IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

PERATON, INC. (formerly known as Harris IT Services Corporation), Plaintiff, v. RAYTHEON COMPANY, Defendant.	Case No. 1:17cv979-AJT/JFA

DEFENDANT RAYTHEON'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS

PRELIMINARY STATEMENT

Despite bringing claims for breach of contract and trade secret misappropriation, Peraton's complaint tellingly does not allege that Raytheon has, in fact, breached any contract. Nor does it allege that Raytheon has, in fact, misappropriated any trade secrets either. Instead, all of Peraton's contract and trade secret claims in this case hinge on a single-sentence allegation in Peraton's complaint: according to Peraton, "Raytheon's notification that it would drop [a] firewall constitutes an anticipatory repudiation of the NDAs as well as a threatened disclosure of Harris's trade secrets." Compl. ¶ 31. Peraton's contention is that Raytheon was obligated by the NDAs and trade secret law to firewall all employees who might have been exposed to any Peraton confidential information and then block them from working on projects with Peraton's competitors even after the termination of the Peraton/Raytheon relationship. Neither the contracts nor trade secret law require that Draconian restraint on competition. At base, Peraton's position seems to be that if Raytheon does not work with Peraton on the particular projects at issue, then it should not be allowed to work on the projects at all. The teaming agreements for those projects, however, are expressly non-exclusive and contemplated that Raytheon would be able to work with other teaming partners during the Peraton relationship, much less after termination of that relationship. This litigation is Peraton's attempt to get more than they bargained for and either pressure Raytheon back into a teaming agreement with Peraton or punish Raytheon for rightfully terminating that relationship.

As to the contract claim, the NDAs do not refer to any firewall requirement, neither in words nor in substance. Peraton's contract allegations instead put forth the assertion that Raytheon "anticipatorily repudiated" a firewall provision that is not in the allegedly breached contract, *i.e.*, the NDAs. That cannot be an anticipatory repudiation of the NDAs, and, to the contrary, Raytheon

has repeatedly confirmed to Peraton that it has and will continue to abide by the NDAs. There is no viable claim for a breach under these circumstances. *City of Fairfax, Va. v. Wash. Metro. Area Transit Auth.*, 582 F.2d 1321, 1326 (4th Cir. 1978) (breach of contract claim based on "anticipatory repudiation" requires "a positive, unconditional, and unequivocal declaration of fixed purpose not to perform the contract in any event or at any time."). As to the trade secret claims, Peraton's theory is that without a firewall Raytheon's employees will inevitably disclose Peraton's trade secrets if they work with any of Peraton's competitors. Virginia law does not recognize such an "inevitable disclosure" theory as viable to support a trade secret misappropriation claim. *Gov't Tech. Servs. v. Intellisys Tech. Corp.*, 51 Va. Cir. 55 (1999) (unpublished) ("Virginia does not recognize the inevitable disclosure doctrine."). As to Peraton's final claim, *i.e.*, unjust enrichment, that theory also cannot stand because the parties' relationship is governed by an existing contract. "Virginia law holds that where, as here, a contract exists, there can be no recovery for unjust enrichment." *Run Them Sweet, LLC v. CPA Global Ltd.*, 224 F. Supp. 3d 462, 469 (E.D. Va. 2016).

For these reasons, none of Peraton's claims state a viable claim for relief and Peraton's complaint should be dismissed.

STATEMENT OF FACTS

Plaintiff, Peraton, Inc. ("Peraton"), filed this trade secret and contract action in Fairfax County Circuit Court on August 10, 2017. Defendant, Raytheon Company ("Raytheon"), timely removed it to this Court on September 1, 2017. Dkt. No. 1 (Notice of Removal and attached pleadings). The dispute centers on two non-disclosure agreements and related now-terminated teaming agreements between Raytheon and Peraton. The parties entered in these agreements to pursue government contracts for two projects, referred to as Grimlock and Broadside. Dkt. No.

17-1, Grimlock Non-Disclosure Agreement; Dkt. No. 17-2, Grimlock Teaming Agreement; Dkt. No. 17-3, Broadside Non-Disclosure Agreement; Dkt. No.17-4, Broadside Teaming Agreement.[1] Peraton's 12-page complaint purports to support four different causes of action: breach of the non-disclosure agreements, misappropriation of trade secrets under the Virginia Uniform Trade Secret Act and the Defend Trade Secrets Act, and unjust enrichment.

