IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

CURRY'S TRANSPORTATION SERVICES, INC.,	)	
Plaintiff,	)	NO. LACV 021480
vs.	)	**RULING ON PLAINTIFF'S PETITION AT LAW**
MIKE DOTSON, ERIC RYNER, JUSTIN CRAIG SHAFER, AND RYNER TRANSPORTATION, INC.,	)	
Defendants.	)	

This matter came for a contested trial before the Court on July 22, 2013, and concluded on July 24, 2013. Plaintiff, Curry's Transportation Services, Inc., appeared through Jason Curry and was represented by Attorney Thomas E. Maxwell. Defendants Mike Dotson, Eric Ryner, Justin Craig Shafer, and Ryner Transporation, Inc., appeared personally and through their attorney, Jason J. O'Rourke. The Court has now considered the testimony presented, the exhibits admitted into evidence, and the contents of the court file. The Court being fully advised makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Court must decide the facts from the evidence. The Court considers the evidence using its observations, common sense and experience. The Court will try to reconcile any conflicts in the evidence, but if the Court cannot, the Court accepts the evidence it finds more believable.

In determining the facts, the Court may have to decide what testimony to believe. The Court may believe all, part, or none of a witness's testimony. In determining what testimony to believe, the Court considers the reasonableness and consistency of the testimony with other

evidence and, additionally, whether a witness has made inconsistent statements, as well as the witness's appearance, conduct, age, intelligence, memory, knowledge of the facts, interest in the trial, motive, candor, bias and prejudice. With these concepts in mind, the Court finds the following facts:

A. Witness Testimony

(1) Jason Curry

The following is a summary of the testimony from Jason Curry. Curry has been the vice-president of operations at Curry's Transportation since the company's inception. He is a 49 percent owner. His wife is a 51 percent owner, and the company president.

Curry's Transportation formed in 2001. By 2006 it had grown to approximately 35 employees and 30 trucks. Also, in 2006, Curry's acquired Nelson Trucking. In June of 2007 a tornado wiped out Curry's terminal. The company lost numerous files.

Curry's now has approximately 125 employees. About 90 of these are drivers. The company also works with independent owner/operators who lease their trucks to Curry's for Curry's use. There is a standard agreement for these independent operators. Of the owner/operators working with Curry's approximately 80 percent operate under Curry's authority and DOT number. About 20 percent operate under their own authority and DOT number.

Eric Ryner worked as an employee of Curry's on two separate occasions. He was reemployed for his second stint as a Curry's employee in 2006. He left Curry's direct employ in 2008. Ryner ceased employment with Curry's in 2008 when he became an owner/ operator. At that time he formed Ryner Transportation (RT). On August 8, 2012, Ryner ceased working with Curry's entirely.

Initially, Curry's provided freight to RT under Curry's authority. Eventually, Ryner obtained his own authority at the end of 2009. Jason Curry testified that he assisted Ryner on what he needed to do to get his own authority. Curry's was agreeable with owner/operators operating under Curry's authority or under their own authority. Curry's uses owner/operators to increase their fleet without additional investment.

RT hauled solely for Curry's. But on August 9, 2012, RT discontinued hauling for Curry's. By this time RT had five trucks that Jason Curry was aware of.

On the evening of August 8, 2012, Jason Curry called Eric Ryner several times. Ryner finally called him back. Ryner told Curry that he was going out on his own, would not be hauling for Curry's and would haul for someone else. Curry told Ryner that he was under contract with Curry's and not allowed to haul for someone else. Curry had no warning that Ryner would discontinue hauling in this fashion.

Early in 2012 the company's freight was not being distributed equally and needed to be evened out. Curry testified that he told Mike Dotson, Craig Shafer, and Todd Kirchner that the high-paying gravy jobs could not all go to RT. Dotson was operations manager at the time, a position right below Jason Curry himself. Shafer was dispatcher. This directive was followed for a short time. Later, Curry had another meeting with Dotson, Shafer, and Kirchner and told them that he was getting complaints from other haulers who saw RT getting the better jobs and routes. He again told them that they had to even out the freight.

One of Curry's customers was Winegard. Winegard used on-time shipping and had little warehouse space. Curry's took five to eight loads per day into Winegard's. There was a very profitable rate for this service because it was time sensitive. The Winegard business worked well

for picking up other loads as well.

At the time RT terminated hauling for Curry's, Dotson had quit a week before. Shafer quit the day after RT discontinued hauling for Curry's.

Dotson had been with Curry's for seven years. He was Jason Curry's right-hand man and had wide responsibility. Dotson knew Curry's rates and how they were formulated. He also handled customer relations. As to Winegard, Dotson was the main contact at Curry's. He handled the Winegard business.

Dotson was on an extended vacation in July of 2012. He had borrowed three weeks of vacation because he was out of vacation. Dotson left for vacation on June 28, 2012. He returned during the third week of July. On the morning that he returned he informed Jason Curry that he would be resigning. He gave two weeks' notice at that time. There was no indication prior to this that he would be leaving.

Dotson had a company phone and laptop. He returned them. When the phone was returned it had been wiped clean.

Before Dotson's last day there was no indication from him of any dissatisfied customers who would be leaving Curry's. Jason Curry also testified that there was no prior indication from Shafer that he would be terminating his employment. Likewise, there was no prior indication for Ryner that he would discontinue hauling for Curry's.

Operations manager was a very important position at Curry's. The operations manager had daily contact with the decision makers of Curry's customers. Jason Curry testified that he worked with Dotson on a daily basis to transition him into the operations manager role. He took Dotson on customer visits and introduced him to his (Curry's) contacts.

Shafer quit the day after Jason Curry talked to Eric Ryner about the fact that RT would discontinue hauling for Curry's. Shafer gave no advance notice.

Curry was shown Exhibit 1, an independent contractor operating agreement. Curry testified that Ryner had an independent contractor operating agreement with Curry's. The purpose of this agreement was to protect Curry's customer base and also because it was required by law. The agreement had terms regarding non-competition. Curry did admit that some of the terms changed when Ryner got his own authority. For example, Ryner got a higher rate of pay. Curry also admitted that with respect to paragraph 3 of the agreement he had crossed out the number 15 and written in 30, thus changing the time period in which compensation would be paid to the contractor. Curry testified that after signing this agreement, Ryner never asked for modification of the non-compete or to terminate the agreement. There was no discussion about the non-compete no longer being in force when RT began to operate under its own authority. Page 4, paragraph 13 of the agreement provides a method for termination. Curry testified that no notice was received from Ryner that the lease would be terminated.

When Curry learned that RT was hauling for Curry's customers, he communicated with Ryner about it. Curry identified Exhibit No. 2, a cease and desist letter. A return receipt is attached to Exhibit No. 2 showing that it was received on September 1, 2012.

Jason Curry was then shown Exhibit No. 3, which he identified as Dotson's employment agreement with Curry's. Dotson signed it in front of him. It contained all eight pages at the time Dotson signed it. The agreement had non-compete and non-solicitation provisions. Curry testified that these were important because of Dotson's knowledge of the customer base and rates.

