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**Drummond Financial Services LLC, et al. Order on Pending
Motions and Requests**

John J. Goger
Fulton County Superior Court Judge

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IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA

DRUMMOND FINANCIAL SERVICES, LLC; et)	
al.,)	
)	Civil Action File No.
Plaintiffs,)	2014CV253677
)	
v.)	
)	Bus. Case Div. 4
TMX FINANCE HOLDINGS, INC.; et al.,)	
)	
Defendants.)	

ORDER ON PENDING MOTIONS AND REQUESTS

The above styled action is before the Court on various pending motions and requests, *to wit*: (1) Defendants' Motion to Dismiss and Supplemental Motion to Dismiss (collectively "Motion to Dismiss"); (2) Defendant TitleMax of Georgia, Inc.'s¹ Motion to Add Parties and for Related Relief ("Motion to Add Parties"); (3) Plaintiffs' Motion to Dismiss Counts II and III of Defendants' Amended Twenty-Fourth Defense and Counterclaim and Motion to Dismiss Counts II and III of Defendants' Second Amended Twenty-Fourth Defense and Counterclaim (collectively "Motion to Dismiss Counterclaim"); (4) various discovery related motions and issues, including Plaintiffs' Motion to Compel and Defendants' Motion to Compel; (5) Plaintiffs' Motion for Reinstatement of Paragraphs 1(a) and 1(b) of the Interlocutory Injunction; and (6) Plaintiffs' Motion for Separate Trial on Defendants' Permissive Counterclaims. Having considered the record, the Court finds and orders as follows:

FACTUAL BACKGROUND

This case concerns a dispute between businesses which compete in the title loan industry. Plaintiffs² are companies affiliated by a common ownership and control engaged in the business of

¹ Hereinafter TitleMax Georgia.

² Plaintiffs include Drummond Financial Services, LLC; Anderson Financial Services, LLC; LoanSmart, LLC; Kipling Financial Services, LLC; Huffman Title Pawn, Inc.; LoanMax, LLC; Mid-American Title Loans, LLC; Fairfax Financial Services, LLC; Wellshire Financial Services, LLC; Cash Loans of Marietta, Inc.;

making loans to consumers secured by motor vehicles (*i.e.* “title loans”) and consists of loan brokers and direct lenders. Plaintiffs Drummond Financial Services, Inc. and LoanStar³ act as loan brokers in that they assist customers seeking to obtain title loans from third-party lenders. The remaining Plaintiffs are direct lenders who specialize in making title loans directly to consumers. Plaintiffs assert they invest significant time and resources in developing customer relationships to help ensure customers return for future loans.

The various TitleMax Defendants⁴ are part of a conglomerate of related companies also engaged in the title loan business, including brokers and direct lenders. Defendants are direct competitors of Plaintiffs and operate stores across the United States.

Plaintiffs allege that Defendants have committed a variety of tortious acts while engaged in a nationwide campaign to systematically steal their customers. Plaintiffs allege, *inter alia*, that Defendants: (1) improperly accessed Department of Motor Vehicle (“DMV”) records in violation of federal and state laws to obtain information regarding Plaintiffs’ current and prospective customers and then used that information to solicit and divert Plaintiffs’ customers to the Defendants; (2) improperly entered Plaintiffs’ premises in order to solicit Plaintiffs’ customers; and (3) offered Plaintiffs’ employees monetary compensation for diverting Plaintiffs’ current and prospective customers away from Plaintiffs to Defendants. Plaintiffs have asserted six claims against the Defendants including misappropriation of trade secrets, unfair competition, two counts of tortious interference with prospective contracts and business relationships, trespass and civil conspiracy.

TitleMax Georgia has asserted a counterclaim against North American Title Loans, LLC, a Georgia limited liability company and Cash Loans of Marietta, Inc., alleging they are continuously

Meadowwood Financial Services, LLC; Select Management Funding, LLC; and various North American Title Loans, LLC entities registered in Georgia, South Carolina, New Mexico and Utah. Plaintiffs are referred to collectively herein as “Plaintiffs” or “Drummond”.

³ “LoanStar” collectively refers to Plaintiffs Wellshire Financial Services LLC and Meadowwood Financial Services, LLC.

⁴ Defendant TitleMax (“TMX”) Finance Holdings, Inc. is the parent company that owns all ownership and membership interest in Defendant TMX Finance, Inc. Defendant TMX Finance, Inc. is the parent company that owns all ownership and membership interests of all the TMX subsidiaries, including Defendants TMX Ohio, TMX Texas, TMX Virginia, TMX Utah, TMX Alabama, TMX New Mexico, TMX Arizona, TMX Missouri, TMX South Carolina, and TMX Georgia. Defendants are referred to collectively herein as “Defendants” or TitleMax.

violating the Georgia Pawnshop Act, O.C.G.A. §44-12-130 *et seq.*, through their use of the term “loan” in their names and advertising. TitleMax Georgia has asserted claims against those entities alleging: (1) unfair competition in violation of the Lanham Act; (2) unfair competition in violation of the Uniform Deceptive Trade Practices Act; and (3) civil conspiracy.

Additionally, certain TitleMax Claimants have asserted a counterclaim alleging certain Drummond parties⁵ are instructing employees to visit TitleMax stores to falsely claim to be customers looking for a title loan or posing as a potential recovery vendor, who then allegedly lie about needing to use the restroom in order to gain access to restricted, non-public areas of TitleMax’s stores in order to photograph its trade secret financial information (contained on “goal boards”), information which is then allegedly shared throughout Drummond’s corporate structure. Based on the foregoing, the TitleMax Claimants have brought claims alleging: (1) trespass; (2) misappropriation and theft of trade secrets; (3) violation of the Georgia Racketeer Influenced and Corrupt Organizations Act; (4) conversion (in the alternative); (5) civil conspiracy; and (6) entitlement to litigation expenses.

ANALYSIS

I. DEFENDANTS’ MOTION TO DISMISS

In their Motion to Dismiss, Defendants seek dismissal of Plaintiffs’ Count I (misappropriation of trade secrets), Count II (unfair competition), Count III (tortious interference with Drummond’s prospective CSO contracts and business relationships), and Count IV (tortious interference with the Direct Lender Plaintiffs’ prospective contracts and business relationships) under O.C.G.A. §9-11-12(b)(6) for failure to state a claim. Defendants also request dismissal of Count II (unfair competition), Count III (tortious interference with Drummond’s prospective CSO contracts and business relationships), Count IV (tortious interference with the Direct Lender Plaintiffs’ prospective contracts and business relationships), Count V (trespass), Count VI (civil conspiracy), and Count IX (temporary restraining order and permanent injunction), asserting those counts are “preempted, displaced, or superseded in whole or in part by Count I.”

⁵ See note 32, *infra*.

A. Standard on a Motion to Dismiss

A motion to dismiss brought under O.C.G.A. §9-11-12(b)(6) for failure to state a claim upon which relief may be granted should not be sustained unless:

(1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.... In deciding a motion to dismiss, all pleadings are to be construed most favorably to the party who filed them, and all doubts regarding such pleadings must be resolved in the filing party's favor.

Austin v. Clark, 294 Ga. 773, 774–75, 755 S.E.2d 796, 798–99 (2014) (citing Anderson v. Flake, 267 Ga. 498, 501(2), 480 S.E.2d 10 (1997)); Abramyan v. State, 301 Ga. 308, 309, 800 S.E.2d 366, 368 (2017), reconsideration denied (June 5, 2017).

Under the notice pleading procedure of the Georgia Civil Practice Act, only a short and plain statement of the claim is required. O.C.G.A. § 9-11-8(a)(2)(A). Nevertheless, “a complaint must give a defendant notice of the claim in terms sufficiently clear to enable him to frame a responsive pleading thereto.” Patrick v. Verizon Directories Corp., 284 Ga. App. 123, 124 (2007) (quoting Allen v. Bergman, 201 Ga. App. 781, 783(3)(b) (1991)).⁶

B. Whether Plaintiffs state actionable claims with respect to Counts I-IV

To assess whether Plaintiffs have properly stated claims under Counts I through IV, the Court must first determine what substantive law governs and then considers whether Plaintiffs have sufficiently stated a claim under the applicable law.

(1) Misappropriation of trade secrets (Count I)

Plaintiffs assert their “customer lists and related title loan information” constitute trade secrets which Defendants have “acquired or discovered...by improper and unlawful means.”⁷ Specifically, they

⁶ With respect to Defendants’ Motions to Dismiss, the Court has limited its review to the pleadings. See Campbell v. Ailion, 338 Ga. App. 382, 384 n. 2, 790 S.E.2d 68, 71 (2016) (“Documents attached to a brief in support of [a] motion to dismiss...cannot be considered in deciding the motion to dismiss”) (citation and punctuation omitted).

⁷ First Amended Complaint for Damages and Injunctive Relief (“FAC”), ¶¶ 100-101.

allege Defendants “performed unlawful and impermissible searches” in order to access drivers’ personal information from DMV records “in order to target Plaintiffs’ customers for direct contact and solicitation.”⁸

Plaintiffs contend Defendants’ conduct violates the trade secret laws of “various States, including but not limited to the States of Alabama (Ala Code §8-27-1, *et seq.*), Utah (Utah Code §13-24-1, *et seq.*), Ohio (Ohio Rev. Code §133.61, *et seq.*), Missouri (Mo. Stat. §417.450 *et seq.*), Virginia (Va. Code §59.1-336, *et seq.*), New Mexico (N.M. Stat. §57-3A-1), Arizona (Ariz. Rev. Stat. §44-401, *et seq.*), Tennessee (Tenn. Code Ann. §47-25-1701, *et seq.*), Texas (Tex. Civ. Prac. & Rem. Code Ann. §1345A.001, *et seq.*), South Carolina (S.C. Code Ann. §39-8-10, *et seq.*), and Georgia (O.C.G.A. §10-1-760, *et seq.*).”⁹ However, Plaintiffs only specifically name Ohio, South Carolina, Texas and New Mexico as maintaining databases with DMV records which can be sold to certain entities and then resold under limited circumstances.¹⁰ Insofar as Plaintiffs are not asserting a misappropriation claim with respect to Defendants’ alleged conduct in Texas or South Carolina, as that conduct is the subject of separate litigation,¹¹ the Court largely limits its analysis below regarding Plaintiffs’ trade secret claims to laws of Georgia (to the extent Defendants allege Georgia law governs), Ohio and New Mexico.

a. Georgia law and conflict of laws analysis

Plaintiffs fail to state a trade secret claim under Georgia law. To “recover” under the Georgia Trade Secrets Act (“TSA”), O.C.G.A. §§ 10-1-760 *et seq.*, a plaintiff must show that it has a trade secret as defined by O.C.G.A. §10-1-761(4) and that the defendant misappropriated it. Contract Furniture Refinishing & Maint. Corp. of Georgia v. Remanufacturing & Design Grp., LLC, 317 Ga. App. 47, 57, 730 S.E.2d 708, 715 (2012) (citing Hilb, Rogal & Hamilton Co. of Atlanta v. Holley, 284 Ga. App. 591, 597(4), 644 S.E.2d 862, 867 (2007)). *See* O.C.G.A. §10-1-761.¹² *See also* EarthCam, Inc. v. OxBlue

⁸ FAC, ¶101.

⁹ FAC, ¶107.

¹⁰ FAC, ¶68.

¹¹ FAC, p. 30 n. 2.

¹² The New Mexico TSA and Ohio TSA, both of which are also modeled after the Uniform Trade Secret Act, are substantially similar. *See generally* N.M. Stat. Ann. § 57-3A-2; Ohio Rev. Code Ann. § 1333.61.

Corp., 49 F. Supp. 3d 1210, 1225 (N.D. Ga. 2014) (“The plaintiff has the burden of establishing each of these statutory elements as to each claimed trade secret. This means that a plaintiff who seeks relief for misappropriation of trade secrets must identify the trade secrets and carry the burden of showing that they exist”). The Georgia TSA defines a “trade secret” as follows:

“Trade secret” means information, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information: (A) Derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

O.C.G.A. §10-1-761(4).