Raytheon and Peraton are federal government contractors and occasional teaming partners in competing for specific opportunities to serve U.S. Government agencies. Compl. ¶¶ 8-9. Two such opportunities surrounded what are referred to as the Grimlock and Broadside projects. Raytheon and Peraton entered into a non-disclosure agreement on December 15, 2014 for the Grimlock opportunity, Compl. ¶ 11, and June 22, 2015 for the Broadside opportunity, Compl. ¶ 14. The NDAs require the parties to do certain things with respect to information that was disclosed by the other party and marked as "Proprietary Information." Dkt. Nos. 17-1 & 17-3 ¶ 8. In particular, the parties both agreed to use the other party's Proprietary Information only for discussions about the Grimlock and Broadside projects (Dkt. Nos. 17-1 & 17-3 ¶ 4); maintain it in confidence (Dkt. Nos. 17-1 & 17-3 ¶ 7); not disclose it to any third party (Dkt. Nos. 17-1 & 17-3 ¶ 9); and protect it using the same degree of care the receiving party uses to protect its own Proprietary Information (Dkt. Nos. 17-1 & 17-3 ¶ 10). Importantly, the NDAs do not refer to any firewall requirement, neither in words nor in substance.

[1] Peraton did not attach to its complaint the NDAs that were allegedly breached. Raytheon has previously filed the NDAs at issue ***under seal*** (Dkt. Nos. 17-1 & 17-3), and the Court may properly consider them in deciding this motion to dismiss. *New Beckley Mining Corp. v. Int'l Union, United Mine Workers of Am.*, 18 F.3d 1161, 1164 (4th Cir. 1994). For context on certain issues, Raytheon also filed ***under seal*** the parties' teaming agreements and certain correspondence between the parties (Dkt. Nos. 17-2, 17-4 & 17-5, and the attached Exhibit A). Raytheon's motion does not hinge on these documents as evidence, however.

Raytheon and Peraton also entered into teaming agreements for Broadside on October 21, 2014 and for Grimlock on September 18, 2015. Compl. ¶ 17. Both teaming agreements contained non-exclusivity clauses which provided that Raytheon "will participate **non-exclusively** with [Peraton] in pursuing the award under the aforementioned PROGRAM and may participate in any other proposal or team effort" for the bid. Dkt. Nos. 17-2 & 17-4 ¶ 7 (emphasis in original). While Peraton's complaint hinges entirely on Raytheon's refusal to voluntarily firewall a long list of employees from any future work related to Grimlock and Broadside, the Broadside non-disclosure agreement and corresponding teaming agreement make no reference to firewalls and do not require firewalls. Dkt. Nos. 17-3 & 17-4. The Grimlock non-disclosure agreement likewise does not mention or require firewalls. Dkt. No. 17-1. An exhibit to the Grimlock teaming agreement does reference firewalls, Dkt. No. 17-2 at Exhibit A,—a provision Raytheon abided by during the term of the agreement, as Peraton notes in its complaint at ¶¶ 25-26—but that provision is not one of the expressly-numerated surviving terms of the agreement. Dkt. No.17-2 ¶¶ 13, 26. The firewalling requirement from the Grimlock teaming agreement therefore ended when the agreement terminated. The agreements both were terminated in the spring of 2017 because, *inter alia*, Peraton (formerly Harris IT Services Corp.) failed to secure Raytheon's approval for a transaction that spun off Peraton from its parent company, Harris Corporation, which the teaming agreements expressly establish to be a ground for termination. Dkt. Nos. 17-2 & 17-4 ¶13(o); Dkt. No. 17-5 (M. Wilson May 12, 2017 Ltr.).

Raytheon and its employees have continuously complied with the NDAs and will continue to do so, as Raytheon has repeatedly confirmed to Peraton. *See, e.g.*, Dkt. No. 17-5 at 2 ("Raytheon shall continue to honor the terms of the Non-Disclosure Agreements…and shall not use any HITS proprietary information beyond the original intended purpose(s) including any subsequent

Raytheon proposal activity or in competition against HITS."); Ex. A (G. LoCascio Aug. 22, 2017 Email) ("Raytheon has repeatedly given Peraton assurances that any confidential information… has been and continues to be maintained consistent with Raytheon's NDA obligations and has not and will not be used in connection with any potential work on the Broadside or Grimlock efforts."); *id*. ("Moreover, to that end, [the employees involved in the teaming efforts with Peraton for Broadside and Grimlock] have also been reminded of and reaffirmed their obligations under the parties' NDA."). In fact, Raytheon has gone above and beyond the requirements in the NDAs by wholly segregating all electronic information received from Peraton as part of Broadside and Grimlock, such that the information is not accessible to anyone potentially involved in pursuing other teaming agreements for Broadside or Grimlock. Ex. A (G. LoCascio Aug. 22, 2017 Email) ("[A]ny electronic information provided by Harris IT has been segregated and is not accessible to the Raytheon employees identified by Peraton.").