When Curry learned that Dotson was working for RT, he sent him a cease and desist letter. Dotson identified Exhibit No. 5 as that cease and desist letter. A return receipt attached to the letter shows that it was received by Sherrie Dotson on September 8, 2012.

Curry met with Dotson before Dotson left the company. Dotson told him that he would be pursuing something working with the church. Dotson gave no indication that he would be working for RT. Dotson said he needed to spend more time with his family. Curry asked Dotson to sign an exit letter, Exhibit No. 4. According to Curry, Dotson showed no reservation about signing it. Dotson also brought up no issues regarding his employment contract. (The Court would note that Exhibit No. 4 contains the following language: "Additionally, I agree not to accept any employment where I will compete directly or indirectly for the next year, with Curry's Transportation Services, Inc. This agreement is per the previously signed confidentiality agreement all Curry managers sign as a condition of employment.")

As to Craig Shafer, Curry testified that he was an employee on two occasions. Shafer worked as a dispatcher. He had no non-compete the first time he worked at Curry's. He left after his first stint in 2008 or 2009. Shafer was reemployed in late 2010. At that time, Curry talked to him about the terms of his returning to employment. Curry offered to rehire Shafer on the grounds that he sign a non-compete. Curry was shown Exhibit No. 6, which he identified as the email sent to Shafer regarding his reemployment. (The Court would note that this actually appears to be a letter to Shafer that was signed by Jason Curry. There is also a signature line for Craig Shafer, but no signature. The last sentence of this email/letter states, "With this job and contract comes a level of confidentiality. Therefore you will be required to sign a confidentiality contract and a non-compete contract.") Curry testified that Shafer came to work shortly

thereafter. Curry acknowledged, however, that he could not find a non-compete for Shafer in Shafer's personnel records.

Curry found out that Shafer was working for RT the day after RT discontinued hauling for Curry's. When he did, Curry wrote a letter to Shafer, Exhibit No. 7. This is a cease and desist letter. The return receipt attached to it shows that it was received by Shafer on September 1, 2012.

After RT discontinued hauling for Curry's, there were some customers that Curry's no longer hauled freight for subsequent to the split. These included ACH Phone, a 50 percent reduction, Winegard, a 100 percent reduction, and Griffin Wheel, a 90 percent reduction. Per Jason Curry, no customer had ever reduced business with Curry's Transportation in this manner before the split with RT.

On August 9, 2012, Curry contacted Winegard to tell them that Dotson and Shafer had left the company. However, Winegard brought no business back to Curry's. Curry testified that this type of change of carrier was very unusual in the industry.

On cross-examination Curry testified that Shafer was employed by Nelson Trucking when Curry bought out Nelson. Curry was not aware of Shafer having an employment contract with Nelson's. Curry acknowledged that he did not ask Shafer to sign a non-compete until 2008. He did not ask him to sign one in 2006 or when he was first hired in 2002. Curry acknowledged that Shafer refused to sign the non-compete in 2008, but was allowed to keep working there with access to the same information that he had access to previously. Curry also acknowledged that the first time Shafer left the company he (Shafer) tried to solicit Curry's clients, but Curry did nothing about it.

Curry acknowledged that Shafer did not sign the letter identified as Exhibit No. 6. He also noted that when Shafer came back to work he was presented with a confidentiality agreement by either himself or Mike Dotson. He was shown his deposition in which he indicated that he (Curry) gave Shafer the agreement when they were alone in Curry's office. Curry acknowledged that Shafer did not sign the agreement in his office. Curry did not see Shafer sign it and has not seen a signed copy. He was not aware of anyone else who had seen a signed copy. Curry acknowledged that he cannot produce a signed copy. The confidentiality agreement should have been in Shafer's human resources file if he signed it, but it was not there. There was no evidence that it was removed from Shafer's file. Curry acknowledged that he was not aware of any evidence that Shafer ever took confidential information or used it to solicit Curry's clients.

As to Dotson, Curry was not aware of any evidence that Dotson used confidential information to solicit Curry's clients. He was also not aware of any evidence that Dotson had used rate information.

Curry acknowledged that page 2 of Exhibit 3, the confidentiality agreement signed by Dotson, contains a definition of what is not confidential information. Curry agreed that the identity of customers is not a secret. He acknowledged that customers are well-known in the shipping industry. Curry's has some customers that other companies haul for. No customers are a secret. Curry also acknowledged that the internet has broker boards. He admitted that these are sometimes used to fill loads. He acknowledged that there are a lot of competitors out there.

Curry acknowledged that employee drivers are not prohibited from disclosing the identity of customers, and neither are owner/operators under their agreements. They are free to disclose

this information.

As to pricing, Curry admitted that Curry's Transportation has no special formula to set price. He said overhead has something to do with it. Other factors that affect price are overhead, fuel, where the load is, where it's going, and whether it's tarped or not. Curry admitted that most of these things are constant. He also acknowledged that overhead varies from company to company. Curry acknowledged that his company built a new building in 2007. He was questioned about his deposition in which he admitted that a company like his with a new building may have higher overhead than a new startup. When pressed, Curry could not identify one factor in pricing that varies from one company to another other than overhead. He stated that the amount he will accept for a particular load will vary from day to day.

Curry acknowledged that there was no agreement with the company's employees to prevent them from disclosing rates or going to work for a competitor.

As to Exhibit 1, Curry stated that not all owner/operators have to sign this agreement if they are operating under their own authority. He acknowledged that there is no written non-compete or non-solicitation agreement with some owner/operators operating under their own authority. He identified several, to include Cook and Sons, P.J. Trucking, and Holstein. Curry acknowledged that all of them have access to Curry's rates. He admitted nothing prevents them from telling others what the company charges.

As to Eric Ryner, Curry testified that Ryner was employed by Curry's but that he bought his own truck and became an owner/operator. Curry testified that when Ryner became an owner/operator he entered into the agreement in Exhibit No. 1 so that RT could operate under Curry's authority and DOT number. Curry noted that if a driver has his own authority he has his

own DOT number. If not, he operates under Curry's DOT number.

Curry noted that any truck operating under Curry's authority should have its own written agreement. Curry acknowledged that he was not aware of any agreement for any of RT's trucks other than the one mentioned in Exhibit No. 1. He admitted that the contract only references one truck and that he did not have agreement for each individual Ryner truck.

In December 2009 Ryner quit hauling under Curry's authority and hauled under his own authority. When Ryner got his own authority he no longer operated under Curry's DOT number; he operated under his own. The relationship changed when Ryner got his own DOT number. It changed in various respects: The responsibility for fuel tax reporting changed; displaying Curry's placards was no longer required, just RT DOT numbers; DOT log books no longer had to be turned in to Curry's because this became Ryner's own responsibility; Curry stopped providing liability insurance; the rate paid to Ryner changed from 75 percent to 80 percent; and, the compensation to the contractor was changed so that it had to be paid in up to 30 days, as opposed to 15.