However, “[u]nder O.C.G.A. § 10–1–761(4), only tangible lists of customers and suppliers are the property of the [company] and warrant protection as trade secrets.” DeGiorgio v. Megabyte Int’l, Inc., 266 Ga. 539, 539, 468 S.E.2d 367, 369 (1996) (citing Avnet, Inc. v. Wyle Labs., Inc., 263 Ga. 615, 618-20(2), 437 S.E.2d 302, 305 (1993)). *See also* Bacon v. Volvo Serv. Ctr., Inc., 266 Ga. App. 543, 545, 597 S.E.2d 440, 443 (2004) (citing Crews v. Roger Wahl, C.P.A., P.C., 238 Ga. App. 892, 898, n. 4, 520 S.E.2d 727 (1999) (“While a client list may be subject to confidential treatment under the Georgia [TSA], the information itself is not inherently confidential. Customers are not trade secrets. Confidentiality is afforded only where the customer list is not generally known or ascertainable from other sources and was the subject of reasonable efforts to maintain its secrecy”). Here, insofar as Plaintiffs do not allege that Defendants took a tangible list of their customers, but rather contend Defendants searched motor vehicle databases to determine, *inter alia*, which vehicles have liens held by Plaintiffs, Plaintiffs have not stated a claim for misappropriation of trade secrets under Georgia law.¹³

¹³ *See also* TMX Fin. Holdings, Inc. v. Drummond Fin. Servs., LLC, 300 Ga. 835, 838, 797 S.E.2d 842, 845 (2017).

Defendants argue that, applying the doctrine of *lex loci delicti*, Georgia law governs Plaintiffs' misappropriation claim related to Defendants' access and use of DMV records in Ohio and New Mexico. Defendants contend that since the last event to trigger liability under the Georgia TSA is where Plaintiffs sustained their injury and, here, Plaintiffs' economic losses were ultimately suffered in Georgia where their principal places of business are located, it follows that Georgia law applies such that Plaintiffs fail to state a trade secrets claim regarding Defendants' alleged out-of-state conduct. The Court disagrees.

Under Georgia law, the *lex loci delicti* determines the substantive rights of the parties. *Ohio Southern Express Co. v. Beeler*, 110 Ga. App. 867, 868(1), 140 S.E.2d 235. How do we determine the *lex loci delicti* where the tort is transitory in nature? The general rule is that "the place of wrong, the locus delicti, is the place where the injury sustained was suffered rather than the place where the act was committed, or, as it is sometimes more generally put, it is the place where the last event necessary to make an actor liable for an alleged tort takes place." 15A C.J.S. Conflict of Laws, § 12(2)(b), 459. Georgia follows the general rule: In *Wardell v. Richmond Screw Anchor Co.*, 133 Ga. App. 378, 210 S.E.2d 854, we observed that " 'The law of the place where the tort or wrong has been committed is the law by which the liability is to be determined, and the place of the wrong is the place where ... there takes place the last event necessary to make an actor liable for an alleged tort.' " *Wardell v. Richmond Screw Anchor Co.*, supra, at p. 380, 210 S.E.2d 854, quoting *Brooks v. Eastern Air Lines*, 253 F.Supp. 119, 121 (N.D.Ga.1966).

Risdon Enterprises, Inc. v. Colemill Enterprises, Inc., 172 Ga. App. 902, 903–04, 324 S.E.2d 738, 740 (1984). See *Bullard v. MRA Holding, LLC*, 292 Ga. 748, 750, 740 S.E.2d 622, 625 (2013).

As noted above, to state a claim under the Georgia TSA (as well as under the New Mexico TSA and Ohio TSA), a plaintiff must demonstrate that the information in question constitutes a "trade secret" and that the defendant misappropriated it. Notably, however, a plaintiff need not show damages or economic injury in order to obtain relief under the Georgia TSA. Indeed, the Act expressly authorizes injunctive relief and permits damages "[i]n addition to or in lieu of" such injunctive relief and "if neither damages nor unjust enrichment caused by the misappropriation are proved by a preponderance of the evidence, the court may award damages caused by misappropriation measured in terms of a reasonable

royalty.” See O.C.G.A. §§ 10-1-762 and 10-1-763.¹⁴ Thus, although the Court does not ignore Plaintiffs’ emphasis throughout their pleadings to having suffered harm in Fulton County, Georgia where they are headquartered,¹⁵ nevertheless, Defendants’ focus on Georgia as the place where Plaintiffs’ economic injury was ultimately suffered is misplaced with respect to the trade secrets claims.¹⁶

Instead, in analyzing conflict of law issues in trade secret cases, Georgia federal courts have held the *lex loci delicti* is the place where the tortious act of misappropriation and use of the trade secret occurred. See, e.g., Manuel v. Convergys Corp., 430 F.3d 1132, 1139–40 (11th Cir. 2005) (where Ohio company brought trade secrets claim under Ohio and Georgia law against former employee who previously worked for the company in Florida but took a job in Georgia with a competitor and where Ohio company alleged it had entrusted former employee with trade secret information that would inevitably be used during employment with Georgia competitor, Georgia law governed); Salsbury Labs., Inc. v. Merieux Labs., Inc., 735 F. Supp. 1555 (M.D. Ga. 1989), aff’d as modified, 908 F.2d 706 (11th Cir. 1990) (Georgia law, rather than Iowa law, applied to poultry vaccine manufacturer’s claim for misappropriation of trade secrets and confidential information because, although the vaccine allegedly misappropriated by competitor was developed in Iowa, misappropriation and use of trade secrets occurred at competitor’s Georgia laboratory).

On this issue the Court finds the Restatement (Second) of Conflict of Laws instructive:

The relative importance of the contacts...varies somewhat with the nature of the tort involved. Thus, the place of injury is of particular importance in the case of personal injuries and of injuries to tangible things (see §§ 146- 147). The same is true in the case of false imprisonment and of malicious prosecution and abuse of process (see § 155). On the other hand, the place of injury is less significant in the case of fraudulent misrepresentations (see § 148) and of such unfair competition as consists of false advertising and the misappropriation of trade values. The injury suffered through false advertising is the loss of customers or of trade. Such customers or trade will frequently be lost in two or more states. The effect of the loss, which is pecuniary in its nature, will normally be felt most severely at the plaintiff’s headquarters or principal place of business. But this place may have only a slight relationship to the defendant’s activities and to the

¹⁴ Similarly, the New Mexico TSA and Ohio TSA authorize both injunctive relief and damages. See N.M. Stat. Ann. §§ 57-3A-3, 57-3A-4; Ohio Rev. Code Ann. §§ 1333.62, 1333.63.

¹⁵ See, e.g., FAC, ¶¶ 5-6, 41, 104, 107, 116, 120, 122, 130, 138, 144, 150.

¹⁶ Here, Plaintiffs seek both injunctive relief and damages. See FAC, ¶¶ 104, 107, 151-160.

plaintiff's loss of customers or trade. The situation is essentially the same when misappropriation of the plaintiff's trade values is involved, except that the plaintiff may have suffered no pecuniary loss but the defendant rather may have obtained an unfair profit. For all these reasons, the place of injury does not play so important a role for choice-of-law purposes in the case of false advertising and the misappropriation of trade values as in the case of other kinds of torts. Instead, the principal location of the defendant's conduct is the contact that will usually be given the greatest weight in determining the state whose local law determines the rights and liabilities that arise from false advertising and the misappropriation of trade values.

Restatement (Second) of Conflict of Laws § 145 (1971).

Here, Plaintiffs allege Defendants' employees unlawfully accessed and used the DMV records of Plaintiffs' customers in New Mexico and Ohio to contact them "in order to unlawfully steal" those New Mexico and Ohio customers.¹⁷ Thus, the allegedly improper access and misappropriation of customer information, if any, occurred in New Mexico and Ohio such that New Mexico and Ohio law, respectively, govern Plaintiffs' trade secret claims regarding Defendants' alleged conduct in those states. Further, the Court does not find that Georgia's public policy exception requires application of Georgia law. The TSA adopted in Georgia, New Mexico and Ohio are each modeled after the Uniform Trade Secrets Act, and otherwise have substantially similar definitions of what constitutes a trade secret.

b. New Mexico TSA and Ohio TSA

Under the New Mexico TSA,

[a] "trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process, that: (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

N.M. Stat. Ann. § 57-3A-2(D).

Pursuant to the Ohio TSA,

[a] "trade secret means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following: (1) It

¹⁷ FAC, ¶¶ 90-92.

derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Ohio Rev. Code Ann. § 1333.61(D).

Neither state appears to absolutely mandate that a customer list be in tangible form in order to be protected under the state's TSA. *See Al Minor & Assoc., Inc. v. Martin*, 2008-Ohio-292, ¶ 24, 117 Ohio St. 3d 58, 64, 881 N.E.2d 850, 855; *State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Envtl. Prot. Agency*, 2000-Ohio-282, 88 Ohio St. 3d 166, 172, 724 N.E.2d 411, 417; *Mesarvey, Russell & Co. v. Boyer*, No. 91AP-974, 1992 WL 185656, at *15 (Ohio Ct. App. July 30, 1992), cause dismissed sub nom. Mesarvey, Russel & Co. v. Boyer, 65 Ohio St. 3d 1447, 601 N.E.2d 42 (1992); *Interstate Serv. Ins. Agency, Inc. v. McIntire*, No. C-890346, 1991 WL 1386, at *5 (Ohio Ct. App. Jan. 9, 1991); *Valco Cincinnati, Inc. v. N&D Machining Serv., Inc.*, No. 8108537, 1984 WL 7127, at *5 (Ohio Ct. App. Dec. 19, 1984), aff'd sub nom. Valco Cincinnati, Inc. v. N & D Machining Serv., Inc., 24 Ohio St. 3d 41, 492 N.E.2d 814 (1986). *Rapid Temps, Inc. v. Lamon*, 2008-NMCA-122, ¶ 23, 144 N.M. 804, 809, 192 P.3d 799, 804.

Both Ohio and New Mexico courts have found that “listings” or “compilations” of customer information may be considered trade secrets, even if some of the information is publicly available. *See State ex rel. Lucas Cty. Bd. of Commrs. v. Ohio Envtl. Prot. Agency*, 88 Ohio St. 3d 166, 173, 724 N.E.2d 411, 418 (Ohio 2000); *Al Minor & Assoc., Inc. v. Martin*, 117 Ohio St. 3d 58, 59, 881 N.E.2d 850, 851 (Ohio 2008). *Compare Berardi's Fresh Roast, Inc. v. PMD Enterprises, Inc.*, 2008 WL 4681825, 2008-Ohio-5470, ¶ 24 (Ohio 2008). *See Rapid Temps, Inc. v. Lamon*, 144 N.M. 804, 809, 192 P.3d 799, 804 (New Mexico 2008). *Compare Insure New Mexico, LLC v. McGonigle*, 2000-NMCA-018, ¶¶ 14-15, 128 N.M. 611, 615–16, 995 P.2d 1053, 1057–58.

Further, under both New Mexico and Ohio law whether particular information constitutes a trade secret is generally a question of fact. *See Pincheira v. Allstate Ins. Co.*, 144 N.M. 601, 609(C)(1), 190 P.3d 322, 330 (2008) (“The existence of a trade secret ordinarily is a question of fact...It is also one of the most elusive and difficult concepts in the law to define...Evaluating trade secret status therefore “requires

an ad hoc evaluation of all the surrounding circumstances. For this reason, the question of whether certain information constitutes a trade secret ordinarily is best resolved by a fact finder after full presentation of evidence from each side”) (citing Learning Curve Toys, Inc. v. PlayWood Toys, Inc., 342 F.3d 714, 723 (7th Cir.2003)); Fred Siegel Co., L.P.A. v. Arter & Hadden, 85 Ohio St. 3d 171, 181, 707 N.E.2d 853, 862 (Ohio 1999) (“A possessor of a potential trade secret must take some active steps to maintain its secrecy in order to enjoy presumptive trade secret status, and a claimant asserting trade secret status has the burden to identify and demonstrate that the material is included in categories of protected information under the statute...The question whether a particular knowledge or process is a trade secret is, however, a question of fact to be determined by the trier of fact upon the greater weight of the evidence”).

Finally, each state defines misappropriation to include the “acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means.” *See* N.M. Stat. Ann. §57-3A-2(B)(1); Ohio Rev. Code Ann. §1333.61(B)(1). “Improper means” includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means. *See* N.M. Stat. Ann. §57-3A-2(A); Ohio Rev. Code Ann. §1333.61(A). *Cf. E. I. duPont deNemours & Co. v. Christopher*, 431 F.2d 1012, 1015 (5th Cir. 1970) (taking aerial photography of a competitor’s plant construction is an improper means of obtaining another’s trade secret which may be actionable).

Here, Plaintiffs allege Defendants unlawfully accessed DMV records to obtain not just customers’ identities but personal information regarding their customers and their related title loan information; information which Plaintiffs allege is not readily available through lawful means and which they have expended money, time and effort to maintain confidential and to protect from any unauthorized access.¹⁸ Given the authorities summarized above, the Court cannot conclude based on the pleadings that Defendants have established Plaintiffs “could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief” as to their trade secret claims under New Mexico

¹⁸ FAC, ¶¶ 2, 49-54, 69-77, 79, 86-87, 92, 100-107.

and Ohio law. Thus, Defendants' Motion to Dismiss Plaintiffs trade secret misappropriation claims related to Defendants' alleged conduct in New Mexico and Ohio is **DENIED**.¹⁹

(2) Preemption of Counts II, III, IV, V, VI, and IX

Defendants urge Plaintiffs' trade secret claims preempt their unfair competition, tortious interference, trespass, civil conspiracy and injunctive relief claims to the extent those claims are based on alleged trade secret misappropriation. Although Defendants' analysis centers largely on Georgia law and the preemption provision contained in the Georgia TSA, O.C.G.A. §10-1-767,²⁰ as held above, Plaintiffs' trade secret claims are governed by the laws of state where the misappropriation occurred.

