments of Irreparable Harm Are Insufficient

B&B's leading argument is that irreparable harm exists because the Individual Defendants' agreements contain an acknowledgment of the same. (Pl. Mem. 17). However, it is well-settled that this is categorically insufficient to support injunctive relief. *See Schram v. PMC Ins. Agency, Inc.*, No. 20-cv-10307-GAO, 2022 U.S. Dist. LEXIS 237229, at \*38 (D. Mass. Sep. 1, 2022); *see also Automile Holdings, LLC v. McGovern*, 136 N.E.3d 1207, 1224 (Mass. 2020). This is particularly true as to Howden, which is not a party to any contract with B&B.

## 2. The Loss Of Client Relationships Is Insufficient

B&B also contends, in a sentence, that the "loss of customers, and associated goodwill, are quintessential examples of irreparable harm." (Pl. Mem. 18). Putting aside the absence of any allegations of actual solicitation by the Individual Defendants of any clients – much less at Howden's direction – it is well-settled that irreparable harm cannot exist where monetary compensation is available to remedy any purported harm. *See WHDT Cong. Holdings, LP v. Farnsworth Cong., LLC*, Case No. 1784 CV 00295-BLS2, 2017 Mass. Super. LEXIS 88, at \*7 (Mass. Super. May 16, 2017); *T.T.K., Inc. v. Columbia Speedway Plaza Member, LLC*, 2009 Mass. Super. LEXIS 270, \*7 (Mass. Super. Oct. 9, 2009). This is precisely the case here.

The Court need look no further than the fact that B&B forecasts the revenue it expects to earn from clients for purposes of guidance and quarterly commission expectations. (Kasen Decl. ¶34). Presumably, as well, B&B maintains detailed historical records concerning revenue from clients, and any competitor, including Howden, who provides services will do the same prospectively. Any alleged harm is thus readily quantifiable. *See First-Citizens Bank & Tr., Co. v. Onorato*, No. 25-cv-11331-DJC, 2025 U.S. Dist. LEXIS 148088, at \*27 (D. Mass. Aug. 1, 2025) (holding this is true even where a defendant uses confidential information).

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Howden against which to tether an allegation of irreparable harm. B&B does not even explain what irreparable harm arises from employee departures.

B&B cannot alternatively rely on non-descript allegations of loss of client goodwill. Clients do not hire brokerage firms, but instead, brokers. (Kasen Decl. ¶31). The relationship exists independently of the employer of the broker, and it is commonplace for clients to follow the broker to whom they have developed a relationship of trust and reliance. (McGowan Decl. ¶30). B&B does not have goodwill with any client. *See Elizabeth Grady Face First, Inc. v. Garabedian*, No. 16799D, 2016 WL 1588816, at \*4 (Mass. Super. Mar. 25, 2016) (“[I]f the customers choose to avail themselves of the particular services being offered by the defendants, then the conclusion the Court is left to draw is that the true good will that exists in this business lies in favor of the employees.”); *see also KTC, Inc. v. Nickelle Beauty Salon & Boutique, LLC*, 2017 Mass. Super. LEXIS 2610, at \*9-11 (Feb. 22, 2017); *Lunt v. Campbell*, 23 Mass. L. Rep. 145 (2007); *Sentry Ins. v. Firnstein*, 14 Mass. App. Ct. 706, 708 (1982). Moreover, for injunctive relief, vague allegations do not suffice, and B&B is required to detail how, precisely, Howden appropriated client goodwill. *See Rohm & Haas Elec. Materials, LLC v. Elec. Circuits Supplies, Inc.*, 759 F. Supp. 2d 110, 126-127 (D. Mass. 2010). No allegation exists explaining how Howden has impacted client perception of, loyalty to, and trust in B&B (or that such even exists in the first place). The sparse allegations are therefore insufficient to support irreparable harm.