Curry testified that Exhibit No. 1 is the only written contract or lease which he ever had with Ryner. (The Court notes that this is incorrect as the defendants introduced Exhibit A, an independent contractor operating agreement signed between Ryner Transportation, Inc., and Curry's Transportation dated September 29, 2008.) Curry testified that no new written contract with Ryner was entered into after Ryner got its own authority.

Curry testified that all loads are booked by the dispatchers. Curry's dispatchers decided which loads to funnel to RT.

Curry was aware of no evidence that Ryner had access to Curry's customer list. He

acknowledged that none of the drivers in August of 2012 had non-compete agreements. This is still true today. He has had drivers leave and go to work for competitors. He has not sued any of them. Ryner did not have a non-compete or non-solicitation agreement when he was an employee. Curry acknowledged that he admitted during his deposition that owner/operators operate essentially the same as employee drivers. He has no customers that haul only with Curry's. He admitted that most customers do not bind themselves to one carrier, as it would prevent negotiating better rates.

Curry acknowledged that one of the company's employee drivers could quit today and go to work for a competitor, could buy their own truck and start their own business, could solicit all of Curry's customers, and could do just as much damage as any owner/operator. Curry acknowledged that an employee could leave and do anything he does not want Ryner to do.

Curry acknowledged that Eric Ryner had little access to confidential information, only rates charged and customer names. Nothing really prohibited Ryner from disclosing rates.

When asked if he was aware of any evidence that Ryner had used confidential information, Curry answered that he was not aware of any.

Curry acknowledged that his company and his competitors often worked together to haul loads for customers.

Curry acknowledged that Dotson could have gone to work for a competitor before he signed the non-compete agreement. Curry admits that he did nothing to prevent that at the time. Curry acknowledged that Dotson got no consideration for signing Exhibit No. 4.

Curry's Transportation now has 120 employees. Curry's has backhoe, septic and repair facilities, as well as a contract with Freightliner. Curry acknowledged that RT does not have any

of these operations, or a brokerage facility similar to the one that Curry's has. In 2012 Curry's Transportation had 19 million dollars in sales. This was higher than 2011, and 2011's figures were higher than those in 2010. Curry acknowledged that the company has added trucks, replaced older units, and added a couple of drivers since the defendants left its employ. He admitted that he has no knowledge of damage defendants have caused to his business. Curry acknowledged that the number of loads were comparable to what they were when the defendants left. Curry admitted that he wants to shut down RT.

On redirect Curry acknowledged that the company has no written contract with Holstein, P.J. Trucking, or Cook and Sons. There is only a verbal agreement with these carriers. Curry distinguished this by noting that RT had only hauled for Curry's. Curry testified that he entered into Exhibit 1 with RT to be compliant with federal law and so that Curry could protect its customers. He noted numerous provisions that remained in effect even after Ryner got its own authority. Curry testified that it was not the intent of that contract that it would terminate if Ryner got its own authority.

(2) Richard Pence

The following is a summary of the testimony of Richard Pence. Pence had been a driver with RT. He went to work with RT in March of 2012. Most of his loads emanated from Winegard in Burlington, Iowa. He was generally dispatched by either Kirchner, Shafer, or Dotson. He stopped working for RT on October 12, 2012.

In August of 2012 RT stopped getting all of its loads from Curry's. Eric Ryner told him they were breaking off from Curry's. There were meetings where discontinuing hauling for Curry's was discussed. According to Pence, this was before RT quit hauling for Curry's.

According to Pence, Shafer, Dotson, and Ryner were at a meeting in which Ryner laid out the plan by which Shafer and Dotson would come to work for RT, and RT would discontinue hauling for Curry's. There was a reference to a non-compete for one of them.

Pence stated that he saw Dotson at RT more than once before the discontinuance. Shafer and Dotson came to work for RTimmediately after Ryner discontinued hauling for Curry's. Pence asked Ryner why Shafer and Dotson were coming to work. According to Pence, Ryner said that Shafer and Dotson had a book of contacts this thick, indicating approximately three inches with his fingers. Ryner said we couldn't survive without this.

On cross-examination Pence indicated that he went to Curry's first about this case and met with them about five times. He did acknowledge that he never actually saw a book of contacts from Curry's.

On redirect Pence indicated that these contacts would have been valuable. He said that knowledge of rates was valuable because you could underbid the competitor.

(3) Justin Marland

The following is a summary of the testimony from Justin Marland. Marland testified that he was a driver at RT and that he started at RT in April or May of 2012. While there, he hauled drywall and Winegard freight. When RT hauled for Curry's, Dotson and Shafer dispatched him, as did Kirchner.

Before separating from Curry's Transportation, Eric Ryner told Marland that he was going out on his own and would be hauling Winegard freight. There was a meeting before the separation from Curry's occurred. Ryner, Dotson, and Shafer were there, along with numerous others. At the meeting Ryner said that they would be doing their own thing and would be

hauling Winegard freight. According to Marland, at that meeting they were told if anyone asked about Dotson, he was a shag driver, not a dispatcher, because Dotson had a non-compete agreement with Curry's.

On cross-examination it was established that Marland sought out Jason Curry to see how he could help with the lawsuit.

(4) Michael Dotson

The following is a summary of the testimony of Michael Dotson. Dotson currently works for RT. He is a dispatcher. He has worked there since August 8, 2012. Dotson has only been a dispatcher at RT. Before that he was Curry's operations manager for six years. Prior to working as an operations manager at Curry's he was a driver for Curry's. Before that he held numerous positions as a driver.

Dotson stated that he had numerous duties as operations manager. It was an important position. He assisted with efficiency, working with customers, obtaining new customers, working with brokerage as to loads, working with pricing, maintaining customers, as well as customer satisfaction and relations.

As to pricing, there were negotiations with customers. He developed pricing strategies along with Jason Curry, but said that pricing was industry knowledge. Dotson knew what Curry's typically charged and the variables Curry's would consider.

With respect to Winegard, Dotson testified that Winegard did not dictate to suppliers who they would use for shipping. He indicated that Winegard occupied approximately five percent of his time each day. Shafer was the main point of contact for Winegard at Curry's. Terry Wagner was the main point of contact at Winegard.

The loss of Winegard would have initially resulted in a decrease of revenue to Curry's. Dotson noted, however, that there was more freight out there than any carrier can haul. Winegard and all of its suppliers were third or fourth in terms of revenue to Curry's. A loss of all of them would have been a substantial loss of revenue.

Dispatch developed a customer list. Dotson admitted that this was an important asset. Having it would provide a time advantage to competitors. Cold calls to get new business worked only about 50 percent of the time.

Dotson remembered a project in the spring of 2012 to update the client or contact list. He went on vacation the first week of August 2012. The project was completed before he went on vacation. The updated list was stored on a flash drive in a locked cabinet. A hard copy was given to Kirchner who was the lead dispatcher. The list was also in the Prophecy dispatch software system. Dotson directed Kim Theobald to put the list on a flash drive, and she gave it back to him.