The New Mexico TSA does not contain a preemption provision. Thus, there can be no preemption with respect to the trade secrets claim asserted under New Mexico law.

The Ohio TSA "displace[s] conflicting tort, restitutionary, and other laws of this state providing civil remedies for misappropriation of a trade secret" but does not affect "[o]ther civil remedies that are not based on misappropriation of a trade secret." Ohio Rev. Code Ann. § 1333.67. See Glasstech, Inc. v. TGL Tempering Sys., Inc., 50 F. Supp. 2d 722, 730 (N.D. Ohio 1999) ("The preemption section of the UTSA has been interpreted to bar claims which are based entirely on factual allegations of misappropriation of trade secrets"); Kehoe Component Sales Inc. v. Best Lighting Prod., Inc., 933 F. Supp. 2d 974, 1015 (S.D. Ohio 2013) ("Where the common-law claim possesses an independent factual basis separate from the factual allegations establishing a UTSA claim, then the portion of the claim supported by an independent factual basis survives preemption") (citing Int'l Paper Co. v. Goldschmidt, 872 F.Supp.2d 624, 635 (S.D. Ohio 2012)). See also Exal Corp. v. Roeslein & Assocs., Inc.,

¹⁹ As noted above, Plaintiffs also allege Defendants' conduct violates the TSA as adopted by Alabama, Utah, Missouri, Virginia, Arizona, and Tennessee, although Plaintiffs do not specify how DMV records were accessed or used in those states. To the extent Plaintiffs maintain Defendants improperly accessed or used DMV records in those states and are asserting a trade secrets claim as to such conduct, that would have to be properly pled and such claims would likewise be governed under those states' laws. Whether a trade secrets claim is actionable thereunder (*e.g.*, whether the information obtained constitutes a trade secret, what information is/is not is publically available, etc.) is better addressed with the benefit of evidence. The Court takes no position on whether Plaintiffs' trade secrets claims will ultimately survive summary judgment.

²⁰ O.C.G.A. §10-1-767(a) states: "Except as provided in subsection (b) of this Code section, this article shall supersede conflicting tort, restitutionary, and other laws of this state providing civil remedies for misappropriation of a trade secret."

No. 4:12-CV-01830, 2012 WL 4754748, at *3 (N.D. Ohio Oct. 2, 2012) (“After full review of the cases, this Court finds most persuasive the opinions that require fuller factual development prior to ruling on preemption. Acting prematurely can result in a scenario that strips Plaintiffs of any recovery, even though they have been wronged”).²¹

Here, Plaintiffs’ trade secrets claims are predicated on allegations their customer list and related title loan information constitute trade secrets which Defendants have misappropriated by unlawfully searching DMV records in order to contact and solicit Plaintiffs’ existing and prospective customers. To the extent Plaintiffs’ other tort claims are based on improperly obtaining customers’ information through DMV records in Ohio, those claims would be preempted pursuant to the foregoing authorities. Specifically, Count III, tortious interference with Drummond’s prospective CSO contracts and business relationships, is predicated entirely on the same factual allegations as the trade secrets claims; *i.e.* improperly accessing DMV records to obtain Plaintiffs’ customers’ information (the alleged trade secrets) to solicit their business. As such, under Ohio law, Count III would be preempted by the trade secrets claims.

²¹ Similarly, the other named states’ Trade Secret Acts only preempt common law tort claims to the extent they are predicated on or derived from the same factual allegations as the trade secret claim. *See Bell Aerospace Servs., Inc. v. U.S. Aero Servs., Inc.*, 690 F. Supp. 2d 1267, 1277 (M.D. Ala. 2010) (“[T]he company may not pursue both statutory and common law theories of recovery for the...alleged misappropriation of ‘trade secrets’ or confidential documents” and, thus, “may not pursue its breach-of-fiduciary-duty claim under a theory that is essentially the same as its ATSA claim”); *Madison Oslin, Inc. v. Interstate Res., Inc.*, No. 2:11-CV-01343-SLB, 2012 WL 4730877, at *9 (N.D. Ala. Sept. 30, 2012) (“To the extent plaintiffs plead common law causes of action based on the same underlying facts as those giving rise to their claim under the ATSA...such causes of action are preempted”); *Unisource Worldwide, Inc. v. Swope*, 964 F. Supp. 2d 1050, 1056 (D. Ariz. 2013) (“The AUTSA expressly preempts all common-law tort claims for misappropriation of a trade secret. A.R.S. § 44–407. It does not affect “[o]ther civil remedies that are not based on misappropriation of a trade secret”) (citation omitted); *Custom Hardware Eng’g & Consulting, Inc. v. Dowell*, 918 F. Supp. 2d 916, 936 (E.D. Mo. 2013) (“Claims based on facts related to the misappropriation claim are derivative, and therefore preempted”); *ProductiveMD, LLC v. 4UMD, LLC*, 821 F. Supp. 2d 955, 964 (M.D. Tenn. 2011) (citing *Hauck Mfg. Co. v. Astec Indus., Inc.*, 375 F. Supp. 2d 649, 658 (E.D. Tenn. 2004) (“[I]t is clear some of what [the plaintiff] characterizes as breaches of the duty of loyalty are preempted by the TUTSA. Under the “same proof test, a claim is preempted “when it necessarily rises or falls based on whether the defendant is found to have ‘misappropriated’ a ‘trade secret’”); *CDC Restoration & Const., LC v. Tradesmen Contractors, LLC*, 2012 UT App 60, ¶ 48, 274 P.3d 317, 331 (“[I]f proof of a non-UTSA claim would also simultaneously establish a claim for misappropriation of trade secrets, it is preempted irrespective of [f] whatever surplus elements of proof were necessary to establish it...However, to whatever extent that a claim is based upon wrongful conduct independent of the misappropriation of trade secrets or otherwise confidential information, it is not preempted” (citation and punctuation omitted); *MicroStrategy Inc. v. Bus. Objects, S.A.*, 429 F.3d 1344, 1363 (Fed. Cir. 2005) (“[T]he Virginia Uniform Trade Secrets Act (VUTSA), Va.Code § 59.1–341(A), preempts claims predicated on a misappropriation of trade secrets”). *See also* Uniform Trade Secrets Act, §7(b) (“This Act does not affect:... (2) other civil remedies that are not based upon misappropriation of a trade secret”).

However, the unfair competition, tortious interference with the Direct Lender Plaintiffs' prospective contracts and business relationships, trespass, civil conspiracy and injunctive relief claims are all predicated on additional factual allegations of misconduct; *e.g.*, trespassing on Plaintiffs' premises to confront and solicit their customers and soliciting Plaintiffs' employees to provide referrals of Plaintiffs customers in exchange for personal financial incentives.²² Given this, the Court cannot say based on the pleadings that the foregoing claims are all preempted in their entirety such that they are subject to dismissal *in toto*. Accordingly, Defendants' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART** as outlined above.

(3) Unfair competition (Count II)

With respect to Count II, unfair competition, Plaintiffs allege Defendants have: "surreptitiously" recorded customers' license plate and VIN numbers to search DMV records and then searched DMV records by lienholder for Plaintiffs' customers; trespassed onto Plaintiffs' properties in (at least) New Mexico, Utah, Alabama, Virginia, Arizona and Georgia to solicit Plaintiffs' customers, including directly confronting customers as well as leaving flyers offering cash and other financial incentives to induce them to change companies; and solicited Plaintiffs' employees in New Mexico, Alabama, Missouri, Arizona, Tennessee, and Georgia, offering them cash to divert Plaintiffs' current and prospective customers from Plaintiffs to Defendants. Plaintiffs allege Defendants' conduct violates statutes regarding unfair competition in Utah, Ohio, New Mexico, and South Carolina and violates the common law of Utah, Ohio, New Mexico, South Carolina, Missouri, Texas, Arizona and Tennessee.

Defendants urge Count II should be dismissed to the extent Plaintiffs seek to assert a claim under South Carolina's Unfair Trade Practice Act, S.C. Code Ann. §§ 39-5-10 *et seq.* ("SCUPTA") and to the extent they assert a common law claim for unfair competition.

a. Unfair competition claim asserted under SCUPTA

SCUTPA broadly prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20. To state a SCUTPA

²² FAC, ¶¶ 110-111, 119, 125-127, 132-135, 140, 154-155.

claim, the plaintiff must allege “(1) that the defendant engaged in an unlawful trade practice, (2) that the plaintiff suffered actual, ascertainable damages as a result of the defendant's use of the unlawful trade practice, and (3) that the unlawful trade practice engaged in by the defendant had an adverse impact on the public interest.” Havird Oil Co. v. Marathon Oil Co., 149 F.3d 283, 291 (4th Cir. 1998) (citing S.C. Code Ann. § 39-5-140).

An impact on public interest may be shown if the acts or practices have the potential for repetition. Burbach v. Inv'rs Mgmt. Corp. Int'l, 326 S.C. 492, 497, 484 S.E.2d 119, 121 (S.C. Ct. App. 1997). This “potential for repetition” may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence, or (2) by showing the company’s procedures create a potential for repetition of the unfair and deceptive acts. Singleton v. Stokes Motors, Inc., 358 S.C. 369, 379, 595 S.E.2d 461, 466 (S.C. 2004). *See also* Ameristone Tile, LLC v. Ceramic Consulting Corp., 966 F. Supp. 2d 604, 621 (D.S.C. 2013) (“[T]he plaintiff in a SCUTPA action is required only to allege and prove those facts sufficient to demonstrate potential for repetition; at that point, [the] plaintiff has proven an adverse effect on the public interest sufficient to recover under the SCUTPA”).

Here, Defendants argue this claim fails under South Carolina law because Plaintiff failed to allege an injury to the public interest. However, Plaintiffs have alleged that Defendants engaged in multiple types of unfair and deceptive acts, including making misrepresentations about Plaintiffs’ business to its customers in order to mislead and deceive them, trespassing onto Plaintiffs’ premises to aggressively solicit Plaintiffs’ customers in person in an effort to take away their business, and soliciting Plaintiffs’ employees by offering financial incentives to divert customers from Plaintiffs to Defendants. Plaintiffs further allege Defendants are not only continuing to engage in such conduct but that Defendants’ management encourages, promotes and/or ratifies such conduct. These allegations are sufficient to state a claim for unfair competition under SCUPTA. As such, Defendants’ Motion to Dismiss Count II under SCUPTA is **DENIED**.

b. Common law claims alleging unfair competition

“In the absence of a statute...at least with respect to a state where the common law is in force, a Georgia court will apply the common law as expounded by the courts of Georgia.” Coon v. Med. Ctr., Inc., 300 Ga. 722, 729, 797 S.E.2d 828, 834 (2017). *See* Slaton v. Hall, 168 Ga. 710, 148 S.E. 741, 743 (1929) (“The common law is presumed to be the same in all the American states where it prevails. Though courts in the different states may place a different construction upon a principle of common law, that does not change the law. There is still only one right construction. If all the American states were to construe the same principle of common law incorrectly, the common law would be unchanged”).

Thus, while Georgia courts “will follow the decisions of a sister state in construing the statutes thereof, they are not bound by the interpretation placed upon the common law by the courts of other states.” Lay v. Nashville, C. & St. L. Ry. Co., 131 Ga. 345, 62 S.E. 189, 189 (1908). *See* Krogg v. Atlanta & W.P.R. Co., 77 Ga. 202, 214 (1886) (“We are not bound by the interpretation of the common law, as made by the courts of Alabama; as to what is the common law on this subject, this court is not only competent to decide, although the accident occurred in Alabama, but it is its duty to decide, the common law being the same [in] both jurisdictions”); In re ConAgra Peanut Butter Prod. Liab. Litig., No. 1:07-MD-1845-TWT, 2012 WL 3779088, at *2 (N.D. Ga. Aug. 29, 2012) (“Although the rule in Georgia is *lex loci delicti*, there are exceptions if the *lex loci delicti* is foreign law. One exception is the application of common law. Foreign law does not apply if no foreign statutes are involved”) (citing Leavell v. Bank of Commerce, 169 Ga. App. 626, 627, 314 S.E.2d 678 (1984); other citations and punctuation omitted). *See also* Moseley v. V Secret Catalogue, Inc., 537 U.S. 418, 428, 123 S. Ct. 1115, 1122, 155 L. Ed. 2d 1 (2003). Thus, here, Plaintiffs’ common law tort claims alleging unfair competition must be construed pursuant to the “common law as expounded by the courts of Georgia.” Coon, 300 Ga. at 729.