**3. There Is No Irreparable Harm Arising From B&B’s Allegations Concerning Confidential Information**

B&B lastly contends that a presumption of irreparable harm arises where trade secrets are misappropriated. However, B&B has not identified any trade secrets beyond a reference to “the contents of [B&B’s] electronic devices.” (Pl. Mem. 9). This bare conclusion and indistinct allegation does not allow B&B to credibly contend that they were irreparably harmed or that a presumption should attach. *See Lunt*, 23 Mass. L. Rep. 145. This intentional (or unavoidable)

obscurity also prevents a reasonable assessment of possible economic remediation based on allegations of misappropriation.<sup>2</sup>

Moreover, there is no allegation tethering any conduct of Howden to any alleged misappropriation. The generalized allegations of misappropriation of unidentified confidential information are directed at the Individual Defendants as a collective, without specifying the conduct of any one of them. This imprecision also forecloses any claim of irreparable harm. *See Neural Magic, Inc. v. Facebook, Inc.*, No. 20-10444-DJC, 2020 U.S. Dist. LEXIS 270934, at \*26 (D. Mass. May 29, 2020) (finding no irreparable harm where the plaintiff did not provide details regarding what trade secrets have been or could be disclosed and how).

Lastly, the only evidence (or allegation) concerning Howden that even exists is that Howden directed the Individual Defendants to comply with their lawful contractual obligations to B&B. (McDonough Decl. ¶¶6-7). B&B simply cannot contend it was irreparably harmed by Howden's conduct. Were injunctive relief not entirely inappropriate against Howden, Howden would consent to an injunction prohibiting it from using B&B confidential information given that it is a non-issue in this case. For these threshold reasons, B&B's application for injunctive relief must be denied.

**C. B&B Has Not And Cannot Demonstrate A Likelihood Of Success On The Merits Of Its Claims Against Howden**

B&B's Motion for injunctive relief should be denied for the additional reason that B&B is unlikely to succeed on the merits of any of its claims against Howden.

**1. B&B Is Unlikely To Succeed On Its Tortious Interference Claim**

To establish a claim for tortious interference with contract, B&B must demonstrate: (i) a contract with a third party; (ii) Howden knowingly induced the third party to break that contract;<sup>3</sup>

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<sup>2</sup> To the extent B&B implies that any Defendant used confidential information to effect harm by soliciting clients, (Compl. ¶177), the resultant harm would be the consequential loss of clients, which can be remedied by monetary damages and is therefore not irreparable. (Point I(B)(2), *supra*).

(iii) Howden's conduct is intentional and improper in motive or means; and (iv) harm to B&B. *See Psy-Ed Corp. v. Klein*, 459 Mass. 697, 715–16 (2011). When an employee's underlying contract is unenforceable, as they are here, a tortious interference claim fails. *See Telectronics, Inc. v. Downing*, No. CIV. A. 86-2465-Z, 1987 WL 9904, at \*4 (D. Mass. Apr. 6, 1987). Massachusetts courts will only enforce a restrictive covenant if it is: (i) necessary to protect a legitimate business interest; (ii) reasonably limited in time and space; and (iii) consonant with the public interest. *Automile Holdings*, 483 Mass. at 808. "Legitimate business interests do not include...protection from ordinary competition." *ISO Claims Partners, Inc. v. Cassavoy*, No. SUCV2017575, 2017 WL 2233502, at \*4 (Mass. Super. Mar. 20, 2017). B&B's tortious interference claim against Howden fails because elements of the contracts on which it is based are unenforceable.

**a. The Client Non-Service & Non-Solicitation Provisions Are Unenforceable**

B&B will not succeed on its claim premised on client non-service provisions contained in the Individual Defendants' agreements, (Compl., Ex. 3 §7.2; Compl., Ex. 3 §5(b)(i); Compl., Ex. 4 §5(b)(i)), which amount to an unreasonable restraint on trade. Non-service provisions are not enforced under Massachusetts law.<sup>4</sup> *See Bolick v. Arthur J. Gallagher & Co.*, No. 2023-J-70, 2023 WL 2447502, at \*2 (Mass. App. Ct. Feb. 28, 2023) (crediting argument that a non-service restriction is "an unenforceable restraint on trade"); *Elizabeth Grady*, 2016 WL 1588816, at \*4; *BNY Mellon, N.A. v. Schauer*, 2010 WL 3326965, at \*10 (Mass. Super. May 14, 2010).<sup>5</sup>

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<sup>3</sup> The entirety of B&B's allegations concerning the requisite knowledge by Howden is that Howden uses similar restrictive covenants in its agreements, and the Court should therefore presume knowledge. (Pl. Mem. 10). This is not evidence supporting injunctive relief but an unwarranted inferential leap.