As operations manager he learned things from Jason Curry as to how to do the job, how to maximize profits, efficiency strategies, future customer needs, etc. He went on customer visits with Jason Curry.

Dotson testified that when he first became operations manager he already knew Curry's contacts from driving truck for Curry's. He was privy to more information as operations manager than he had been as a driver. Jason Curry made efforts to introduce him to contacts. He had more interaction with contacts as operations manager than Curry did himself.

Dotson testified that rates and pricing are an industry standard. There is no secret there. There is no way to protect this information. He did admit that if a competitor knew what Curry's

needed to charge to make a profit they could undercut Curry's. He acknowledged that he would not share contact information with competitors because it would give them an advantage.

As to the timing of his departure, Dotson acknowledged that there was a meeting at Perkins in April of 2012. He was invited by Shafer and Ryner. They talked about doing their own thing, but did not offer him a job. At the time, he did not have a sense that he had an opportunity to work for RT. At trial, Dotson stated that he notified Curry's about a problem with RT, though he was shown his deposition in which it said he did not recall whether he had done so.

After the April meeting, Dotson later talked to Ryner and Shafer about working for RT. Dotson stated that he felt like he wanted to leave Curry's about a year and a half before he did so. The decision to leave was made on July 4, 2012, while he was on vacation. He had talked to Ryner about leaving Curry's before this. Going to RT was arranged on July 4, 2012. Ryner offered him two possible positions, shag driver or dispatcher. Ultimately, he accepted the position of dispatcher. On July 4th, Ryner did tell him that he was going to stop hauling for Curry's Transportation.

Dotson communicated his decision to leave to Curry on July 29th or 30th. As to the vacation in 2012, Dotson asked for an advance on his vacation because he had not accrued enough time. Dotson indicated that he left on vacation on June 30th, but the decision to leave Curry's was made on July 4th. Dotson noted that he booked his vacation 11 months ahead of time.

After he made the decision to leave, Dotson talked to three customers. This was the day before he actually left Curry's. He called Terry Wagner at Winegard and told him that he was

leaving and that there would be a new contact at Curry's. He also told him that he was going to work at RT. Dotson said that he told Wagner he wasn't sure what his position would be. Dotson was impeached with his deposition in which he had answered that he did not recall what he told Wagner. Dotson also talked to Jerry Umthun, another customer of Curry's, as well as Sally Johnson at Batey. He did not tell Umthun he would be working for Ryner. He also did not tell Johnson that he would be working for Ryner. Dotson recalled that he had also called Bonnie Gipson at USG.

Dotson did not tell Jason Curry that he was making these calls. No one had told the customers that he was leaving, so he took it upon himself. He only told four customers because they were personal friends. Of the four, Winegard and Batey now do business with RT. Umthun brokers loads for RT.

He and Shafer were friends and rode to work together. They did talk about the situation with RT. Between the April lunch meeting at Perkins and July 4, 2012, Dotson did not know that Shafer was leaving Curry's for RT. Dotson was impeached with his deposition in which he indicated that he did not officially know that Shafer was leaving, but that he did know unofficially. At trial, to clarify, Dotson indicated that to him "unofficial" equals "uncertain".

Dotson testified that he did not tell Jason Curry about the April lunch meeting, about Shafer possibly leaving, or about RT potentially discontinuing business with Curry's. Dotson testified that he did not tell Curry because it was his (Dotson's) job to help people resolve issues and only take it to Jason Curry if he could not do so.

Dotson acknowledged that he had a confidentiality agreement. He was shown Exhibit No. 3 and admitted that it was the confidentiality agreement. Dotson said that the agreement he

received in 2008 was only five pages, not the eight pages as in Exhibit 3. He could not recall which five pages were present when he was presented with the agreement. Dotson was asked about the answers to interrogatories, specifically number 22, in which he indicated that the agreement he received was only three pages. At trial, Dotson stated that the agreement he signed was five pages, not eight. He testified that the agreement that he was presented contained no non-compete provisions. If it had, he would not have signed it. Dotson was directed to the non-competition provision in paragraph 9. (The Court also notes paragraph 10.) He was also directed to the non-solicitation provisions in paragraph 8. Dotson testified that he did not remember if this was in there. It was pointed out that the signatures on pages 1, 7, and 8 of the confidentiality agreement where on pages that indicated in the upper right-hand corner 1 of 8, 7 of 8, and 8 of 8, respectively. Dotson testified that this would have caused him concern if he had noticed it. He did not review the agreement carefully.

Dotson testified that before he left Curry's he asked for a copy of the confidentiality agreement. He asked Traci Hook for a copy, but did not get one. He wanted to look it over because he was considering a change of employment. He testified that he was not really concerned about the contents.

As to Exhibit No. 4, his resignation letter, Dotson testified that this was presented to him at a meeting. He briefly read the letter. Dotson admitted he often signs things without looking them over. He admitted that this may also have happened with the confidentiality agreement, Exhibit 3.

Dotson told Ryner that he had a confidentiality agreement. He did not recall when he informed Ryner of this. Dotson acknowledged that he did believe he was bound as to

confidential information. He also told Ryner that he felt pages were inserted into the confidentiality agreement. As to paragraphs 6 and 7 of Exhibit 3, dealing with avoiding conflict of opportunities, Dotson stated that he was not concerned that he might be violating these provisions.

Dotson testified that he got a copy of the confidentiality agreement right before he left Curry's. He gave a copy to Eric Ryner the day after he left Curry's. He acknowledged that the confidentiality agreement had eight pages at this point. Dotson stated that he did not discuss the confidentiality agreement with Ryner. Dotson stated that Ryner told him that his (Ryner's) contract with Curry's was invalid because he got his own authority and because the previous contract only referred to one truck.

Dotson started with RT on August 8, 2012. Dotson stated that RT had used Curry's exclusively to obtain loads before they stopped hauling for Curry's. Dotson also noted that during the first month after RT quit hauling for Curry's, RT was hauling for customers they had hauled for while working with Curry's. One example of this was Winegard.

Dotson acknowledged that at RT he had discussed customer development with Shafer. Shafer is the operations manager at RT. RT sought to get business from overlapping customers. Shafer did this. Dotson denied making contact with Curry's customers while at RT.

Dotson testified that he would have known of dissatisfied customers who might leave Curry's only if the dispatcher couldn't handle the problem and brought it to his attention. He could not recall any in the last two weeks of his employment at Curry's. He did state that since April 2012, there were unhappy customers, but none to the point he thought they would quit using Curry's. If there were such customers, and he couldn't handle it, he would tell Jason

Curry.

Dotson claimed that he could not recall being involved in discussions as to how RT would get revenue.

Dotson testified that while at Curry's he was involved with circulating confidentiality agreements to other Curry employees, but claimed that he did not look them over. He was not aware of RT targeting Curry's customers before he left Curry's.