Peraton brought this lawsuit asserting claims of breach of the NDAs, misappropriation of trade secrets, and unjust enrichment. Peraton's complaint asserts that Raytheon's initial and prophylactic voluntary agreement to implement firewalls and subsequent removal of those firewalls "constitutes an anticipatory repudiation of the NDAs as well as a threatened disclosure" of trade secrets. Compl. ¶ 31. For the following reasons, Peraton failed to state a claim under FRCP 12(b)(6), and as such, its complaint should be dismissed.

LEGAL STANDARDS

Under Rule 12(b)(6), the complaint should be dismissed if it fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). "[T]he purpose of Rule 12(b)(6) is to test the legal sufficiency of the complaint." *Randall v. United States*, 30 F.3d 518, 522 (4th Cir. 1994). While a court, in ruling on a Rule 12(b)(6) motion to dismiss, "must accept as true all of

the factual allegations contained in the complaint," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), the complaint must be dismissed if it does not allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The Court "need not accept the legal conclusions drawn from the facts," and "need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." *Eastern Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship*, 213 F.3d 175, 180 (4th Cir. 2000); *see also Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003). A claim should be dismissed "if, after accepting all well-pleaded allegations in the plaintiff's complaint as true . . . it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." *Edwards v. City of Goldsboro,* 178 F.3d 231, 244 (4th Cir. 1999).

In a diversity action such as this, state law supplies the rules of decision. 28 U.S.C. § 1652; *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). This includes the forum state's choice of law rules. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). Virginia applies traditional choice of law rules, under which contracting parties may expressly choose governing law. *See Union Century Life Ins. Co. v. Pollard*, 26 S.E. 421, 421-22 (Va. 1896). Here, the parties chose Virginia law in the two NDAs, which specified that the agreements "shall be governed by, subject to, and construed in accordance with the laws of the Commonwealth of Virginia exclusive of its conflict of law provisions." Dkt. Nos. 17-1 & 17-3 ¶ 21.

ARGUMENT

A. Peraton's breach of contract claim fails as a matter of law because it is premised solely on an alleged "anticipatory repudiation" of a non-existent firewalling obligation.

Peraton does not allege that Raytheon has actually, in fact, breached the parties' NDAs. Rather, Peraton contends that "Raytheon's notification that it would drop the firewalls constitutes an anticipatory repudiation" of the NDAs. Compl. ¶ 44. Raytheon is not obligated under the

NDAs to maintain any firewalls, and thus Raytheon's notification that it would not do so cannot plausibly be a repudiation of any contract term, let alone the entire contract.

A breach of contract claim premised on "anticipatory repudiation" requires "a positive, unconditional, and unequivocal declaration of fixed purpose not to perform the contract in any event or at any time." *City of Fairfax*, 582 F.2d at 1326. Case law in Virginia and beyond demonstrates the "strictness of this requirement of an absolute and unequivocal refusal to perform." *Id*. In addition to the repudiating declaration being "clear and unequivocal," it also "must cover the entire performance of the contract." *Link v. Weizenbaum*, 326 S.E.2d 667, 668 (Va. 1985). If there has been no such declaration, either in words or in action, the breach claim should be dismissed as premature. *City of Fairfax*, 582 F.2d at 1333 (vacating judgment on anticipatory repudiation theory "with directions to dismiss the action of the plaintiff as premature").

There is no provision in the NDAs that refers to firewalling, either in words or in substance. The NDAs require the parties to do certain things with respect to information that was disclosed by the other party and marked as "Proprietary Information." NDA ¶ 8. In particular, the parties both agreed to use the other party's Proprietary Information only for discussions about the Grimlock and Broadside projects (NDA ¶ 4); maintain it in confidence (NDA ¶ 7); not disclose it to any third party (NDA ¶ 9); and protect it using the same degree of care the receiving party uses to protect its own Proprietary Information (NDA ¶ 10). Those are the only provisions Peraton points to in its complaint. Compl. ¶ 12. Those provisions require Raytheon's employees to protect the information and not use it for other purposes, but none of them individually or collectively are

tantamount to requiring Raytheon to firewall from any subsequent work all employees who might have been exposed to any Proprietary Information.[2]