<sup>4</sup> The same is true under Minnesota law. *See EFS Advisors LLC v. Decker*, 2024 WL 6078851, at \*6 (D. Minn. Aug. 14, 2024); *Acordia of Minnesota, Inc. v. Hies*, 2005 WL 8162740, at \*1 (D. Minn. Dec. 14, 2005).

<sup>5</sup> Indeed, the Massachusetts legislature has recognized similar principles in promoting customer freewill and labor movement over the confines of excessive restrictive covenants by enacting the Massachusetts Non-competition Agreement Act. M.G.L. ch. 149, § 24L.

Not only is the provision offensive to public policy principles, it is also overbroad to the extent B&B seeks to enforce it for a two-year period. (Compl., Ex. 1 §5(c); Compl., Ex. 3 §5(b); Compl., Ex. 4 §5(b)). B&B's sweeping two-year period exceeds the limit adopted by Massachusetts courts. *See BNY Mellon*, 2010 WL 3326965, at \*3 (one-year restriction on servicing former clients unreasonable, and shortening to four months); *see also Am. Exp. Fin. Advisors Inc. v. Walker*, No. CIV.A. 98-01673, 1998 WL 754620, at \*8 (Mass. Super. Oct. 28, 1998) (same).

The provision is also not enforceable to the extent it seeks to prevent Howden from accepting business from former B&B clients as an unwarranted imposition on client freewill. *See Corp. Techs., Inc. v. Harnett*, 943 F. Supp. 2d 233, 239 (D. Mass. May 3, 2013), *aff'd*, 731 F.3d 6 (1st Cir. 2013). This is true even for clients B&B claims to have transferred to Howden as a result of improper solicitation, as “there is a public interest in allowing [clients] to continue to work with the broker of their choice, and that public interest stands independent of whether they did or did not come to [Howden] as a result of [Individual Defendants] having violated [the] agreement[s] not to solicit them.” *Bolick*, 2023 WL 2447502 at \*3 (refusing to enforce non-service provision); *Washington Tr. Advisors, Inc. v. Arnold*, 646 F. Supp. 3d 210, 222 (D. Mass. 2022) (“A complete ban on Defendants’ ability to advise the clients who have already transferred their accounts would leave those clients without advisors to service their savings for an extended period.”); *Walker*, No. CIV.A. 98-01673, 1998 WL 754620, at \*10 (finding a restriction on the “maintenance of current client accounts” was improper because of the hardship it would pose on clients).

B&B will also not succeed on its tortious interference claims based on the non-solicitation aspect of the Individual Defendants’ agreements. In addition to the principles outlined above, these provisions are unenforceable because they extend beyond current clients to “prospective clients.” (Compl., Ex. 2 §7.2; Compl., Ex. 3 §5(b)(i); Compl., Ex. 4 §5(b)(ii)). An attempt to curtail actions regarding “prospective clients” far exceeds the limits of legitimate protectable business interests

recognized by Massachusetts courts. *See A.R.S. Servs., Inc. v. Morse*, No. MICV201300910, 2013 WL 2152181, at \*11 (Mass. Super. Apr. 5, 2013). The same holds true for pre-existing clients the Individual Defendants brought to B&B insofar as B&B can have no protectable interest in such relationships. *See Mancuso-Norwalk Ins. Agency, Inc. v. Rogowski-Verrette Ins. Agency, LLC*, 2012 WL 6629644, at \*3 (Mass. Super. Nov. 8, 2012). There is also a notable absence of any allegation that Howden directed any solicitation of clients, and largely no allegations against the Individual Defendants that are not imprecisely plead on a group basis. *See Nicholas v. Tripadvisor, Inc.*, 2024 Mass. Super. LEXIS 1543, at \*2 (May 30, 2024) (dismissing group pleading).