Under cross-examination Dotson testified that he started in the trucking industry approximately 23 years ago. None of his previous employers asked for a confidentiality agreement. Dotson testified that before coming to Curry's he had already learned the logistics of trucking, pricing, where the better paying loads were, and customer relations. He also indicated that since he had purchased his own truck before, he knew the law associated with that. Before working at Curry's he learned about booking his own loads, for example, through the live load boards at truck stops. Dotson testified that he did not learn anything about booking loads or customer relations at Curry's that he did not already know.

Dotson testified that trucking companies operate very similarly with respect to booking freight and customer relations. He testified that it was common for drivers and dispatchers to move from one company to another.

Dotson stated that while employed as a driver at Curry's he had no confidentiality agreement and no written agreement regarding nondisclosure. As a driver he knew the addresses of shippers and their phone numbers, as well the type of freight and destinations. He did not know pricing, but could have asked the shipping department to obtain that information. He was not prohibited from disclosing information to other trucking companies.

Dotson testified that he dealt with customer complaints and finding loads before he ever went to work for Curry's.

Dotson stated that he became operations manager in 2006 and was operations manager until August 25, 2008. No one asked him to sign any non-compete or nondisclosure agreement during this time frame. He did not do anything new after August 25, 2008. Prior to that date there was nothing that prevented him from going to another trucking company. Pricing was the same before and after he signed Exhibit No. 3. Rates are generally industry standard. For example, there was a certain price range, but urgency, oversized loads, higher value loads, etc., could affect the price. Dotson noted that no customers have exclusive carriers. This includes Curry's customers. Rates, truck availability, safety score, and reliability affect which carriers get what business.

Dotson testified that nothing he learned about pricing at Curry's is used by him at RT. The operations are too dissimilar in terms of debt load, size of the company, etc. RT sets its price based on what it needs to take care of its business.

Dotson stated that he wanted to leave Curry's for approximately one and a half years before he did so. The reason for this is because the job was ten hours a day or more. He was on call 24 hours a day. The job took too much time from his family. Dotson testified that he devoted all of his working time to Curry's until he left. As to the timing of his vacation, Dotson noted that his wife is a teacher, that his kids are in school, and that they have a condominium time share. He has to book his vacations 11 months in advance. Dotson noted that Jason Curry approved his 2012 vacation in the summer of 2011.

Dotson testified that he never left one job without having another job lined up because he

needed the money to provide for his family, including four children.

During the period from April through August of 2012 he took no steps to hurt Curry's Transportation, nor did he solicit any of Curry's customers. He told four customers that he was leaving Curry's because they were friends. In fact, he had worked for two of them. Dotson pointed out that he only told one of the four that he was going to RT, and that was because that individual had asked him. He did not tell the other three because he did not think it appropriate until he actually left Curry's.

Dotson testified that on his final day Jason Curry said something to him along the lines of he would hate to see him (Dotson) lose his home. Curry then asked him to sign Exhibit No. 4. According to Dotson, Curry gave him no consideration for signing Exhibit No. 4.

As to updating the customer list, Dotson testified that Curry told him to use the Prophecy system more efficiently. To use the automated system properly customer information had to be updated so drivers could use the system correctly. Before that, much of this info had to go to drivers via phone which took up a lot of time. Dotson stated that he did not update this list so that he could take information with him when he left Curry's. The system was being updated by someone else before Dotson booked his vacation 11 months earlier. Dotson pointed out that RT does not even use this particular system. Dotson testified that he took no contact information with him when he left Curry's and that he has used no contact information at RT. Dotson stated that he took no USB drive or hard copy off of Curry's premises. He made no copy of the USB drive or hard copy and did not ask anyone else to do so.

Dotson testified that he did not play favorites at Curry's and did not direct "gravy" loads to RT. He did not treat RT any differently.

Dotson testified that there is an abundance of freight in Iowa with hundreds of loads available. There are numerous trucking companies large, medium, and small in this area. Dotson noted that other trucking companies hauled for Winegard, for example, Decker. He also pointed out that all Winegard suppliers have house trucks.

With respect to restoring the factory settings on his phone, Dotson noted that he had a Facebook account and received personal calls on that phone. He simply used restore factory settings so that no personal information would be left on the phone. Dotson noted that he is not a big tech guy. He also pointed out that all the information on the phone was on the Prophecy software.

Dotson testified that he did nothing to intentionally harm Curry's before or after leaving their employ. He stated that he has not recruited any of Curry's employees. He did nothing to compete with Curry's before his last day there. He makes significantly less money at RT. He also works significantly less hours at RT. While at RT he has referred loads to Curry's.

On redirect Dotson testified that as operations manager he got confidentiality agreements to some employees, not all. It was done on a case-by-case basis. He did not remember if the other confidential agreements contained non-compete clauses.

When asked if knowing the price RT could quote to undercut Curry's would be useful, Dotson answered, if that were the determining factor.

As to the four customers he talked to the day before he left, Dotson stated that he did give all four his home phone number.

Dotson noted that he and Jason Curry interviewed Chad Olson for a dispatch position with Curry's. Olson had a non-compete with Wabash at that time. On recross he was asked if

Curry's hired Olson despite this non-compete. He answered yes.

(5) Justin Craig Shafer

Shafer is the operations manager for RT. He also does dispatch. During his first four months at RT he performed only dispatch duties. There was another dispatcher, Mike Dotson. Before moving to RT, Shafer worked for Curry's Transportation. Shafer started in the Transportation Industry in 1982. He was with Nelson Trucking until 2006. He was the operations manager at Nelson Trucking. Curry's purchased Nelson Trucking in 2006.

From 2006 through October 29, 2008, Shafer worked at Curry's as dispatcher. He then worked for two other employers before returning for a second stint at Curry's. During this second stint there came a point when he became dissatisfied with his employment. Shafer initiated a meeting with Eric Ryner because he knew that both were dissatisfied at Curry's. They explored starting a trucking company.

On April 13, 2012, a breakfast meeting was held at Perkins Restaurant. Shafer initiated the meeting. Eric Ryner and Mike Dotson were there. Shafer invited Dotson because he knew that Dotson was dissatisfied with his employment at Curry's. He wanted to talk to Dotson about working with himself and Ryner. Shafer testified that he wasn't worried about Dotson reporting this meeting to Jason Curry. Shafer testified that at the meeting he did not recall specifically discussing the possibility of his working at RT. He recalled that they discussed various opportunities and obtaining clients in southeast Iowa. Shafer did testify that he had the impression he would have an opportunity with RT. Mostly they discussed whether Eric Ryner could line up the financing needed to grow his company. At the meeting Shafer encouraged the prospect of Dotson being employed by RT. He was not concerned about Dotson's employment

agreement. Per Shafer, Dotson was unsure about it.

Shafer testified that he knew Dotson had an employment agreement. Shafer was asked to sign one and refused to do so. He did recall a confidentiality provision, but not a non-compete provision in the proposed agreement. Shafer could not recall if Dotson's employment agreement was brought up at the meeting.