“[I]n Georgia the term unfair competition is a nomenclature for the doctrine that one cannot pass off his goods as those of another.” Nationwide Advert. Serv., Inc. v. Thompson Recruitment Advert., Inc., 183 Ga. App. 678, 682, 359 S.E.2d 737, 741 (1987) (citing Hayes v. Hallmark Apts., 232 Ga. 307(3), 207 S.E.2d 197 (1974)). As summarized by the Supreme Court of Georgia:

Unfair competition is a form of unlawful business injury. It consists in passing off, or attempting to pass off, on the public, the goods or business of one person as and for the goods or business of another. It consists essentially in the conduct of a trade or business in such a manner that there is either an express or implied representation to that effect. In fact, it may be stated broadly that any conduct, the nature and probable tendency and effect of which is to deceive the public so as to pass off the goods or business of one person as and for the goods or business of another, constitutes actionable unfair competition. The essence thereof consists in the sale of the goods of one manufacturer or vendor for those of another. It is the palming off by one of his goods as the goods of another, and nothing less than conduct tending to pass off one man's goods or business as the goods or business of another will constitute unfair competition. The basic principle of the law of unfair competition is that no one has a right to dress up his goods or business or otherwise represent the same in such manner as to deceive an intending purchaser and induce him to believe he is buying the goods of another, and that no one has a right to avail himself of another's favorable reputation in order to sell his own goods. The present tendency is to decide every case on the ground of unfair competition, by making the decision turn on whether or not the effect of what was done is to pass off the goods or business of one man as the goods or business of another. Unless it appears that there is or will probably be a deception of ordinary buyers and the general public into thinking that the goods or business of one is the business or goods of another and thus bring about the sale of one man's goods as the goods of the other, the case is *damnum absque injuria* for which no action lies.

Atlanta Paper Co. v. Jacksonville Paper Co., 184 Ga. 205, 212–13, 190 S.E. 777, 782–83 (1937). See Kay Jewelry Co. v. Kapiloff, 204 Ga. 209, 209, 49 S.E.2d 19, 20 (1948) (“In our reported cases where the question of unfair trade competition was involved, the litigants were engaged in a competitive business or dealt in competitive goods, and the ‘passing off’ rule has been sufficient to afford a test as to whether there was unfair competition. The test under this rule is whether the goods or business of one are in fact ‘passed off’ as the goods or business of another, and it has been said, in cases between litigants in actual and direct market competition, that nothing less than such conduct will constitute unfair competition”); Carter v. Carter Elec. Co., 156 Ga. 297, 119 S.E. 737, 740 (1923) (“The essence of the wrong in unfair competition consists in the sale of the goods of one person for that of another; and if defendant is not attempting to palm off its goods as those of complainant the action fails”). See also Saunders Sys. Atlanta Co. v. Drive It Yourself Co. of Georgia, 158 Ga. 1, 123 S.E. 132, 133, 135 (1924) (noting “the doctrine of secondary meaning...is the origin of the law of unfair competition, as distinguished from technical trademarks or trade-names: ‘If the defendant, as a matter of fact, by his conduct is passing off his goods as the

plaintiff's goods, or his business as plaintiff's business, a case of unfair competition is made. The test is whether the public is likely to be deceived” (citing Reddaway v. Banham, 65 L. J. Q. B. 381 (1896)). See, e.g., Carnes v. Smith, 236 Ga. 30, 42, 222 S.E.2d 322, 330 (1976); Multiple Listing Serv., Inc. v. Metro. Multi-List, Inc., 223 Ga. 837, 841–42, 159 S.E.2d 52, 55 (1968), as modified, 225 Ga. 129, 166 S.E.2d 356 (1969); Dolphin Homes Corp. v. Tocomc Dev. Corp., 223 Ga. 455, 456, 156 S.E.2d 45, 47 (1967); Citizens Jewelry Co. v. Savelle Jewelry Co. of Albany, 219 Ga. 409, 411, 133 S.E.2d 858, 860 (1963); Gordy v. Dunwody, 209 Ga. 627, 634, 74 S.E.2d 886, 891 (1953), as modified, 210 Ga. 810, 83 S.E.2d 7 (1954); Fraser v. Singer, 211 Ga. 26, 27, 83 S.E.2d 599, 600 (1954); First Fed. Sav. & Loan Ass'n v. First Fin. & Thrift Corp., 207 Ga. 695, 64 S.E.2d 58 (1951); Gano v. Gano, 203 Ga. 637, 640–41, 47 S.E.2d 741, 743 (1948); Indus. Inv. Co. v. Mitchell, 164 Ga. 437, 138 S.E. 908 (1927); Rome Mach. & Foundry Co. v. Davis Foundry & Mach. Works Works, 135 Ga. 17, 68 S.E. 800, 800 (1910); First Georgia Leasing, Inc. v. First Georgia Bank, 188 Ga. App. 847, 847, 374 S.E.2d 751, 751 (1988).

In the case at bar, Plaintiffs do not allege that any Defendant attempted to deceive the public by “passing off, or attempting to pass off, on the public, the goods or business of [Plaintiffs] as and for the goods or business of [Defendants].” Atlanta Paper Co., 184 Ga. at 212. Further, Plaintiffs have not provided any Georgia authority supporting Plaintiffs’ “broad view of unfair competition.”²³ Absent such, the Court is compelled to find Plaintiffs’ common law unfair competition claims fail as a matter of Georgia law. Defendants’ Motion to Dismiss is **GRANTED** as to those common law unfair competition claims.²⁴

(4) Tortious interference with the Direct Lender Plaintiffs’ prospective CSO contracts and business relationships (Count IV)²⁵

With respect to Count IV, Plaintiffs allege Defendants “willfully and intentionally” interfered with the Direct Lender Plaintiffs’ prospective contracts and business relationships by, *inter alia*: entering

²³ Plaintiffs’ Response in Opposition to Defendants’ Motion to Dismiss, p. 24.

²⁴ However, Plaintiffs’ unfair competition claims asserted under the statutes of Utah, Ohio, New Mexico, and South Carolina remain for adjudication.

²⁵ Insofar as the Court has already dismissed Count III (tortious interference with Drummond’s prospective CSO contracts and business relationships) as preempted by Plaintiffs’ trade secrets claims, it is not addressed here.

Plaintiffs' store properties to solicit Plaintiffs' customers directly by offering cash or other financial incentives and representing Defendants can offer a lower interest rate title loan despite not knowing the interest rates offered by Plaintiffs; and soliciting Plaintiffs' employees by offering them cash to divert Plaintiffs' current and prospective customers to Defendants.²⁶ Plaintiffs allege such conduct has caused them injury, including the "the loss of business goodwill and loss of interest payments they would have otherwise received under the prospective title loan contracts", and assert Defendants' conduct violates the laws of Alabama, Utah, Ohio, Missouri, Virginia, Texas, New Mexico, South Carolina, Arizona, Tennessee and Georgia.²⁷

Although Plaintiffs generally allege Defendants' conduct violates certain states' laws, they fail to specify any specific statutory authority in the relevant states under which they assert Count IV. As such, the Court must presume they are asserted under the common law and, for the same reasons summarized in Part I(B)(3)(b), *supra*, the Court construes Plaintiffs' common law claims alleging tortious interference with Plaintiffs' contracts and business relations under Georgia law. *See Coon*, 300 Ga. at 729; *Slaton*, 168 Ga. at 710; *Lay*, 131 Ga. at 345. *Krogg*, 77 Ga. at 214.

As construed in Georgia,

[t]he elements of tortious interference with contractual relations, business relations, or potential business relations are: (1) improper action or wrongful conduct by the defendant without privilege; (2) the defendant acted purposely and with malice with the intent to injure; (3) the defendant induced a breach of contractual obligations or caused a party or third parties to discontinue or fail to enter into an anticipated business relationship with the plaintiff; and (4) the defendant's tortious conduct proximately caused damage to the plaintiff.

Northeast Georgia Cancer Care, LLC v. Blue Cross & Blue Shield of Georgia, Inc., 297 Ga. App. 28, 33, 676 S.E.2d 428, 433 (2009). "For purposes of this type of tort, 'privilege' means legitimate economic interests of the defendant or a legitimate relationship of the defendant to the contract, so that it is not considered a stranger, interloper, or meddler." *Disaster Servs., Inc. v. ERC P'ship*, 228 Ga. App. 739, 741, 492 S.E.2d 526, 529 (1997). Further, "[m]alice' in th[is] context means any unauthorized interference or

²⁶ FAC, ¶¶ 125-127.

²⁷ FAC, ¶¶ 128, 130.

any interference without legal justification or excuse.” Carroll Anesthesia Assocs., P.C. v. AnestheCare, Inc., 234 Ga. App. 646, 648, 507 S.E.2d 829, 832 (1998) (citing Arford v. Blalock, 199 Ga. App. 434, 441(13), 405 S.E.2d 698 (1991)).

Improper, non-privileged conduct is an essential element of this tort. Thus, the “[p]laintiff must show more than that the defendant simply persuaded a person to break a contract.” Kirkland v. Tamplin, 285 Ga. App. 241, 244, 645 S.E.2d 653, 656 (2007) (citations omitted). Rather, the “plaintiff must adduce evidence of “improper action or wrongful conduct,” which Georgia courts have defined to mean “wrongful action that generally involves predatory tactics such as physical violence, fraud or misrepresentation, defamation, use of confidential information, abusive civil suits, and unwarranted criminal prosecutions.” Id.

In moving to dismiss the tortious interference claims, Defendants assert competitive behavior is not actionable in tort and Plaintiffs have “failed to demonstrate that...Defendants’ alleged conduct was not privileged.”²⁸ Further, Defendants argue Plaintiffs failed to adequately plead damages and “failed to identify a single contract that was breached or a prospective business relationship that was lost as a result of Defendants’ alleged conduct.”²⁹ Having considered the pleadings and allegations in support of the tortious interference claims, summarized *supra*, and construing the allegations in the light most favorable to Plaintiffs, the Court finds Plaintiffs have sufficiently pled each element of Count IV so as to satisfy Georgia’s notice pleading standard.³⁰ Defendants’ Motion to Dismiss is **DENIED** as to Count IV.

II. TITLEMAX GEORGIA’S MOTION TO ADD PARTIES

In this action TitleMax Georgia asserts counterclaims against Plaintiffs North American Title Loans, LLC (“NATL”) and Cash Loans of Marietta, Inc. (“CLM”) for violations of the Lanham Act, unfair business practices and civil conspiracy. In its Motion to Add Parties, TitleMax Georgia requests leave of Court to file an amended pleading adding various parties as counterclaim defendants pursuant to O.C.G.A. § 9-11-19 or, alternatively, under O.C.G.A. §9-11-20. Specifically, Defendant seeks to add:

²⁸ Defendants’ Motion to Dismiss, p. 19.

²⁹ Defendants’ Motion to Dismiss, p. 20.

³⁰ *See, e.g.*, FAC, ¶¶ 86-89, 92-95, 98, 119-122, 125-130.

(1) AndR, Inc.; (2) Atlanta Title Loans, Inc.; (3) Aycox, Inc.; (4) Aycox & Aycox Clayton, Inc.; (5) Aycox & Martin Enterprises, Inc.; (6) Aycox Enterprises, Ltd.; (7) Cash Loans of Stone Mountain, Inc.; (8) Instant Cash Loans on Car Titles, Inc.; (9) LoanMax Title Loans, LLC; and (10) Mableton Car Title Loans, Inc. (collectively the “Missing Parties”). Defendant asserts these Missing Parties and potentially others as of yet unidentified entities are affiliates of Plaintiffs and they own and/or operate the majority of the title pawn stores in Georgia which Defendant alleges in its counterclaim are violating state and federal law and are allegedly engaging in deceptive trade practices, including misleading advertising, and civil conspiracy to engage in deceptive trade practices.

Under O.C.G.A. § 9-11-19, a new party must be joined when “complete relief cannot be afforded among those who are already parties” in its absence. *See also* O.C.G.A. § 9-11-13(h) (“When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants as provided in this chapter, if jurisdiction of them can be obtained”). “The concept of complete relief embraces the desirability of avoiding repetitive lawsuits on essentially the same facts or subject matter, as well as the desirability of joining those in whose absence there might be a grant of hollow or partial relief to the parties before the court.” Searcy v. Searcy, 280 Ga. 311, 313 (2006). Under O.C.G.A. §9-11-20 parties may be joined when they assert—or have asserted against them—any right to relief “arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action.”