Accordingly, the Court should reject B&B's tortious interference claim predicated on the Individual Defendants' client non-service and non-solicitation covenants.<sup>6</sup>

**b. The Employee Non-Solicitation Provisions Are Unenforceable**

B&B also claims that Howden tortiously interfered with the employee non-solicitation covenants in the Individual Defendants' agreements. B&B characterizes Howden's actions as a "raid" and even refers to the operative non-solicitation clause as a "No Raiding Covenant." (Compl., Ex. 1 §5(d)(ii)). Momentarily putting aside the factual inaccuracy of this claim, Massachusetts Courts have definitively held that "[a]nti-raiding of employee provisions [] limit competition in the market to purchase labor from qualified workers." *Robert Half Int'l, Inc. v. Simon*, No. 2084CV00060BLS2, 2020 WL 1218988, at \*4 (Mass. Super. Jan. 29, 2020). Accordingly, the *Simon* Court found no legitimate business interest in enforcing the anti-raid provision and refused to grant injunctive relief based on its terms. *Id.* at \*9; *see also Automile Holdings*, 483 Mass. at 808 (noting that courts have "long recognized a public interest in the ability of individuals to be able to carry on their trade freely."). The same principle applies here.

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<sup>6</sup> To the extent B&B intends to claim that Howden tortiously interfered in relation to the Individual Defendants' obligations concerning confidential information: (i) B&B fails to identify any confidential information at issue; and (ii) B&B does not allege that Howden directed or received any B&B confidential information, such that any contention would be entirely hollow.

While this policy interest is alone sufficient to foreclose B&B's claim, there are also no allegations concerning Howden's purported role in breaching non-solicitation clauses. B&B's contentions are limited to conclusory statements such as "Howden intentionally hired Kasen, McGowan, and Flaherty in management positions and encouraged them to solicit other B&B employees..." (Pl. Mem. 13). That unsupported allegation stands in stark contrast to the evidence, which demonstrates that Howden did no such. Instead, frustrated B&B employees chose to explore opportunities outside of B&B for a better culture, better pay, and better opportunities with Howden. *See TalentBurst, Inc. v. Collabera, Inc.*, 567 F. Supp. 2d 261, 269 (D. Mass. 2008) ("Massachusetts courts [] have held that the offering of a job to a competitor's at-will employee, including one that provides better pay and benefits, does not as matter of law constitute improper means" to establish a tortious interference claim). The record is thus bereft of any evidence that Howden directed any of the Individual Defendants to solicit other B&B employees.

Accordingly, B&B's tortious interference claim further fails to the extent it is based on employee non-solicitation covenants.

## **2. B&B Is Unlikely To Succeed On Its Trade Secrets Claims**

B&B's Massachusetts Uniform Trade Secrets Act ("MUTSA") claim against Howden fails because it has not and cannot show the existence of a specific trade secret or that Howden has accessed (or even received) any trade secrets through "improper means." To prove misappropriation of a trade secret, B&B must show: (1) it possessed a trade secret; (2) it took reasonable steps to preserve its secrecy; and (3) Howden breached a duty not to disclose or use the trade secret. *See Alder Food Distributors, Inc. v. Keating*, No. 0000748, 2000 WL 33170823, at \*6 (Mass. Super. June 6, 2000). B&B's claim fails on multiple fronts.

First, B&B fails to allege the existence of a specific trade secret under Massachusetts law. MUTSA defines "trade secret" as any "specified or specifiable" information that: (i) derives

independent economic value from not being generally known or readily ascertainable by proper means; and (ii) is the subject of efforts to maintain its secrecy. *See* M.G.L.A. 93 § 42. Courts have emphasized that these heightened pleading standards, which require identifications of specific trade secrets, are “distinct from the liberal pleading standards associated with the Federal Rules of Civil Procedure applicable to the DTSA.” *Netcracker Tech. Corp. v. Laliberte*, No. 20-CV-11054-RGS, 2020 WL 6384312, at \*2 n.2 (D. Mass. Oct. 30, 2020).

Here, B&B references broad categories of information such as “pricing information” and “customer lists,” (Compl. ¶173), but comes far short of alleging any “specified or specifiable” trade secret. This level of generality is insufficient. *See Welter v. Med. Pro. Mut. Ins. Co.*, No. 22-CV-11047-PBS, 2023 WL 2988627, at \*16 (D. Mass. Feb. 23, 2023); *Insulet Corp. v. EOFlow, Co.*, 104 F.4th 873, 881–83 (Fed. Cir. 2024). B&B’s claim fails for this threshold reason.