After the meeting Shafer did have further conversations with Ryner about the possibility of working for RT. He characterized these as daily conversations. Shafer was not concerned about RT getting revenue. He said there is a lot of freight in this area. Shafer testified that he frequently asked Ryner about financing. Shafer rode to work with Dotson each day, a 30-minute ride each way. Shafer testified that he was sure the two of them talked about RT during the rides to work. Shafer testified that during these rides he continuously pushed Dotson to go to work for RT. (The Court would note that this is inconsistent with Dotson's testimony.)

Shafer went to work for RT on August 13, 2012. Dotson was there at the time. Shafer was working dispatch. Dotson was doing some other things, such as organizing. Dotson did dispatch some trucks.

Shafer was asked if before August 13, 2012, there were any discussions with Winegard about the possibility of RT hauling their freight. He answered no.

Shafer did let Dotson know that he had received an offer from RT. He knew that Dotson got an offer from RT. He was not sure of the time at which Dotson received his offer, but noted it had to be close to when he got his offer.

Shafer testified that on the Monday after he quit Curry's Transportation he had a conversation with Terry Wagner at Winegard. According to Shafer, Wagner planned to split the

company's loads between RT and Curry's Transportation. According to Shafer, Curry never responded to Winegard, so Winegard went with RT. Per Shafer, they just received an email from Winegard saying that Winegard wanted RT to haul their freight. Shafer indicated that this was before he left to go to Ryner's. Shafer testified that he believes everyone saw this email. He also indicated that Dotson may have been the one who initially received the email. (The Court notes the seeming inconsistency in Shafer's comments regarding when he talked to Terry Wagner and the time at which the email was received from Winegard.)

On cross-examination Shafer testified that he did not have a non-compete or confidentiality agreement with Nelson's. Shafer noted that he went to work for Curry's as a dispatcher in 2006. Jason Curry did not ask him to sign any such agreements in 2006, 2007, or up to August 2008. Shafer testified that his duties did not change after he refused to sign the non-compete/ confidentiality agreement. He still worked as a dispatcher. The issue wasn't brought up again. He still had access to the same information.

Curry's did not prevent him from leaving after his first stint with the company to go to another trucking company. There was no lawsuit. Per Shafer, Jason Curry did scream at him and said something about him (Shafer) going to jail.

Shafer testified that it is common for a variety of trucking companies to haul for a particular customer. There is nothing confidential about customers' names. They are easy to find. As to pricing, Shafer testified that there is nothing secret about it. Some companies have different costs, but the rates of companies are easy to obtain. He testified that shippers may say that a particular company can haul for this and ask if the company they are presently negotiating with can beat that price. Shafer also testified that shippers will sometimes simply set the price.

Shafer returned to Curry's Transportation in 2010. Dotson recruited him back. At the time, he met with Jason Curry. According to Shafer, Curry offered him the job, including a particular rate of pay and three weeks' vacation. Shafer accepted a few days later. As far as he could recall, Curry did not mention a non-compete or confidentiality agreement at the meeting.

Shafer was shown Exhibit No. 6, which he indicated was emailed to him after the job was offered. This letter/email references confidentiality and no-compete agreements. Shafer noted that he did not sign these and that Curry nonetheless let him work for the company, never asking him about it again. Shafer also pointed out that the email refers to two weeks of vacation despite the fact that three weeks had been offered at the meeting.

According to Shafer, Kirchner was the outbound dispatcher at Curry's, while he was the inbound dispatcher. This meant that he had to find loads for the trucks to bring back so that they would not have to return empty. Shafer indicated that he found return loads by calling around. He also used internet boards which were available to anyone. Shafer indicated that he dispatched loads for Curry's the same way he did elsewhere, and the same way everybody does it.

Shafer testified that he did not funnel gravy loads to RT. He used who he needed to to keep the customers happy. Shafer testified that if the customers wanted RT he would usually do that to keep them happy, not to benefit RT. According to Shafer, Terry Wagner at Winegard wanted RT trucks in order to get the job done. Shafer indicated that he was referencing the time period when RT still hauled for Curry's.

Shafer testified that he did nothing to damage Curry's Transportation before or after he left their employment. He testified that RT has not used Curry's strategies or business plan. Shafer testified that those would not even be helpful for RT. Shafer testified that he has not

solicited away Curry's employees. He stated that he developed no unique knowledge by way of working at Curry's. He had this knowledge beforehand. Shafer testified that he did nothing to compete with Curry's before leaving. He did not contact Curry's employees before leaving.

On redirect Shafer acknowledged that he knew what Curry's had to charge to make a profit. He stated that he did not know Curry's profit or loss margin.

(6) Kimberly Theobald

Theobald testified that she has worked for Curry's for the last two years. She works for Curry's as an outbound dispatcher. She also worked in brokerage where she secured loads from companies such as New Core Steel and sold those loads to carriers. Theobald additionally indicated that she had worked in the hopper and reefer division. It was at that time that Mike Dotson was her direct supervisor.

Theobald worked on updating the customer master list, which she characterized as a massive project. She stated that no one had started it before her. Dotson first asked her to start this project in February of 2012, and then pushed her to get started on it in May of 2012. The project entailed taking 2,600 customer files and updating their contact names, emails, phone numbers, fax numbers, and directions to their facilities. Theobald testified that Dotson wanted a digital copy for his laptop and a hard copy to keep offsite as a backup.

According to Theobald, Dotson asked for updates about every two weeks. He gave her a deadline for completion before he left for vacation.

Per Theobald, the information was entered into the company's Prophecy system and exported onto a spreadsheet. She gave Dotson a hard copy and a thumb drive containing the information. Theobald testified that she put the information on a thumb drive with the help of

Scott Richardson. Theobald testified that Dotson put the hard copy in a briefcase. All of this was done before Dotson left for vacation.

Theobald testified that it would have been a tremendous amount of legwork to compile all of this data on 2,600 customers from scratch. She indicated that simply updating it took approximately seven weeks.

Theobald testified that while she was in brokerage she used an internet truck stop rate feature which gave industry-wide standards for certain freight lanes. She testified that a competitor would have an advantage if it knew Curry's rates.

On cross-examination Theobald acknowledged that Curry's discloses rates to customers and potential customers. She acknowledged that the company does not require them to keep the rates confidential. She admitted that customers disclose rates to other shippers and asks those other shippers if they can beat them.

As to updating the Prophecy system, Theobald acknowledged that Dotson told her Jason Curry told him to update Prophecy. The fact that it was being updated was not a secret. Dotson never told her to keep it secret. Others in the office knew she was working on it. Theobald also did not dispute Dotson's testimony that he asked another employee to start this project in late 2011.

Theobald admitted that the Prophecy system improves the efficiency of the office, and that Curry's has gained a benefit from this update. She testified that asking her to update the files was no shock or surprise to her.