Notably, the parties certainly could have included a firewall requirement in the NDAs. In fact, in the Grimlock teaming agreement between Peraton and Raytheon, the parties expressly agreed to a limited firewall procedure during the term of agreement. Dkt. No. 17-2 at Exhibit A. Raytheon complied with that requirement by firewalling employees until the agreement was terminated. Dkt. No. 17-5. While the parties expressly agreed to a list of provisions that would survive termination, the firewall requirement was not one of the surviving provisions. Dkt. No. 17-2 ¶¶ 13, 26. The requirement thus ended when the agreement terminated in the spring of 2017. Notably, Peraton has not alleged that Raytheon breached that firewall requirement, presumably because Peraton knows Raytheon complied with it, as Peraton acknowledges in its complaint. Compl. ¶¶ 26-27. Had the parties bargained for the firewall requirement to continue after termination of the teaming agreement, they would have made it a surviving term or included it in the NDAs. It is not a surviving term, it is not in the NDAs, and Raytheon is not obligated to maintain firewalls.

By telling Peraton that it was no longer maintaining firewalls, Raytheon was not repudiating any obligation in the NDAs (or any obligation that survived termination of the teaming agreements, which Peraton does not even allege). This cannot therefore be a "clear and

[2] As to the actual obligations in the NDAs, Raytheon has and will continue to abide by them, which Raytheon has repeatedly confirmed to Peraton. *See, e.g.*, Dkt. No. 17-5 at 2; Ex. A (G. LoCascio Aug. 22, 2017 Email). Raytheon has, in fact, gone further than the NDAs require, and segregated any electronic information received from Peraton, which Raytheon has also told Peraton. *Id*. Thus, far from any "clear and unequivocal" repudiation, Raytheon has clearly and unequivocally told Peraton that it has and will abide by the NDAs.

unequivocal" declaration that Raytheon intends to breach the NDAs, as would be required to support Peraton's anticipatory repudiation theory.

B. Peraton's unjust enrichment claim fails as a matter of law because the parties' relationship is governed by existing contracts.

As this Court has repeatedly explained, "Virginia law holds that where, as here, a contract exists, there can be no recovery for unjust enrichment." *Run Them Sweet*, 224 F. Supp. 3d at 469 (citing *Kern v. Freed Co.*, 299 S.E.2d 363 (Va. 1983)). This is black letter law. Restatement (Third) of Restitution and Unjust Enrichment § 2(2), p. 15 (2010) ("A valid contract defines the obligations of the parties as to matters within its scope, displacing to that extent any inquiry into unjust enrichment.").

Peraton's claim for unjust enrichment cannot stand and must be dismissed in light of the teaming agreements and non-disclosure agreements that govern the parties' relationship with respect to the events and allegations at issue in the complaint. *Run Them Sweet*, 224 F. Supp. 3d at 469 ("[P]laintiff's unjust enrichment claim must be dismissed because the parties unquestionably have an express contract.").

C. Peraton's trade secret claims turn on an "inevitable disclosure" theory, which is legally foreclosed and factually unsupported by Peraton's allegations.

Peraton does not allege that Raytheon has actually misappropriated any of Peraton's trade secrets. Rather, Peraton's trade secret claims only allege that "Raytheon's notification that it would drop [its] firewall constitutes…a threatened disclosure of Harris's trade secrets." Compl. ¶ 31. Peraton's theory is that Raytheon is violating the VUTSA and DTSA by "permit[ing] its employees with knowledge of Harris's trade secrets to team with a Harris competitor." Compl. ¶¶ 56-57. In other words, simply because a Raytheon employee was exposed to Peraton's alleged

trade secrets, they will inevitably, according to Peraton, disclose those alleged trade secrets if they work with another partner.

Although some courts have recognized "inevitable disclosure" as a viable theory supporting a trade secret misappropriation claim under certain circumstances, it is neither a favored nor automatically applied theory. In the typical "inevitable disclosure" case, the plaintiff has an employee who knows its trade secrets who later accepts a position with the plaintiff's direct competitor. If the plaintiff can show that its former employee possesses "so much confidential information that no [employee] would ever be able to leave one competitor to join another because he would inevitably use valuable proprietary information," some courts in certain circumstances have found that sufficient to support a trade secret misappropriation claim. *Dearborn v. Everett J. Prescott, Inc.*, 486 F. Supp. 2d 802, 820-21 (S.D. Ind. 2007). Because this doctrine amounts to a restraint on employment and trade, courts have reasoned it "should remain limited to a rare and narrow set of circumstances in which the departing employee has acted in bad faith in taking or threatening to take valuable confidential information from the employer." *Id.* at 820. Peraton's attempt to stretch this doctrine to cover the alleged facts in this case fails as a matter of law, for several reasons.