Second, B&B fails to allege that it employed reasonable efforts to keep any such information secret. The Complaint merely asserts that some employees were subject to confidentiality agreements and refers generally to internal policies (without specifying which individual defendants those policies applied to), (Compl. ¶¶ 92, 97), but does not plead any other measures that B&B adopted to keep its information secret, such as restricting access to information, marking documents as confidential, or implementing data security protocols. Mere reliance on confidentiality agreements and policies distributed at the outset of employment, without more, does not support a finding of reasonable efforts under MUTSA. *See Chiswick, Inc. v. Constas*, No. 200400311, 2004 WL 1895044, at \*3 (Mass. Super. June 17, 2004); *see also Dynamics Rsch. Corp. v. Analytic Scis. Corp.*, 9 Mass. App. Ct. 254, 277 (1980) (affirming denial of injunction and holding that “a contractual agreement without more does not afford such [trade secret] protection.”). B&B’s amorphous efforts, even if credited, are also “not the same as finding that [B&B] took reasonable

measures to protect specific information alleged to be a trade secret,” as required. *See Insulet Corp. v. EOFLOW, Co.*, 104 F.4th 873, 881 (Fed. Cir. 2024).

Third, and perhaps most glaringly, B&B fails to set forth any specific facts or allegations demonstrating that Howden directly received, used, or misappropriated any of B&B's information or that they did so by “improper means.” Rather, B&B relies on imprecise group pleading and assertions “upon information and belief” without alleging concrete facts about any specific information that was transmitted to Howden, that Howden ever requested or accessed, or that Howden used for any competitive advantage. *See Comark Communications, LLC v. Anywave, LLC*, 2014 WL 2095379, at \*2 (D. Mass. May 19, 2014). The only concrete act alleged involving Howden is that Howden extended employment offers to certain B&B employees (Compl. ¶2), which is insufficient. *See* M.G.L.A. 93 § 42. Under MUTSA, “improper means” requires “theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage.” *See id.* The Complaint contains no allegations that Howden engaged in such conduct. Without these allegations, B&B cannot establish trade secret misappropriation under Massachusetts law. *Arnold*, 646 F. Supp. 3d at 222 (denying TRO and PI and holding Plaintiff failed to establish likelihood of success on MUTSA claim where offered only that defendants engaged in “coordinated, systematic program of client solicitation” without any allegation they obtained trade secrets through improper means); *see also Lycos, Inc. v. Jackson*, No. 20043009, 2004 WL 2341335, at \*3 (Mass. Super. Aug. 25, 2004).

Similarly, allegations that Howden obtained business from former customers, received BOR letters, or made higher compensation offers to B&B employees do not establish that Howden accessed or used any protected trade secret. To infer otherwise, as B&B urges, would be improper speculation. Courts have held that customer or employee information does not constitute a trade secret if obtainable by proper means. *See Needham*, 2021 WL 2019287, at \*7. Here, employee

compensation information, particularly at B&B, is known to the industry. (McGowan Decl. ¶ 26; Kasen Decl. ¶ 18). Client information was also readily accessible to B&B employees, (Kasen Decl. ¶¶ 35-36; Kesner Decl. ¶ 21; Burnham Decl. ¶ 13), such that use of it cannot be deemed improper. *See Chiswick*, 2004 WL 1895044, at \*3 (“[W]here the employer openly shares information among its employees,” such as customer lists, “that information will not be deemed confidential” and “defendant cannot be enjoined from using this information in future employment.”).

Accordingly, any trade secret claim against Howden will fail.

### **3. B&B Is Unlikely To Succeed On Its Unfair Competition Claim**

B&B’s unfair competition claim under chapter 93A of the Consumer Protection Act is derivative of its tortious interference and trade secrets claims. (Compl. ¶161). In *Perishables By Air, Inc. v. OceanAir, Inc.*, the Appeals Court of Massachusetts upheld the trial court’s directed verdict on an unfair competition claim under G. L. c. 93A “[g]iven the absence of liability on the underlying derivative counts and the insufficient evidence of any independent unfair or deceptive act or practice by [defendants].” 68 Mass. App. Ct. 1110 (2007). B&B’s unfair competition claim rises and falls with its trade secrets or tortious interference claims and therefore cannot succeed.