Theobald acknowledged that she does not know what Dotson did with the hard copy. She just saw him put it in a briefcase. She knows of nothing to indicate that Dotson used this

information at RT. She also acknowledged that she does not know what Dotson did with the thumb drive.

(7) Traci Hook

Hook testified that she has worked at Curry's for the last seven years. She handles billing for freight.

Hook testified that Dotson had a conversation with her about the confidentiality agreement. He wanted to see what was in it. Dotson asked for a copy of her confidentiality agreement because he wanted to know what he had signed. He then asked her to ask Human Resources for a blank copy.

According to Hook, in June of 2012 Dotson asked her if she knew how to print a list with all of the customer contact information. She testified that she did not know how to do it and referred Dotson to Scott Richardson. Dotson also wanted to know if she knew how to print out a customer rate schedule. Per Hook, Dotson also asked her for the matrix and web site she used to calculate Curry's fuel surcharge rate. Hook testified that she did not share this information with competitors. She also indicated that the matrix belonged solely to Curry's.

According to Hook, when Dotson came back from vacation he told her that he had put in his two weeks' notice. Dotson told her that he had no immediate plans and was going to do God's work. Dotson told her that he knew he had a confidentiality agreement, but that transportation was what he'd known, so that was where he would have to go find employment.

Hook testified that Curry's rates are not shared with competitors.

On cross-examination Hook acknowledged that Curry's bills to its customers show their rates. Nothing prevents the customers from telling other shippers Curry's rates. She also

acknowledged that the fuel surcharge is in the bill. Hook acknowledged that customers would have to compare rates and fuel surcharges with those of other carriers. She also acknowledged that Dotson told her that he asked for the matrix because of a complaint from New Process Steel, indicating that he wanted to use it to explain the surcharge to them.

(8) Cary Scott Richardson

Richardson testified that he is a dispatcher at Curry's and has worked there for the last five years. He has been employed in the industry for approximately 20 years. He has prior experience as a dispatcher, operations manager, in sales, etc.

Richardson testified that he remembers updating the database. Mike Dotson and Kim were involved. He was not aware of anyone else being involved. Per Richardson, Dotson said he wanted to take a copy of the database on vacation in case any problems came up that he needed to be in the middle of.

Richardson worked with Winegard and their suppliers. From April 2012 through August 2012, Richardson had no impression that Winegard or any of its suppliers were dissatisfied with Curry's services. Winegard stopped working with Curry's abruptly. The same was true for Winegard's suppliers. Richardson testified that while employed at Curry's he had never seen a customer change that quickly.

On cross-examination Richardson acknowledged a long history in the trucking industry, listing six companies that he had worked for. Richardson indicated that he had dispatched for companies, worked as an operations manager, terminal manager, and driver. He acknowledged that no other employers had ever required a non-compete as far as he could recall. As to updating the customer database and Prophecy system, Richardson acknowledged that the

company still uses Prophecy. In his opinion, he did not find the system to be particularly beneficial.

(9) Eric Ryner

Ryner testified that he is the president of RT. RT is an S corporation and he holds all of the shares. The company has 19 employees and 12 drivers. There are two dispatchers, Shafer and Dotson. There are two mechanics.

Ryner testified that he has been in trucking since 1999. He never worked as a dispatcher or operations manager. RT was formed in September of 2008. Ryner testified that he worked at Curry's as a company driver from 2002 through 2003, for a period of approximately six to eight months. Ryner worked at Curry's on two occasions. His second stint started in June of 2006. At that time, he came back to Curry's as a company driver. Then in September of 2008 he got his own truck and became an owner/operator. At that point he formed RT. RT owned the truck.

Ryner testified that he spoke to Jason Curry about forming RT. He planned to lease the truck to Curry's for all of its loads. Ryner worked with the dispatcher at Curry's to get loads. When he formed RT he became an employee of the company and ceased being an employee of Curry's.

Ryner testified that trucking is a heavily regulated industry. In 2008 RT had to use Curry's authority to haul, and this went on for a year until approximately September of 2009. In September of 2009 RT got its own authority. Still, when RT got its own authority it only planned to haul for Curry's Transportation. The authority acquired by RT in September 2009 was contract authority. (RT applied for common carrier authority in 2013.)

RT hauled for Curry's until August 6th of 2012. It was exclusive with Curry's until that

time. Ryner testified that around late summer of 2012 he thought about discontinuing hauling for Curry's. Ryner indicated that he had thought about it starting in April. There were some discussions with Shafer and Dotson, the first of those occurring in April of 2012.

Discontinuing with Curry's was a big change. As to potential sources of revenue for the new company, Ryner testified that there are a number of ways to get freight. These would include online sources, contacting people, and posting trucks online. Ryner testified that in April of 2012 this was how RT thought it would replace revenue from Curry's.

Ryner was asked if RT planned to haul for Curry's customers. His answer was if it happened. Ryner testified that Curry's does not own the customers, they're just customers.

Ryner acknowledged that he had a meeting with Dotson and Shafer in April of 2012. He said they did not discuss a strategy for RT to discontinue hauling for Curry's. Shafer called the meeting. Per Ryner, Shafer did not say on the phone why he wanted to meet. Ryner was questioned about his answer to a similar question at deposition in which he indicated that Shafer wanted to talk about his being unhappy at Curry's and whether Ryner wanted to go out on his own. At trial, Ryner then said he was not sure if this was said on the phone or in person. Ryner testified that at the April meeting he had the impression Shafer wanted to discuss a strategy for discontinuing with Curry's. According to Ryner, Shafer did not say why Dotson would be at the meeting or talk about Dotson's dissatisfaction with Curry's. Ryner stated that at the April meeting Shafer said if Ryner needed help going out on his own he (Shafer) would help him out.

After the April meeting, Ryner crunched numbers to see if he could go out on his own, or if he even wanted to do so. When asked how he planned to pay for it, Ryner testified that he had some money and would obtain a bank loan. Ryner testified that he did not talk to a bank until

mid-June. He applied for a loan at Farmers Merchant and obtained one. Shafer asked about this and Ryner shared that he had talked to a bank.

After the April meeting Ryner did update Dotson. He testified that he told Dotson he was seeking financial assistance. He also believed he told Dotson that he was seeking to purchase four trucks. Ryner testified that he did not know if Shafer and Dotson were discussing this. He was then shown his deposition in which his response was that he knew Shafer was sharing information with Dotson. At trial, Ryner then reiterated that he had no recollection as to whether the two had shared information.

Ryner decided that he personally would no longer haul for Curry's in April of 2012. He was dissatisfied with his treatment, the pay, and the attitude. However, he did not have RT quit hauling for Curry's at that point because he had to keep income rolling in for the company, his drivers' families, and for his own family.

RT quit hauling for Curry's after a conversation that Ryner had with Jason Curry on August 6, 2012. Ryner testified that he had intended to haul for Curry's for a week or so longer, but not after the call.