Here, given the procedural history of this case, the positions taken by the parties during the course of these proceedings with respect to their respective title pawn enterprises operating in Georgia, and the nature of the counterclaims and relief sought by Defendants, the Court agrees joinder of the Missing Parties is appropriate pursuant to O.C.G.A. §9-11-19. Further, the Court finds permissive joinder under O.C.G.A. §9-11-20 would also be authorized insofar as Defendant seeks to assert a right to relief against the Missing Parties arising out of the same “series of transactions or occurrences” as alleged in its counterclaim (*e.g.*, an alleged enterprise-wide practice of engaging in misleading advertising in violation

of state and federal law) and common question of law or fact exist given Defendant alleges the Missing Parties are engaging in similar unfair practices, including using similar advertising and trade dress.

Accordingly, TitleMax Georgia's Motion to Add Parties is hereby GRANTED and the Court orders that the Missing Parties be added as counterclaim defendants in this action. Within ten (10) days of the entry of this order Plaintiffs shall supplement their discovery responses to identify any additional third-party affiliates that have owned or operated stores in Georgia since December 29, 2010 or notify Defendant that no such additional affiliates exist. Those additional third-party affiliates, if any, shall also be added as counterclaim defendants. Within fifteen (15) days of the entry of this order, Defendant TitleMax of Georgia, Inc. must file its amended pleading adding the foregoing parties and must thereafter promptly perfect service upon those added parties.

III. PLAINTIFFS' MOTION TO DISMISS COUNTS II AND III OF DEFENDANTS' AMENDED TWENTY-FOURTH DEFENSE AND COUNTERCLAIM AND MOTION TO DISMISS COUNTS II AND III OF DEFENDANTS' SECOND AMENDED TWENTY-FOURTH DEFENSE AND COUNTERCLAIM³¹

In their Twenty-Fourth Defense and Counterclaim as asserted in the Amended Answer, Affirmative Defenses and Counterclaim ("Amended Answer and Counterclaim") and Second Amended Answer, Affirmative Defenses and Counterclaim ("Second Amended Answer and Counterclaim"), certain TMX Defendants assert a counterclaim against certain Drummond Plaintiffs³² alleging misappropriation and theft of trade secrets (Counterclaim II) and violations of the Georgia Racketeer Influenced and Corrupt Organizations ("RICO") Act, O.C.G.A. §§16-14-1 *et seq.* (Counterclaim III), among other claims. The Drummond Respondents moved to dismiss Counterclaims II and III for failure to state a

³¹ See note 6, *supra*. Although the parties repeatedly reference matters outside of the pleadings in their respective briefs and make assertions regarding what evidence does or does not exist, the Court here has limited its review of this motion to the pleadings.

³² The Twenty-Fourth Defense and Counterclaim as asserted in Defendants' Amended Answer and Second Amended Answer are specifically brought by: TitleMax of Ohio, Inc.; TitleMax of Utah, Inc.; TitleMax of Virginia, Inc.; TitleMax of Alabama, Inc.; TitleMax of Georgia, Inc.; TitleMax of Arizona, Inc.; TitleMax of Missouri, Inc.; TitleMax of Texas, Inc.; and TitleMax of South Carolina, Inc. (collectively referred to in this Section as "TitleMax Claimants"). Their counterclaims have been asserted against: Drummond Financial Services, LLC, North American Title Loans, LLC, a Georgia limited liability company; North American Title Loans, LLC, a South Carolina limited liability company; North American Title Loans, LLC, a Utah limited liability company; Anderson Financial Services, LLC; Huffman Title Pawn, Inc.; LoanMax, LLC; Mid-American Title Loans, LLC; Fairfax Financial Services, LLC; Wellshire Financial Services, LLC; Cash Loans of Marietta, Inc., and Meadowood Financial Services, LLC (collectively referred to in this Section as "Drummond Respondents").

claim, asserting the TitleMax Claimants failed to allege sufficient facts in support of those counterclaims. The TitleMax Claimants thereafter filed their Second Amended Answer and Counterclaim to include additional factual allegations in support thereof. The Drummond Respondents have again moved to dismiss, asserting the amended pleading still fails to state a claim as to Counterclaims II and III.

A. Misappropriation of trade secret

In their Second Amended Answer and Counterclaim, the TitleMax Claimants allege, *inter alia*:

[Drummond Respondents] sent their employees (sometimes known as “Operations Specialists”) to [TitleMax Claimants’] stores under false pretenses. [Drummond Respondents’] Operations Specialists filled out pawn applications even though they did not need to pawn anything, lied about their employers, and utilized other fraudulent means of obtaining information that would be useful in competing against [TitleMax Claimants].

Among other things, on multiple occasions, [Drummond Respondents’] Operations Specialists asked to use the bathroom in [TitleMax Claimants’] stores, which are **located in non-public areas of those stores**. On the way to and from the bathroom, [Drummond Respondents’] Operations Specialists **would illegally trespass on non-public areas of [TitleMax Claimants’] stores via false pretenses and surreptitiously photograph financial [sic] [TitleMax Claimants’] confidential and proprietary information**. The financial information illegally obtained by [Drummond Respondents’] Operations Specialists included [TitleMax Claimants’] “goal boards” which are summaries of sales targets (based on past performance) and financial progress.³³

TitleMax Claimants assert, for example, that Zachary Farmer, one the Drummond Respondents’ Operations Specialists, emailed his supervisor multiple pictures of TitleMax Claimants’ “goal boards and other documents containing confidential and proprietary information.”³⁴ TitleMax Claimants allege their trade secrets include, among other things, the goal boards the Drummond Respondents illegally photographed and misappropriated through unlawful access and disclosure to unauthorized persons.³⁵

In their motion, Drummond Respondents urge TitleMax Claimants have not alleged facts sufficient to show that they made reasonable efforts to maintain the secrecy of the information displayed on their goal boards. Further, they assert TitleMax Claimants cannot show that they maintained the secrecy of their alleged trade secrets because the information was posted on or near goal boards that were

³³ Second Amended Answer and Counterclaim, ¶¶ 36-37 at pp. 43-44.

³⁴ Second Amended Answer and Counterclaim, ¶38 at p. 44.

³⁵ Second Amended Answer and Counterclaim, ¶48-50 at p. 47.

accessible to the general public in high-traffic areas and TitleMax employees undisputedly allowed the public access to view the information on the way to and from the bathroom.

However, regardless of which state law applies, the issues raised in Drummond Respondents' motions are matters which cannot be resolved based on the pleadings. TitleMax Claimants allege that they took "reasonable efforts to maintain the secrecy of the[ir] confidential information" but that Drummond employees posing as potential customers/vendors, although given permission to use the bathroom in non-public store areas, would then "illegally trespass on non-public areas...[of the] stores via false pretenses" in order to photograph TitleMax Claimants' confidential and proprietary information. The reasonableness of TitleMax Claimants' actions to maintain this information secret (which may very well depend on where exactly the goal boards and other allegedly confidential and proprietary information were located, whether any Drummond employees exceeded the permission given to go to the bathroom to access other non-public areas, etc.) is a matter which cannot be assessed at the pleadings stage. The claim has been sufficiently pled such that the Drummond Respondents' Motion to Dismiss is hereby **DENIED** with respect to the misappropriation of trade secrets claim.³⁶

B. RICO claim

"To assert a civil claim based upon either a violation of the RICO statute or a conspiracy to violate that statute, a plaintiff must show that the defendants violated or conspired to violate the RICO statute; that as a result of this conduct the plaintiff has suffered injury; and that the defendant's violation of or conspiracy to violate the RICO statute was the proximate cause of the injury." Wylie v. Denton, 323 Ga. App. 161, 165, 746 S.E.2d 689, 693 (2013) (citing Cox v. Mayan Lagoon Estates, 319 Ga. App. 101, 109(2)(b), 734 S.E.2d 883 (2012)).

Under Georgia's RICO statute, it is "unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money." O.C.G.A. §

³⁶ The Court takes no position on whether TitleMax Claimants' trade secrets claims will ultimately survive summary judgment.

16–14–4(a). A “racketeering activity,” also known as a “predicate act,” is the commission of, the attempt to commit, or the solicitation or coercing of another to commit a “crime which is chargeable by indictment” under certain laws of the state of Georgia and the United States. O.C.G.A. §16-14-3(5); Wylie, 323 Ga. App. at 164. Further, “pattern of racketeering activity” means to engage in at least two acts of racketeering activity that are “interrelated by distinguishing characteristics and are not isolated incidents” and that were done “in furtherance of one or more incidents, schemes, or transactions.” O.C.G.A. § 16–14–3(4).

Here, the Drummond Respondents assert the TitleMax Claimants have failed to state a RICO claim because: they cannot allege sufficient facts to show they made reasonable efforts to maintain the secrecy of their alleged trade secret information; the “racketeering activity” on which the claim is predicated did not occur in Georgia and, thus, does not constitute a “theft of trade secrets” under Georgia’s criminal law; and the proximate-cause standard applicable to RICO claims has not been met.

For the reasons stated above, the reasonableness of the TitleMax Claimants’ actions to maintain the secrecy of their trade secrets has been sufficiently alleged and whether evidence can be produced in support of those allegations is to be determined. Further, the Court finds the RICO claim has been adequately pled.³⁷ Although the Drummond Respondents contend all of the racketeering activity alleged by TitleMax Claimants occurred out of state such that it does not give rise to a Georgia RICO claim, TitleMax Claimants allege the Drummond Respondents repeatedly directed their employees to visit

³⁷ The Drummond Respondents also assert the TitleMax Claimants have failed to plead their Georgia RICO claim with the requisite particularity, citing Pombert v. Glock, Inc., 171 F. Supp. 3d 1321 (N.D. Ga. 2016). *See Id.* at 1335 (citing Ambrosia Coal & Constr. Co. v. Morales, 482 F.3d 1309, 1316 (11th Cir.2007)) (“RICO claims ‘are essentially a certain breed of fraud claims, [and] must be pled with an increased level of specificity’”). Notably, the court in Pombert relied on another federal district case (*see* Ambrosia Coal & Constr. Co.) where the RICO claim was predicated on allegations of fraud and where that court in turn relied on other federal authority predicated on fraud allegations (*see* Brooks v. Blue Cross & Blue Shield of Fla., Inc., 116 F.3d 1364, 1381 (11th Cir. 1997)) as well the federal pleading standard under Rule 9(b) of the Federal Rules of Civil Procedure. Having considered the TitleMax Claimants’ amended pleadings, given the current posture of the case, and in light of Georgia’s notice pleading standard and that there is no binding authority indicating all RICO claims, even those not predicated on fraud, are nevertheless subject to a heightened pleadings standard under O.C.G.A. §9-11-9, the Court finds the RICO claim has been sufficiently pled. *See also* Maddox v. S. Eng’g Co., 216 Ga. App. 6, 7 (1994) (error to dismiss RICO claim which was based on defendants’ alleged violation of O.C.G.A. §16-10-20, for making false statements to government entities where the plaintiff did not specify what false statements were made, noting the defendants could move for a more definite statement).

TitleMax stores, including stores in Texas, South Carolina, Alabama and Ohio, to obtain financial information through improper and/or unlawful means and that TitleMax's trade secret information once obtained was then "shared across the [Drummond Respondents'] corporate structure."³⁸ Based on the pleadings, the Court cannot say as a matter of law that the TitleMax Claimants "could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought" as to the civil RICO claim.

Finally, the Drummond Defendants assert the applicable proximate cause requirement to assert a RICO claim cannot possibly be met here.

To satisfy the proximate cause element of RICO, a plaintiff must show that her injury flowed directly from at least one of the predicate acts. *Longino v. Bank of Ellijay*, 228 Ga. App. 37, 41(2), 491 S.E.2d 81 (1997). This burden is not met where a plaintiff shows "merely that his injury was an eventual consequence of the [predicate act] or that he would not have been injured but for the [predicate act]." *Maddox v. Southern Engineering Co.*, 231 Ga. App. 802, 806(1), 500 S.E.2d 591 (1998)...Thus, to survive a motion to dismiss, a plaintiff asserting a RICO claim must allege more than that an act of racketeering occurred and that she was injured. *Longino*, supra. **Rather, she must show that her injury was the direct result of a predicate act targeted toward her, such that she was the intended victim.** *Nicholson*, [257 Ga. App. 429, 431(1), 571 S.E.2d 466 (2002)]...See also *Green Leaf Nursery v. E.I. DuPont De Nemours and Co.*, 341 F.3d 1292, 1307(2) (11th Cir.2003) (**in determining whether a plaintiff has satisfactorily alleged a RICO claim, a court should examine whether the alleged predicate acts were aimed at the plaintiff or whether they were aimed primarily at a third party**)...

Wylie, 323 Ga. App. at 166.