The lone cases cited by B&B in support of its 93A claim are of little value. In *Acorida Northeast, Inc. v. Academic Risk Resources & Ins., LLC*, the Court heavily weighed explicit evidence of disloyal conduct and client solicitation *while still employed*, which included creating a competing entity and sending a fax and authorization to a client to allow them to transfer their business as if they had no choice, as well as overwhelming evidence of misappropriation. *See* 19 Mass. L. Rptr. 75 at \*2-3 (Sup. Ct. Jan. 5, 2005). Here, B&B presents no such evidence of similar disloyal conduct by the Individual Defendants, and their actions amount to nothing more than preparation to transfer employment. Even more attenuated is B&B’s citation to *W.B. Mason Co., Inc. v. Staples, Inc.*, a case which involved employees joining a competitor in a purported breach of

a *noncompete agreement* and did not involve a 93A claim. *See* 2001 WL 227855, at \*7 (Mass. Super. Jan. 18, 2001). Here, no such restriction is present – the Individual Defendants were free to leave B&B and join Howden.

B&B’s 93A claim also fails for the independent reason that “there is no allegation that any unfair or deceptive acts occurred primarily and substantially within Massachusetts; i.e., the center of gravity of the circumstances that gives rise to the claim is not in the Commonwealth.” *Greg Beeche Logistics, LLC v. Skanska USA Bldg., Inc.*, No. 12-CV-11121-DJC, 2013 WL 5550673, at \*3 (D. Mass. Sept. 23, 2013) (dismissing 93A claim). A party’s presence in Massachusetts alone is insufficient. *See Evergreen Partnering Grp., Inc v. Pactiv Corp.*, No. 11-10807-RGS, 2014 WL 304070, at \*5 (D. Mass. Jan. 28, 2014). The fact that B&B may have suffered harm in Massachusetts (lost clients) fails to qualify as an unfair or deceptive trade practice that occurred within Massachusetts giving rise to a 93A claim. *See Welch Foods, Inc. v. Liberty Mut. Fire Ins. Co.*, No. 001249A, 2005 WL 1131747, at \*26 (Mass. Super. Apr. 6, 2005). As demonstrated in Point II(C)(4), *infra*, B&B fails to allege sufficient suit-related conduct within Massachusetts, and Howden’s action in hiring Massachusetts employees does not meet the bar. *See OceanAir, Inc.*, 68 Mass. App. Ct. 1110 at \*6 (“[D]efendants could not be held liable under G.L. c. 93A for hiring the three at-will employees.”). Thus, B&B has not demonstrated a likelihood of success as it relates to its unfair competition claim.

#### **4. B&B Is Unlikely To Succeed On All Of Its Claims Against Howden For Want Of Personal Jurisdiction**

All of B&B’s claims against Howden will fail because B&B has not met its burden to demonstrate personal jurisdiction over Howden.<sup>7</sup> *See Lamarche v. Lussier*, 844 N.E.2d 1115, 1120 (Mass. App. Ct. 2006). B&B must demonstrate sufficient contacts between Howden and

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<sup>7</sup> Howden does not presently move for dismissal based on lack of personal jurisdiction under Mass. R. Civ. P. 12(b)(6), but notes that B&B’s failure to offer sufficient evidence to meet its burden forecloses its request for injunctive relief.

Massachusetts to satisfy both Massachusetts' long-arm statute (Mass. Gen. Laws ch. 223A, §3) and the due process requirements in the United States Constitution. *See SCVNGR, Inc. v. Punchh, Inc.*, 85 N.E.3d 50, 52, 54 (Mass. 2017). B&B has failed to satisfy this burden.

The long-arm statute strictly limits the circumstances under which a nonresident defendant may be subject to jurisdiction in Massachusetts. In its Complaint, B&B relies on two provisions of the statute: §3(c), which requires the defendant "commit a tortious act within the Commonwealth," and §3(d), which requires an injury in Massachusetts caused by out-of-state acts, so long as the defendant is "regularly doing or soliciting business" in the Commonwealth or otherwise maintains persistent presence in, or derives substantial revenue from, Massachusetts. (*See* Compl. ¶50). Neither provision is satisfied here.

B&B does not allege that Howden committed any tortious act within Massachusetts or caused any tortious injury in Massachusetts. All B&B offers is boilerplate recitations of the long-arm statute, unsupported by any concrete or particularized factual allegations connecting Howden's purported conduct to this state. Such conclusory and formulaic assertions are wholly insufficient. *See Renaissance Worldwide Strategy, Inc. v. Bridge Strategy Grp., LLC*, No. 991150, 2000 WL 1298131, at \*5 (Mass. Super. Mar. 1, 2000).