First, and as a dispositive threshold matter, like many other jurisdictions, "Virginia does not recognize the inevitable disclosure doctrine." *Gov't Tech. Servs.*, 51 Va. Cir. at 55;[3] *see also*

[3] In *MeadWestvaco Corp. v. Bates*, a Virginia Circuit court concluded that "Virginia would *likely* apply the doctrine of inevitable disclosure" in a situation where an employee was subject to a non-compete agreement. No. CL 13-1589, 2013 WL 12183821, at *12 (Va. Cir. Ct. Aug. 1, 2013) (unpublished) (emphasis added). A subsequent Virginia case clarified that the inevitable disclosure doctrine was not actually applied or relied upon in deciding *MeadWestvaco*. *SanAir Techs. Lab., Inc. v. Burrington*, No. CL15-1054, 2015 WL 12588951, at *3 (Va. Cir. Ct. Sept. 25, 2015) (unpublished). In any event, there is no non-compete agreement at play here.

LeJeune v. Coin Acceptors, Inc., 849 A.2d 451, 471 (Md. 2004) (declining to apply the inevitable disclosure doctrine); *Del Monte Fresh Produce Co. v. Dole Food Co.*, 148 F. Supp. 2d 1326, 1337 (S.D. Fla. 2001) (finding that "a court should not allow a plaintiff to use inevitable disclosure as an after-the-fact noncompete agreement to enjoin an employee from working for the employer of his or her choice"); *IBM Corp. v. Seagate Tech., Inc.*, 941 F. Supp. 98, 101 (D. Minn. 1992) (holding that, "in the absence of a covenant not to compete or a finding of actual or an intent to disclose trade secrets, employees 'may pursue their chosen field of endeavor in direct competition'" and that "[m]erely possessing trade secrets and holding a comparable position with a competitor does not justify an injunction. A claim of trade secret misappropriation should not act as an ex post facto covenant not to compete").

Second, Peraton's allegations fall woefully short of establishing that Raytheon's employees have "so much confidential information" they "would inevitably use valuable proprietary information" when pursuing Grimlock or Broadside with another teaming partner. Indeed, Peraton does not even allege which employees would so "inevitably" disclose Peraton's trade secrets, or why they would necessarily have to disclose those trade secrets when working with another teaming partner. Moreover, Peraton has not alleged that any of the special circumstances that might (in some courts outside of Virginia) justify applying this doctrine. Peraton does not sufficiently allege bad faith by any Raytheon employee and it has not alleged any actual disclosure of any Peraton trade secret by any Raytheon employee.

Third, the teaming agreements between Raytheon and Peraton specifically envisioned that Raytheon could partner with other companies to pursue Grimlock and Broadside. Both agreements are expressly "non-exclusive." Dkt. Nos. 17-2 & 17-4 ¶ 7. The Broadside agreement did not even require firewalling during the active term of that agreement. In other words, Peraton effectively

agreed that Raytheon employees could work simultaneously with Peraton and another company on separate proposals for Broadside. And as explained above, *supra* at 3, any firewalling obligation under Grimlock ended when the parties teaming agreement terminated, so the parties envisioned that Raytheon employees could thereafter work with other partners. Peraton's litigation-inspired position that such an arrangement would inevitably disclose Peraton's trade secrets is flatly belied by Peraton's agreement that firewalling was unnecessary during the Broadside teaming agreement and unnecessary after the Grimlock teaming agreement terminated.

Finally, as to Peraton's DTSA claim specifically, Peraton acknowledges that the DTSA is "nearly identical" to the VUTSA, and alleges that its DTSA claims turn on the "same reasons" as its VUTSA claim. Compl. ¶ 66. Enacted in 2016, the DTSA largely mirrors the Uniform Trade Secrets Act, which is in effect in Virginia. Defend Trade Secret Act, 18 U.S.C. § 1839, et seq. The DTSA should be interpreted to preclude inevitable disclosure, particularly to support an injunction. 18 U.S.C. § 1836(b)(3)(A) (stating a court cannot issue an injunction that would "prevent a person from entering into an employment relationship, and that conditions placed on such employment shall be based on evidence of threatened misappropriation and not merely on the information the person knows[.]") Moreover, for the same reasons discussed above, Peraton's allegations are not sufficient to support a claim that Raytheon's employees will necessarily disclose Peraton trade secrets simply by working with Peraton's competitors, as would be required to support an inevitable disclosure theory.