In the case at bar, the TitleMax Claimants have alleged the Drummond Respondents took direct action against them, targeting their stores by sending their employees to unlawfully acquire their financial trade secret information to gain a competitive advantage over them in the marketplace and resulting in damage to them specifically, including the loss of prospective customers, loss of business goodwill and loss of interest payments under prospective contracts. The TitleMax Claimants have sufficiently alleged injury proximately caused by the Drummond Respondents' alleged racketeering activity. The Drummond Respondents' Motion to Dismiss the civil RICO claim is hereby **DENIED**.

³⁸ Second Amended Answer and Counterclaim, ¶39.

IV. DISCOVERY RELATED MOTIONS AND DISPUTES

A. Plaintiffs' Motion to Compel regarding First Interrogatories and RPDs

In their latest Motion to Compel, Plaintiffs ask the Court to compel Defendants to produce information and documents: related to Defendants' alleged misconduct in specific Named States³⁹; regarding Defendants use of DMV records to solicit Plaintiffs' customers; and from certain categories of custodians likely to have electronically stored information ("ESI") relevant to Plaintiffs' claims.

(1) Discovery related to Defendants' operations and alleged tortious conduct in Named States

Plaintiffs seek information and documents related to Defendants and their employees' alleged misconduct in the Named States, including information regarding: Defendants and their employees' use of DMV databases; employees who engaged in DMV Searching and their supervisors; persons contacted using DMV record information and the employees who contacted them; and employees who offered to pay referral fees to Plaintiffs' employees for the referral of business (*see* Plaintiffs' First Interrogatories Nos. 2-7).

Also, Plaintiffs seek documents and communications identifying and/or related to: Defendants' offices, stores, or branches located in the Named States; Defendants' employees' marketing of services in the parking lots of Plaintiffs' offices, stores or branches and their marketing to and soliciting business from persons entering or leaving Plaintiffs' premises; Defendants' employees' recording, copying or acquiring the license plate or vehicle identification numbers of vehicles located in the parking lots of Plaintiffs' premises; Defendants' employees' offering Plaintiffs' employees/agents incentives to refer persons to Defendants; Defendants' employees' visiting Plaintiffs' premises in the Named States for the purpose of marketing Defendants' services to Plaintiffs' employees; Defendants' employees' DMV Searching; any contracts or agreements between Defendants or their employees and any other person or DMV database providing access to motor vehicle records; Defendants' employees' use of DMV databases in connection with marketing to Plaintiffs' current or potential customers in the Named States;

³⁹ The Named States as defined in Plaintiffs' discovery requests include: Alabama, Arizona, California, Delaware, Georgia, Illinois, Mississippi, Missouri, New Mexico, Nevada, Ohio, South Carolina, Tennessee, Texas, Utah, Virginia, and Wisconsin.

documents or communications obtained from any DMV database regarding Plaintiffs' current or former customers in the Named States; documents or communications exchanged between employees and Plaintiffs related to the conduct alleged in Plaintiffs' complaint; Defendants' practices, policies and procedures relating to the marketing of Defendants' services to current or potential customers and to Plaintiffs' current or potential customers; and disciplinary action taken with respect to any employees/agents for DMV Searching, offering to pay/paying referral fees to Plaintiffs' employees/agents in exchange for the referral of business, or for marketing Defendants' services in the parking lots of Plaintiffs' premises (*see* Plaintiff First Requests for Production of Documents ("RPD") Nos. 1, 3-10, 12-17, 19, 50).

The Court is compelled to note this motion is directed to certain discovery requests which this Court already ordered produced in its Feb. 17, 2017 Order on Discovery Disputes; *e.g.* Plaintiffs' First Interrogatories Nos. 2-6 and First RPD Nos. 12, 13, 15, and 50. If they have not done so already, Defendants must comply with the Court's previous order compelling full and complete responses to the foregoing discovery requests.

Further, although Defendants object to Plaintiffs' discovery requests seeking information and documents with respect to non-party affiliates given the parties' agreement to adhere to third-party discovery practice regarding affiliated non-parties to this case, any such agreement was not formalized on the record by stipulation or consent order and such would not relieve the parties of their discovery obligations under the Civil Practice Act. To the extent responsive, non-privileged information is available to Defendants and/or Defendants have responsive, non-privileged documents or communications within their "possession, custody, or control", they are obligated to produce same. *See* O.C.G.A. §9-11-33(a) ("Any party may serve upon any other party written interrogatories to be answered by the party served or...who shall furnish such information as is available to the party"); O.C.G.A. §9-11-34(a) ("Any party may serve on any other party a request: (1) To produce...any tangible things which constitute or contain matters within the scope of subsection (b) of Code Section 9-11-26 and which are in the possession, custody, or control of the party upon whom the request is served"). *See also* Lion Antique Cars &

Investments, Inc. v. Tafel, 332 Ga. App. 824, 826, 775 S.E.2d 191, 194 (2015) (in dispute between company and former associates to recover race cars, no abuse of discretion in holding company in contempt for failing to produce documents related to non-party's use of car as ordered given evidence of close relationship between company's president and non-party and that company was able to obtain some documents from non-party, demonstrating company had a measure of control over documents despite being in non-party's possession).

The Court finds the requested discovery by Plaintiffs is likely to lead to the discovery of relevant and admissible evidence. Accordingly, Plaintiffs' request to compel complete responses to First Interrogatories Nos. 2-7 and First RPD Nos. 1, 3-10, 12-17, 19, and 30 is **GRANTED** and Defendants are ordered to answer and produce any responsive documents in their possession, custody or control.

(2) DMV records

Plaintiffs request information regarding Defendants' employees' allegedly unlawful DMV Searching, use of DMV databases and use of DMV records to solicit Plaintiffs' customers as set forth in First RPD Nos. 12-16 and 50 (summarized above). The Court previously granted Plaintiffs' motion to compel regarding First RPD Nos. 12, 13, 15, and 50. Again, if they have not done so already, Defendants must comply with the Court's previous order requiring full and complete responses to the foregoing discovery requests.

To the extent Defendants object to the discovery based on the Supreme Court's holding that Plaintiffs have not stated a claim for misappropriation of trade secrets under Georgia law, the Court's rulings in Part I, *supra*, outline the relevant law applicable to Plaintiffs' claims as asserted in their pleadings. In accordance with the Court's rulings herein, there remain claims at issue to which Plaintiffs' discovery requests are relevant and are reasonably calculated to lead to the discovery of admissible evidence. As such, Plaintiffs' Motion to Compel responses to their First RPD Nos. 12-16 and 50 is **GRANTED**.

(3) ESI searches of custodians

The parties have already engaged in considerable discovery regarding ESI. However, Plaintiffs ask the Court to compel Defendants to search for ESI from “thousands of additional custodians”, specifically: employees in executive level positions (those holding the positions of President, Senior Vice President of Operations, Vice President of Operations, and Divisional Vice President who had responsibilities over any of the Named States) (“Executive custodians”); employees in managerial positions (those holding the positions of Regional Manager, District Manager and General Managers with responsibilities over any of the Named States) (“Management custodians”); Defendants’ marketing department and employees working therein (“Marketing custodians”); Defendants’ Legal, Human Resources, and Compliance Departments and employees therein (“Legal, HR, and Compliance custodians”); and Defendants’ store-level email addresses for stores in certain cities or within 10 miles thereof (*i.e.* Albuquerque, New Mexico; Columbus, Ohio; Navarre, Ohio; Akron, Ohio; and Gaffney, South Carolina) (“Store-level custodians”).

Defendants agreed to search for and collect documents regarding 100 custodians. However, Defendants contend Plaintiffs’ requests would require searching ESI related to thousands of additional employees and would cost millions of dollars. Defendants assert they have already incurred \$1 million related to ESI discovery to search for responsive documents from 100 custodians. They estimate ESI discovery as to the additional custodians would cost approximately \$10,000 per custodian. Further, Defendants estimate Plaintiffs’ additional requests would involve ESI related to an additional 5,700 employees given that: 205 employees fall into the categories of Executive custodians and Legal, HR, and Compliance custodians; approximately 5,480 employees fall into the category of Management custodians; and 15 employees would be considered Store-level custodians. Based on the foregoing, Defendants estimate the additional cost to conduct ESI as to the additional custodians could be more than \$50 million.

The Court previously directed counsel to meet and confer regarding the ESI dispute in order to identify the custodians at issue, for Plaintiffs to particularize what information is sought and for the parties to narrow requests accordingly so as to facilitate efficient and cost effective discovery. Although

Defendants have provided the foregoing figures, Plaintiffs assert Defendants have failed to provide them with specific information regarding the additional custodians which they contend is necessary to have an informed discussion.

The Court orders Defendants to, within twenty (20) days of this order, provide Plaintiffs a list of the additional 5,700 custodians they have identified including, where practical and available, each individual's name, position, type of custodian and, where appropriate, geographic assignment. During that same twenty (20) day period Plaintiffs should review the ESI already provided, and both sides should consider the posture of the case and remaining claims in light of the Court's rulings herein.

Within twenty (20) days thereafter, counsel are directed to meet and confer in an informed, good faith effort to narrow the number of custodians at issue. If the parties are unable to reach an agreement, the parties must promptly notify the Court and within fifteen (15) days of the meet and confer, Plaintiffs shall supplement their Motion to Compel to identify with particularity the individual custodians to which they assert additional searches for ESI should be conducted and the factual and legal basis supporting same. Defendants shall have fifteen (15) days thereafter to provide any response. The parties are, again, warned that, given the costs involved, if additional ESI is permitted the Court will consider cost shifting.

B. Defendants' Motion to Compel

Defendants ask the Court to compel Plaintiffs to fully respond to certain discovery requests.⁴⁰ Specifically, Defendants seek: (a) an audited balance sheet for each Plaintiff (Defendants' RPD No. 49); (b) any documents concerning actions Plaintiffs take to determine where a former customer obtains a loan, pawn, or credit services if bought out by another lender, pawnbroker, or Credit Services Organization, sometimes referred to as "buy-outs" (Defendants' RPD No. 4); and (c) certain personnel files maintained by Plaintiffs (Defendants' RPD Nos. 34, 35, 38, 42, 47).⁴¹

⁴⁰ See generally Defendants' Second Set of Requests for Production of Documents (hereinafter Defendants' "RPD").

⁴¹ Defendants' objection to Plaintiffs' unilateral temporal limitation placed on certain interrogatory responses has been mooted by Plaintiffs' supplemental discovery responses.

(1) Audited balance sheets

The Court finds Defendants have at least made a prima facie showing of the factual basis supporting their claim for punitive damages and the requested discovery is relevant and discoverable with respect to that claim. See Holman v. Burgess, 404 S.E.2d 144, 147 (Ga. App. 1991). Accordingly, Defendants' request to compel a response to RPD No. 49 is **GRANTED**.

(2) Documents related to buy-outs

The Court finds Defendants' request for documentation of how Plaintiffs track customer "buy-outs" is reasonably calculated to lead to the discovery of admissible evidence relevant to Plaintiffs' claims and on the issue of damages. Accordingly, Defendants' request to compel a response to RPD No. 4 is **GRANTED IN PART**. To the extent Plaintiffs in the regular course of business maintain any such documentation tracking buy-outs, same must be produced and provided to Defendants. If no such documentation exists, Plaintiffs must so advise Defendants in their response to RPD No. 4. The foregoing notwithstanding, any such tracking conducted by an attorney in preparation for litigation remains privileged and is protected from discovery. See O.C.G.A. §§ 9-11-26(b)(1), 24-5-501(a)(2).

(3) Personnel files

Defendants' RPD Nos. 34, 35, 38, 42, and 47 seek certain personnel files maintained by Plaintiffs and documentation generally regarding certain employees' pay and bonus structure and compensation. Defendants have narrowed their requests to seek only those portions of the subject personnel files discussing "reprimands and accolades". The Court finds the foregoing requests are reasonably calculated to lead to the discovery of admissible evidence relevant to Defendants' claims and, specifically, their theory that Plaintiffs' agents were sent to Defendants' stores to obtain Defendants' trade secret information. The Court further finds the requests, as limited by Defendants, are narrowly tailored, reasonable in scope, and discoverable. See DeLoitte Haskins & Sells v. Green, 187 Ga. App. 376, 377, 370 S.E.2d 194, 195-96 (1988); Contino v. Winn-Dixie Stores, Inc., No. CV214-146, 2015 WL 2226229, at *2 (S.D. Ga. May 12, 2015). Thus, Defendants' request to compel a response to RPD Nos. 34, 35, 38, 42, and 47 is **GRANTED** as limited in Defendants' letter briefing.