The absence of concrete allegations contrasts with the facts that foreclose jurisdiction. Howden is a Delaware limited liability company with its principal place of business in Minnesota. (Blades Decl. ¶8). Any injury felt by B&B would be felt in Florida, where it is headquartered. (Compl. ¶¶16–18). Thus, the long arm statute is not satisfied under B&B's sparse allegations.

Due process principles also disallow jurisdiction. Due process requires B&B to show that Howden has such "minimum contacts" with Massachusetts that the exercise of jurisdiction would not "offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). B&B does not plead any facts tethering Howden's activities to

Massachusetts apart from hiring employees to work in Massachusetts. B&B's claims against Howden do not arise out of this lawful conduct to hire at-will employees who were not subject to non-compete agreements. And it would be unfair for Howden to defend claims against it in Massachusetts when it is a Delaware company with no alleged presence in Massachusetts, and where B&B is a Florida entity. The lack of jurisdiction prevents B&B from succeeding on its claims against Howden.

**D. The Balance Of Hardships And Public Interest Disfavor Injunctive Relief**

The balance of hardships and public interest does not support injunctive relief. As an initial matter, it cannot be overstated how broad the relief B&B seeks is. It would effectively stop the careers of 29 individuals, prevent dissatisfied B&B employees to seeking better opportunities at Howden, prevent Howden from conducting lawful business activities (on a record that shows no improper activities), and foreclose third-party clients from working with the insurance broker to whom they have entrusted their financial well-being.

These restrictions are antithetical to the principles of fair competition protected by Massachusetts law. *See Townsend Oil Co., Inc. v. Tuccinardi*, No. 1984CV04024-BLS2, 2020 Mass. Super. LEXIS 12, at \*6 (Mass. Super. Jan. 13, 2020) (quotation omitted) (“[T]he right of employees to use their knowledge, experience, and skill to compete against their prior employer promotes the public interest in labor mobility and the employee's freedom to practice his profession and in mitigating monopoly.”).

An injunction would also effectively extend the contracts of the Individual Defendants to Howden – a non-party to any agreement with B&B. *See BNY Mellon*, 2010 WL 3326965, at \*10 (explaining while a contractual provision may be enforced against a party to the contract, “it is inequitable to enforce those provisions where doing so harms the interests of third parties or exceeds the reasonable objective of the [a]greement”). Indeed, “Massachusetts courts have

recognized a public interest in allowing a company to receive business from a client even where an employee is bound by a non-solicitation covenant.” *Harnett*, 943 F. Supp. 2d at 245.

And perhaps most significantly, an injunction would infringe on the ability of third-party clients to continue working with the broker of their choosing. In *Harnett*, the District of Massachusetts determined that enjoining the defendant’s new employer, as an entity, from conducting business with the plaintiff’s clients would effectively prevent those third parties from choosing their preferred provider of IT solutions, contrary to public policy. *Id.* at 245-46. Similarly, here, B&B’s requested relief directly contradicts the public policy of this State. *See BNY Mellon*, 2010 WL 3326965, at \*9 (Mass. Super. May 14, 2010) (“In sum...it is inequitable to enforce those provisions where doing so harms the interests of third parties or exceeds the reasonable objective of the Agreement”).

The hardships to B&B against which these important considerations must be balanced are purely pecuniary. B&B will suffer lost business and nothing more.<sup>8</sup> But if its claims are found to have merit, it can be compensated with money damages. Injunctions should not be weaponized to avoid ordinary competition.

### **CONCLUSION**

For the foregoing reasons, Howden respectfully requests that the Court deny B&B’s Motion for a preliminary injunction, and grant any other relief that this Court deems just and proper.

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<sup>8</sup> Any allegations related to confidential information fall flat because no allegations have been advanced, and Howden has taken reasonable steps to prevent the use or disclosure of any B&B confidential information.

Dated this 26th day of December, 2025.

Respectfully submitted,

/s/ Conrad J. Bletzer, Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document has been served upon all counsel of record, this 26th day of December, 2025, via the electronic mail and via the Court's electronic filing system.

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*/s/ Conrad J. Bletzer, Jr.*

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Conrad J. Bletzer, Jr.

Date: December 26, 2025