CONCLUSION

For the foregoing reasons, Raytheon respectfully requests that the Court dismiss Peraton's complaint pursuant to FRCP 12(b)(6).

Dated: September 7, 2017

Respectfully submitted,

By: /s/ Gregg F. LoCascio

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CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2017, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will automatically provide notice to the following:

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Exhibit A

From: LoCascio, Gregg F.
To: Miller, Randy
Cc: DePalma, Nicholas M.; Chapman, Taylor S.; Rhoades, Lynne A.; McEldowney, Sean M.; Dalmut, Elizabeth
Subject: Re: Peraton/Raytheon
Date: Tuesday, August 22, 2017 2:31:30 PM

Randy,

Thanks for your email. As I mentioned when I reached out to you last week, Kirkland has been retained to represent Raytheon in this matter and we are in the process of evaluating Peraton's alleged claims and request for a preliminary injunction, for which no briefing has yet been submitted under the schedule Peraton previously requested and obtained from Calendar control.

As I indicated I would, I have spoken with Raytheon about your request that Raytheon agree that a broad list of Raytheon employees be voluntarily firewalled off of any potential teaming activities in connection with the Broadside and Grimlock opportunities. For a variety of reasons, Raytheon is not willing to constrain its business in such a manner.

First -- and critically -- Raytheon has repeatedly given Peraton assurances that any confidential information that was provided by Peraton's predecessor Harris IT under the parties' agreement has been and continues to be maintained consistent with Raytheon's NDA obligations and has not and will not be used in connection with any potential work on the Broadside or Grimlock efforts. Indeed, any electronic information provided by Harris IT has been segregated and is not accessible to the Raytheon employees identified by Peraton. Raytheon has done so even though it does not necessarily agree that the information that Peraton has identified as allegedly confidential or trade secret actually qualifies for those protections, but has consistently operated out of a conservative abundance of caution to address Peraton's perceived concerns. Moreover, to that end, those employees have also been reminded of and reaffirmed their obligations under the parties' NDA. So Peraton faces no risk to any of its alleged confidential information, much less any imminent risk meriting expedited relief.

Second, the prior teaming agreement between Raytheon and Harris IT was non-exclusive (which I understand is a requirement of the customer) and specifically contemplated that Raytheon could enter into additional teaming agreements with parties other than Harris/Peraton. Under Peraton's view, a swath of Raytheon's relevant employees and management would be unable to do that, essentially negating that provision of the parties' agreement and stifling competition.

Third, Peraton essentially requests Raytheon to voluntarily agree to its requested preliminary injunction, relief that Raytheon does not believe Peraton is entitled to under the parties' agreement or the law. As to your comment about the propriety of firewalls generally, insofar as Raytheon previously and briefly (for a week as I understand it) firewalled the identified employees, it did so as a temporary prophylactic measure so that Raytheon could evaluate Peraton's claims.

As to your suggestion that Peraton may try to seek a TRO, that appears unnecessary, as well as inconsistent with Peraton's prior actions. Per above, Peraton faces no imminent threat whatsoever. But it also must be noted that Peraton has known Raytheon's position on the lack

of a need or requirement for a firewall for months. And even after Peraton filed this action, the hearing date for the preliminary injunction in late September was selected by Peraton counsel. From the correspondence I have seen, Peraton even declined to pursue an earlier hearing date that was proposed by Raytheon counsel.

Lastly, on the issue of removal, we are evaluating removal of the complaint. Peraton elected to plead both a federal cause of action and a dispute subject to diversity jurisdiction in state court, so it should come as no surprise to Peraton that Raytheon is evaluating removal. We have not made a decision at this time. Although Peraton chose not to give Raytheon any advance notice of its suit, I will nonetheless represent that Raytheon will inform Peraton of its removal decision prior to simply filing a notice of removal and providing notice to opposing parties as required under the rules.

As I told you last week, I was out of town with my family through today. I will be working in Chicago and Wisconsin Wednesday through Friday but can be available to discuss this further if needed with some advance notice on timing.

Regards, Gregg