C. Issues related to Plaintiffs' discovery requests raised in letter briefs⁴²

(1) Documents related to communications with third-parties

Plaintiffs seek discovery related to communications with third parties and whistleblowers regarding the alleged conduct at issue in this case, including communications between anonymous whistleblower Humble Veritas, who forwarded to Plaintiffs email correspondence exchanged with TitleMax's Director of Human Resources regarding the use of DMV databases to locate and solicit competitors' customers (Plaintiffs' Third Requests for Production ("Third RPD"), Nos. 1-4, 42, 43). Defendants initially objected on the basis the requested discovery is in regards to claims being pursued in separate Texas litigation. Defendants subsequently supplemented their discovery responses, agreeing to produce the "whistleblower" documents produced in the Texas litigation, and assert the supplemental discovery moots Plaintiffs' request to compel further production.

Defendants' production of certain "whistleblower" documents that were produced in the Texas litigation and assertion Defendants are not aware of any other "whistleblowers" other than the one identified in the Texas litigation does not squarely address Plaintiffs' discovery requests. Defendants should supplement their response to produce any responsive, non-privileged documents and communications in their possession or control.

(2) Personnel files

Plaintiffs seek documents from the personnel files of certain employees of Defendants involved in the conduct at issue in this litigation (Third RPD No. 5) and contend they have narrowed their request to seek documents from only the personnel files that relate to the parties' allegations in this action. Plaintiffs contend each of the individuals included in this request were directly involved in the conduct at issue. Defendants assert they have already agreed to search and produce 40 personnel files but Plaintiffs now seek the personnel files of an additional 51 individuals who according to Defendants "have, at best, attenuated connections to any issue in the case."

⁴² Although the Court's rulings in Part IV(A), *supra*, on Plaintiffs' Motion to Compel relate to some of the same categories of information and/or documents as addressed here, this section relates to discovery disputes regarding Plaintiffs' Second Interrogatories, Third RPD, Fourth RPD, and First Requests for Admissions ("RFA").

Generally, employee personnel files are discoverable under Georgia law. See DeLoitte Haskins & Sells v. Green, 187 Ga. App. 376, 377, 370 S.E.2d 194, 195–96 (1988); Contino v. Winn-Dixie Stores, Inc., No. CV214-146, 2015 WL 2226229, at *2 (S.D. Ga. May 12, 2015). Based on the information provided, the Court cannot determine these individuals’ involvement or relation to the conduct at issue in this litigation. Whether the requested information is discoverable as reasonably calculated to lead to the discovery of admissible evidence relevant to Plaintiffs’ claims will likely depend on whether the individuals have some involvement to the claims or conduct alleged or if, as Defendants allege, they have had no material connection to the matters at issue. In light of the Courts’ other rulings and instructions herein, counsel are directed to meet and confer in good faith regarding this discovery request and the remaining personnel files at issue. If an agreement cannot be reached as to which individuals’ personnel files are relevant to this litigation, the parties are free to file an appropriate motion which identifies the relevant individuals and addresses their involvement/lack of involvement with this case.

(3) Telephone related records

Plaintiffs seek documents and phone records relating to telephones used by Defendants’ stores and their employees (specifically the employees identified in response to Plaintiffs’ Interrogatory No. 17) who have solicited certain specifically named customers of the Plaintiffs (Third RPD Nos. 7 and 8). Plaintiffs assert this request should be “straightforward” as Defendants have only identified one employee in response to Interrogatory No. 17. Plaintiffs also seek phone records for Defendants’ stores located within 10 miles of certain cities where Plaintiffs allege their customers have been solicited by Defendants (Third RPD No. 9). Upon Defendants’ objection that the proposed geographic scope of the request was too vague and ambiguous, Plaintiffs agreed to limit their request to a specific time frame for stores located in certain zip codes.

Defendants assert they have agreed to produce the requested documents responsive to RPD Nos. 7-9, thus, mooting Plaintiffs’ request to compel further production. However, Plaintiffs dispute that Defendants have complied with their discovery obligations, insofar as they have only agreed to provide certain records already in their files and only agreed to provide responsive information for the employee

identified in response to Interrogatory No. 17, Taylor McMonigal, during a time period arbitrarily set by Defendants which does not correspond to her period of employment and have not agreed to provide records for mobile phones that she used while employed by them.

Irrespective of what may be physically in Defendants' "files", to the extent Defendants have reasonable access to or can through reasonable efforts obtain records in response to Plaintiffs' RPD Nos. 7-9, they are required to do so. *See* O.C.G.A. §9-11-34(a) ("Any party may serve on any other party a request: (1) To produce...any tangible things which constitute or contain matters within the scope of subsection (b) of Code Section 9-11-26 and which are in the possession, custody, or control of the party upon whom the request is served"). *See also* Lion Antique Cars & Investments, Inc., 332 Ga. App. at 826. Further, Defendants do not appear to have articulated a basis for only providing responsive documents and phone records relating to telephones used by Taylor McMonigal during a limited time period or why they cannot provide records regarding mobile phones she used.

The Court finds the requested discovery is reasonably calculated to lead to the discovery of admissible evidence. Thus, the request to compel responses to Third RPD Nos. 7-9 is **GRANTED**.

(4) Documents related to buy-outs

Plaintiffs seek information and documents regarding loans Defendants bought out from Plaintiffs or originated after soliciting Plaintiffs' customers (Interrogatories 12 and 14; Third RPD Nos. 10, 11, and 44) and narrowed the request temporally to Nov. 7, 2009 through the present. Defendants have objected on the basis that they do not centrally track buyouts and, as a result, the requested documents either do not exist or are not reasonably accessible. Defendants assert until recently they did not centrally maintain records of loans originated as buyouts or refinances of existing loans and, while it is possible some individual stores may informally track this information, Defendants cannot determine which stores do so or collect any such records, if they exist, without unreasonable burden, expense and the disruption of its business.

As proposed by Defendants, they are directed to search for and produce information and documents regarding the buyout of any of Plaintiffs' customers where the buyout was generated by

conduct which Plaintiffs in this action contend was unlawful. Additionally, in line with the Court's ruling in Part IV(B)(2), *supra*, with respect to Defendants' requests for Plaintiffs' buyout documentation, to the extent Defendants in the regular course of business maintain any such documentation tracking buyouts of Plaintiffs' customers' loans, same must be produced and provided to Plaintiffs.

(5) DMV records

Plaintiffs seek documents related to Defendants "use of DMV Records" and Defendants "knowledge of, and/or compliance or non-compliance with, any state or federal law relating to the use of DMV Records, including, but not limited to, the Drivers' Privacy Protection Act" (Third RPD Nos. 15 and 16). Plaintiffs offered to limit the request temporally to the time period of Nov. 9, 2009 to the present.

According to Plaintiffs, Defendants' responses are deficient and although Defendants have agreed to produce their "policies on DMV record searching, and non-privileged communications reiterating those policies...from July 1, 2013", such is not responsive to Plaintiffs' discovery requests. Defendants object on the basis the requests are overly broad and unduly burdensome, asserting that, insofar as Plaintiffs failed to define "DMV Records" and, for example, vehicle titles constitute DMV records,⁴³ Plaintiffs' requests would encompass "virtually every document involved in a title or transaction."

With respect to RPD Nos. 15 and 16, the Court finds the requests encompass relevant and discoverable information and documents. However, the Court agrees the requests are overly broad given Plaintiffs' failure to narrowly define the term "DMV Records". Counsel are directed to meet and confer in good faith regarding an appropriate definition for the term narrowly tailored to the claims at issue and thereafter Defendants should supplement their responses accordingly. If the parties are unable to reach an agreement on a workable definition, each side should provide a proposed definition narrowly tailored to the claims at issue.

Additionally, Plaintiffs ask Defendants to identify efforts taken to investigate "DMV Searching" by employees, including efforts taken to determine which employees engaged in DMV Searching, what

⁴³ See, e.g., 18 U.S.C. §2721 (for purposes of the Driver's Privacy Protection Act, defining "motor vehicle record" to mean "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicle").

databases were used, the identities of individuals who were contacted using information obtained from DMV Searching, and persons with knowledge of such efforts (Interrogatory No. 19).

Defendants' response that they "are presently unaware of any of their current or former employees who have engaged in DMV Searching outside of the individuals already identified in the Texas Action" and that they "with the assistance, advice and direction of legal counsel, investigated Plaintiffs' allegations of DMV Searching and found no support for the allegations outside of Texas" does not actually respond to the interrogatory posed. Although Defendants have asserted this discovery request seeks privileged information, the Court agrees Defendants should be able provide some information regarding efforts taken to investigate DMV Searching by employees without revealing privileged communications or work product. Defendants are directed to supplement their response accordingly with non-privileged, responsive information.

(6) Documents regarding Defendants' investigations into marketing at Plaintiffs' premises

Plaintiffs seek documents relating to efforts taken by Defendants to investigate their employees' marketing at Plaintiffs' stores and/or parking lots (Third RPD No. 39). Defendants initially agreed to produce responsive documents relating to investigations after this Court's May 28, 2015 Interlocutory Injunction Order. However, Defendants have since agreed to produce any non-privileged documents relating to pre-injunction investigations responsive to this request, thus, rendering Plaintiffs' request to compel further production moot.

(7) Non-expert information regarding Defendants' damages

Plaintiffs seek "non-expert" information relating to damages Defendants allege to have suffered as a result of Plaintiffs' use of the word "loan" in connection with their advertising in Georgia (Interrogatory No. 21; Third RPD No. 41). Defendants object, asserting the requests are premature given ongoing discovery and notes the Court has previously refused to compel discovery related to damages on that basis and instead has instructed Defendants to supplement their responses at the conclusion of discovery. Insofar as discovery is ongoing which may yield information regarding the extent of Plaintiffs' practices relevant to these requests, the Court **DENIES** Plaintiffs' request to compel a response to

Interrogatory No. 21 and Third RPD No. 41. However, Defendants are directed to supplement their responses to these discovery requests upon the conclusion of discovery.

(8) Documents regarding disciplinary efforts

Plaintiffs assert Defendants have provided “incomplete, evasive responses” to their discovery requests seeking documents and communications related to disciplinary efforts contemplated or implemented by Defendants regarding: Defendants’ and its affiliates’ employees for engaging in the misconduct alleged in Plaintiffs’ complaint and the Court’s Interlocutory Injunction; and employees’ failure to comply with Defendants’ “policies prohibiting marketing to Plaintiffs” and with Defendants’ “supplemental initiatives to ensure that its employees comply with the[] policies” as referenced in counsel’s correspondence dated May 25, 2017 (Fourth RPD Nos. 1-4). Defendants initially only agreed to produce documents regarding disciplinary actions with respect to employees of the currently named Defendants and one affiliate, InstaLoan, (but not other affiliates) for violations of “Defendants’ company policies as they pertain to Plaintiffs.” In a supplemental response Defendants have agreed to amend their responses to include TitleMax’s other non-party affiliates. However, Plaintiffs urge the responses remain deficient insofar as they are limited to violations of company policy and ignore the remainder of Plaintiffs’ discover requests.

The Court finds the requested discovery is reasonably calculated to lead to the discovery of admissible evidence relevant to Plaintiffs’ claims. O.C.G.A. §§ 9-11-26(b)(1), 9-11-34(a). *See also Lion Antique Cars & Investments, Inc.*, 332 Ga. App. at 826. Defendants are directed to supplement their responses accordingly with non-privileged, responsive information.

(9) Plaintiffs’ Requests for Admissions

Plaintiffs contend Defendants’ responses to their Request for Admissions (“RFA”) Nos. 1-25 are evasive and deficient insofar as Defendants have objected to providing information regarding entities that are not a party to this litigation and excluded actions by employees of their wholly owned subsidiaries. In a supplemental response Defendants’ have agreed to amend their responses to include TitleMax’s non-party affiliates. Plaintiffs acknowledge the supplemental response moots their request to compel regarding

RFA Nos. 16-25 but urge Defendants' responses remain deficient as to RFA Nos. 1-15, which seek information concerning Defendants' alleged use of DMV records to identify and solicit Plaintiffs' customers.

O.C.G.A. §9-11-36 governs requests for admissions. That Code Section provides in part:

(a) Scope; service; answer or objection; motion to determine sufficiency.

(1) A party may serve upon any other party a written request for the admission,...of the truth of any matters within the scope of subsection (b) of Code Section 9-11-26 which are set forth in the request and that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request....

(2) Each matter of which an admission is requested shall be separately set forth...The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission; and, **when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.** A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to subsection (c) of Code Section 9-11-37, deny the matter or set forth reasons why he cannot admit or deny it.

Here, Defendants' partial denials as to RFA Nos. 1-15 (denying only that their employees or their affiliates' employees outside of Texas have conducted DMV searching) fail to comply with the requirements of O.C.G.A. §9-11-36 insofar as they do not "specify so much of [the admission] as is true and qualify or deny the remainder." Defendants are directed to supplement their responses accordingly to comply with O.C.G.A. §9-11-36.

D. Defendants' request that Plaintiffs supplement their privilege log

Defendants objected to Plaintiffs' privilege log, asserting it fails to provide the information necessary for Defendants to assess Plaintiffs' assertion of privilege. Specifically, Defendant cite: the failure to include the email addresses of the author, recipient, and carbon-copy recipients of each document; the failure to include the "subject line" of emails; the assertion of the attorney-client privilege and work produce doctrine as to each item listed on the log which is 83 pages in length and includes

2,624 documents; and Plaintiffs' failure to define a field/column heading included in the log (*i.e.* "DOC. GROUP BEGIN and DOC. GROUP END"). However, it appears Plaintiffs have amended their privilege log to address the issues raised by Defendants. Thus, the Court DENIES Defendants' request that Plaintiffs be deemed to have waived their privilege claims with respect to the documents identified in their privilege log.

E. Defendants' request for additional interrogatories

Defendants ask to be permitted an additional twenty-five (25) interrogatories beyond the fifty (50) allowed under the Civil Practice Act. O.C.G.A. §9-11-33(a)(1) generally limits the number of interrogatories a party may serve to fifty (50) interrogatories, including subparts. However, parties may with leave of court serve additional interrogatories upon a showing of, *inter alia*, complex litigation. *Id.* Here, given the number of parties and complexity of the claims asserted, the Court grants leave for the parties to serve an additional fifteen (15) interrogatories.

F. Discovery related deadlines

With the exception of the discovery requests regarding which the Court above has instructed the parties through their respective Counsel to meet and confer, any supplementation of discovery responses ordered herein should be provided to the opposing party within thirty (30) days of the entry of this order.⁴⁴

Further, in light of the Court's rulings herein, at the meet and confer conference ordered above Counsel are directed to also confer regarding case management deadlines and present a proposed amended case management order with deadlines that shall govern final adjudication of this action.

V. PLAINTIFFS' MOTION FOR REINSTATEMENT OF PARAGRAPHS 1(a) AND 1(b) OF THE INTERLOCUTORY INJUNCTION

On May 28, 2015, this Court entered a nationwide Interlocutory Injunction, enjoining Defendants from engaging in the following acts: (1)(a) searching state DMV records for the purpose of obtaining the identities and/or contact information of past or present customers of certain title loan stores operated by Plaintiffs and their affiliates for any purpose not allowed by the Driver's Privacy Protection Act

⁴⁴ The parties may stipulate to extend this time in light of the number of documents to be produced but must so notify the Court.

("DPPA"), 18 U.S.C. §2721, *et seq.*; (1)(b) using any information obtained from the DMV records to solicit Plaintiffs' customers; and (1)(c) entering Plaintiffs' stores or parking lots of their stores and (i) collecting or recording Plaintiffs' customers' license plate or vehicle identification numbers for any purposes not permitted by the DPPA, (ii) soliciting Plaintiffs' customers on Plaintiffs' premises, and (iii) offering money or compensation of any sort to employees of Plaintiffs' stores for referring any persons to do business with Defendants.

On interlocutory appeal, the Supreme Court of Georgia affirmed in part, reversed in part and remanded the case for further proceedings consistent with its opinion. With respect to the portion of the injunction predicated on the trespass claim, the Court held: "To the extent that the nationwide injunction limits the circumstances in which TitleMax may go upon property from which Drummond has no right to exclude TitleMax agents and employees, the scope of the injunction is not warranted by a claim for trespass..." TMX Fin. Holdings, Inc. v. Drummond Fin. Servs., LLC, 300 Ga. 835, 838, 797 S.E.2d 842, 845 (2017).

Regarding the portion of the injunction based on Plaintiffs' claim asserting a misappropriation of trade secrets under Georgia law, the Court held: "[T]o the extent that the nationwide injunction against TitleMax collecting information about Drummond customers in parking lots or using that information to search databases of motor vehicles is based on a finding that the identities of Drummond customers are trade secrets, the injunction cannot be sustained..." Id. at 838-839.

Finally, with regard to the portion of the injunction based on the claim for tortious interference with contracts and business relationships which prohibited TitleMax from offering compensation to Drummond employees who refer Drummond customers to TitleMax, the Court found no abuse of discretion in enjoining such conduct nationally. The Supreme Court concluded its opinion as follows:

To the extent that the nationwide injunction prohibits TitleMax employees and agents from going into Drummond stores for certain purposes, and to the extent that it prohibits TitleMax from offering compensation to Drummond employees for customer referrals, the injunction is affirmed. **To the extent that the injunction prohibits TitleMax from going upon parking lots near Drummond stores for certain purposes or from searching government databases of motor vehicles, however, it must be reconsidered.** Those aspects

of the injunction appear most obviously to have been based on the claims for trespass and misappropriation of trade secrets, but the laws of trespass and trade secrets (at least in Georgia) do not support the scope of the injunction. **Accordingly, we vacate the injunction in those respects, and we remand for the trial court to reconsider the scope of its injunction.** To the extent that the parties on remand may rely on law that varies significantly from state to state, **we remind that activities in one state are not due to be enjoined simply because they might be unlawful if done in another state.**

Id. at 839–40 (emphasis added).

In the instant motion, Plaintiffs ask the Court to reinstate Paragraphs 1(a) and 1(b) of the nationwide Interlocutory Injunction (collectively the “DMV Search and Solicitation Conduct”), because even if Defendants’ conduct does not constitute a misappropriation of trade secrets under Georgia law, the DMV Search and Solicitation Conduct still constitutes: (1) tortious interference with contract and business relationships as alleged in Plaintiffs’ complaint; and (2) a misappropriation of trade secrets under the laws of the other named States other than Georgia.

A. Standard

In deciding whether to issue an interlocutory injunction, the trial court should consider whether: (1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest. *Bishop v. Patton*, 288 Ga. at 604, 706 S.E.2d 634.⁷ Although an interlocutory injunction is an extraordinary remedy, and the power to grant it must be “ ‘prudently and cautiously exercised,’ ” the trial court is vested with broad discretion in making that decision. *Id.* at 604, 706 S.E.2d 634 (citation omitted).

SRB Inv. Servs., LLLP v. Branch Banking & Tr. Co., 289 Ga. 1, 5, 709 S.E.2d 267, 271 (2011). *See also Parker v. Clary Lakes Recreation Ass'n, Inc.*, 272 Ga. 44, 44, 526 S.E.2d 838, 839 (2000) (“A trial court may issue an interlocutory injunction to maintain the status quo until the final hearing if, by balancing the relative equities of the parties, it would appear that the equities favor the party seeking the injunction. Thus, a demonstration of irreparable injury is not an absolute prerequisite to interlocutory injunctive relief”); *City of Waycross v. Pierce Cty. Bd. of Commissioners*, 300 Ga. 109, 111, 793 S.E.2d 389, 392

(2016) (“Because the test for the issuance of an interlocutory injunction is a balancing test, it [i]s not incumbent upon the [moving party] to prove all four factors to obtain the interlocutory injunction”).

B. Tortious interference with contract and business relationships

Plaintiffs argue this Court already found Plaintiffs are likely to succeed on the merits of their tortious interference claims, and on interlocutory appeal the Supreme Court found no abuse of discretion in the Court’s Interlocutory Injunction premised thereon. Given this, Plaintiffs contend the tortious interference claim affords an alternate ground supporting reinstatement of the injunction of the DMV Search and Solicitation Conduct. However, the appellate court actually found no abuse of discretion in the portions of the Interlocutory Injunction: that prohibited Defendants from offering compensation to Plaintiffs’ employees for customer referrals, which the appellate court stated appeared to be based on the tortious interference claims⁴⁵; and that prohibited Defendants’ employees and agents from going into Plaintiffs’ stores for “certain purposes”, which was another aspect of Plaintiffs’ tortious interference claims as alleged in their complaint⁴⁶. The Supreme Court did not address the DMV Search and Solicitation Conduct in the context of Plaintiffs’ tortious interference claims.

Further, as held in Part I(B)(2), *supra*, Count III (tortious interference with Plaintiffs’ prospective CSO contracts and business relationships) is preempted entirely by Plaintiffs’ trade secrets claims and the portion of Count IV (tortious interference with the Direct Lender Plaintiffs’ prospective CSO contracts and business relationships) that relates to the alleged misappropriation of Plaintiffs’ trade secrets (*i.e.*, searching DMV records to obtain Plaintiffs’ trade secret customer information to then solicit Plaintiffs’ customers) is also preempted. The surviving portions of the tortious interference claim based on Defendants’ improper solicitation of Plaintiffs’ customers and employees on Plaintiffs’ premises (which are in part the basis for other aspects of the Interlocutory Injunction which were upheld) provides no basis for the reinstatement of the portions of the Interlocutory Injunction addressing the DMV Search and Solicitation Conduct.

⁴⁵ FAC, ¶127.

⁴⁶ FAC, ¶126.

C. Misappropriation of trade secrets under the TSA of states other than Georgia

As held in Part I(B)(1), Plaintiffs' trade secret misappropriation claims, which are construed under the laws of the state where such misappropriation is alleged to have occurred, survive the pleadings stage with the exception of the claim as asserted under Georgia law. As noted above, in Plaintiffs' pleadings and briefings the trade secrets claims and related allegations regarding the DMV Search and Solicitation Conduct focus on such conduct as is alleged to have occurred in Ohio and New Mexico.⁴⁷

Having balanced the relative equities of the parties, the Court finds the equities weigh in favor of Plaintiffs and the reinstatement of the Interlocutory Injunction with respect to the DMV Search and Solicitation Conduct but only in Ohio and New Mexico. Plaintiffs have presented evidence that they safeguard their customers' information (including names, contact information, and lien information), that this information is not readily available to the public and that Plaintiffs derive economic value from the compiled information not being readily ascertainable through proper means by others, and that in Ohio and New Mexico Defendants are likely improperly accessing DMV record information in order to directly solicit Plaintiffs' customers.

The Court further finds there is a substantial threat that Plaintiffs will suffer irreparable injury if the injunction is not granted with respect to the DMV Search and Solicitation Conduct in the loss of, *inter alia*, long-time customers and goodwill. Also, the threatened injury to Plaintiffs outweighs any threatened harm that the injunction may do to Defendants, particularly given that Defendants cannot assert any right to do that which is unlawful or any harm from following the law regarding the proper use of DMV record information. Further, reinstating the injunction as to the DMV Search and Solicitation Conduct will not disserve the public interest, but rather serves the public interest in protecting consumers' private information and ensuring state and federal laws governing the use of DMV record information are followed.

⁴⁷ See FAC, ¶¶68, 90-92; Plaintiffs' Motion for Interlocutory Injunction and for Litigation Expenses, pp. 23-24, 29-31; Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss, pp. 10-11, 13-18 and nn. 9, 10, 15, 16; Plaintiffs' Response in Opposition to Defendants' Supplemental Motion to Dismiss, p.8.

Although Plaintiffs urge the injunction regarding the DMV Search and Solicitation Conduct should be reinstated nationwide, as noted by the Supreme Court:

[I]f Drummond has shown only that TitleMax may have misappropriated trade secrets in one or two states by improperly gathering information in those states about customers in those states, we fail to see how that showing would sustain a *nationwide* injunction against TitleMax gathering customer information, including in states in which its practices may not violate the law of trade secrets in any respect (like Georgia).

TMX Fin. Holdings, Inc. v. Drummond Fin. Servs., 300 Ga. at 839 n. 8 (emphasis in original).

Here, evidence has been presented regarding Defendants' alleged DMV Search and Solicitation Conduct in Ohio and New Mexico.⁴⁸ Although Plaintiffs allege "upon information and belief" that such conduct is taking place elsewhere and is actionable, that is an insufficient showing to warrant a nationwide injunction. *Id.* Given the foregoing, Plaintiffs' Motion for Reinstatement of Paragraphs 1(a) and 1(b) of the Interlocutory Injunction is GRANTED IN PART and Paragraphs 1(a) and 1(b) are hereby reinstated but only to the extent of enjoining Defendants from engaging in the activities described thereunder in Ohio and New Mexico.


VI. PLAINTIFFS' MOTION FOR SEPARATE TRIAL ON DEFENDANTS' PERMISSIVE COUNTERCLAIMS

In the instant motion Plaintiffs' ask the Court to order that Defendants' counterclaims be tried separately from Plaintiffs' claims pursuant to O.C.G.A. §9-11-13(b). That Code Section provides in relevant part: "A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. But any such permissive counterclaim shall be separated for the purposes of trial, unless the parties otherwise agree."

Having considered the record, the Court will reserve ruling on this motion pending completion of discovery, resolution of any dispositive motions and until closer to trial.

⁴⁸ Excluding Texas and South Carolina.

SO ORDERED this 13 day of March, 2018.


JUDGE JOHN J. GOGER
Metro Atlanta Business Case Division
Superior Court of Fulton County
Atlanta Judicial Circuit

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