Ryner testified that his loan was approved on July 15, 2012. At that point he bought four trucks and twelve trailers. Prior to the purchase, RT had five trucks and no trailers. Ryner started purchasing the trucks and trailers on July 17, 2012. He shared this information with Shafer and Dotson.

Ryner indicated that he was going to get freight from brokers, load boards, and by calling customers. He felt this would generate enough revenue to cover overhead and the loan. According to Ryner, this is how RT started to obtain customers. He admitted that some of the

customers were companies RT had hauled for while hauling for Curry's.

Ryner testified that Dotson started working at RT around August 3, 2012. He was shown his deposition in which he indicated that Dotson was hired on August 13, 2012. At trial, Ryner said that Dotson hit the payroll on August 13th, but was in RT's office before that. Ryner also testified that he offered Dotson a job sometime in July, contingent on his obtaining financing.

At the time he offered Dotson a job, Ryner did not ask Dotson if he had an employment contract with Curry's. Ryner testified that he became aware of the employment contract in late July or early August. Dotson told him that he had signed some papers and wanted some legal advice on it. Ryner saw the agreement and read some of it. He testified that we sought legal advice. Ryner stated that the agreement did not cause him concern, but that he got legal advice because Dotson requested it. Ryner acknowledged that he told someone that Dotson had a confidentiality agreement and said if anyone asked they should say that he (Dotson) was a shag driver or janitor. Ryner said this was at a drivers' meeting and was said in jest.

Ryner testified that he directed Dotson and Shafer to contact potential customers and tell them that RT was available to haul loads. Ryner was asked whether he knew if some of these customers were customers RT had hauled for while with Curry's. He answered, if that is who they chose to call.

Ryner testified that RT hauled two Winegard loads on August 13th. RT hauled four Winegard loads on August 14th. According to Ryner, the loads from Winegard have subsequently remained at that level. Ryner stated that this includes Winegard's suppliers. Those suppliers include Charter Steel, Alliant Steel, Pro Net, Lockpoint Tube, Phoenix Tube, and Metal Processing. Other companies RT hauled for after August 13, 2012, and that it had carried while

contracted with Curry's, included Progress Rail, ACH Phone, and Atlas. ACH contacted RT in September of 2012.

Shafer started at RT on August 8, 2012. He was offered a job at the same time as Dotson, around July. The offer was contingent on obtaining financing.

RT called companies to let them know that it was available. This included Winegard and its suppliers. RT did take out ads in the Burlington Hawkeye, including during the time frame of August 2012. There was no other advertising. Ryner acknowledged that the ad probably referred to looking for drivers. It was more focused toward obtaining employees.

Ryner was shown Exhibit No. 1, the independent contractor operating agreement. He admitted that he signed page 5 of the agreement. He admitted that the agreement was between him and Curry's to operate under Curry's authority. Ryner then said that he thought he was signing the agreement on behalf of RT, not himself. The truck named in the agreement was the only truck RT owned at that time. That truck is still in service. Since August 13, 2012, the truck has been used to haul for Winegard and its suppliers, as well as other customers that RT hauled for while working with Curry's.

In discussing paragraph number 2 of Exhibit 1, Ryner testified that the terms changed on December 30, 2009, when RT got its own authority and DOT number. Ryner testified that the figure in paragraph 2A went from 75 percent to 80 percent. Paragraph 2B was supposed to remain the same, but didn't always. Paragraph 2C remained the same. As to paragraph 3 regarding the timing of payment, Ryner testified that the handwriting where the number 30 had been written in and 15 crossed out was not his. Ryner testified that the terms in paragraph 3 changed sometime in 2012. According to Ryner, Curry told him he had to go out further for the

time frame on these payments. Ryner testified that he agreed to 30 days. Ryner stated that he agreed to this change in terms in February or early March of 2012.

Ryner testified that he believed this contract no longer applied after RT got its own authority. He stated that he did not get legal advice on this issue. Ryner was asked if he thought the contract was void after RT got its own authority, that is, did RT have any agreement with Curry's. Ryner answered no. Ryner testified that Jason Curry told him that RT would then be on an 80 percent payment. Ryner figured the payments would continue as they were, 15 days. He thought this because of how it had been done before. Ryner testified that he did not know when Curry crossed out the 15 and wrote in 30.

The testimony then turned to paragraph 6 of the agreement. Ryner testified as to several ways paragraph 6 changed after RT got its own authority. As to paragraph 6A, Ryner noted that when he got his own authority he put his own plate on the truck, and Curry's plate was returned. As to paragraph 6B, Ryner testified that that all changed. He also testified that paragraph 6C changed.

Ryner testified that RT gave notice to Curry's that it would terminate operating under the agreement. According to Ryner, there was an accident in 2009. At that point Jason Curry asked RT to get its own authority to relieve Curry's of liability. Ryner acknowledged that there was no written notice to Curry's from RT indicating that RT was terminating the agreement. Ryner stated that he did not think this was necessary because Jason Curry was pushing for it.

On cross-examination Ryner testified that when first hired as an employee driver at Curry's he had access to customers' names, but not pricing information. He could have garnered access to the pricing information. During that employment Jason Curry did not require him to

sign a non-compete or confidentiality agreement.

When he returned to Curry's in 2006 Ryner had the same duties as when he had been a company driver earlier. From 2006 through September of 2008 he was not asked to sign a non-compete or confidentiality agreement. During this period he hauled for steel companies, Winegard, All Steel, U.S. Gypsum, etc. He had access to customers' names and pricing. Ryner testified that confirmation sheets included the pricing information. Ryner testified that from August of 2006 through September of 2008 nothing prohibited him from disclosing pricing information.

Ryner was shown Exhibit A, an independent contractor operating agreement that was presented to him by Curry on September 29, 2008. He signed page 5 of this agreement. (The Court would note that the date of the independent contractor operating agreement in Exhibit 1 is December 29, 2008.) Ryner testified that this first operating agreement was signed after his status changed to owner/operator. This initial agreement applied until December 29, 2008. The initial agreement had no non-compete restrictions in it. It also had no confidentiality provisions. During the three months under this agreement he had access to the same information and performed the same duties as before September 29, 2008. Exhibit 1 and Exhibit A identify the same truck.

Ryner testified that Janet Bennett, who he described as Curry's human resources person, asked him to sign Exhibit 1 after he had already signed Exhibit A. Ryner testified that Curry never talked to him about it. According to Ryner, Bennett said that some people had a problem with the way the agreement was worded regarding the 21-day pay period. According to Ryner, she did not mention any other changes, or that it added non-compete language. He relied on her

word. She was the human resources person. Ryner testified that he had no different access to information or different customers after the December 29, 2008, agreement, than he had under Exhibit 1 or as an employee driver. Ryner testified that Curry did not help him obtain his own DOT number. RT used Joy Fitzgerald for this. Ryner testified that once he got his own authority there was no reason for him to operate under Exhibit 1. After he got his own authority he never leased additional trucks to Curry's. Curry's did not do fuel tax reporting after RT got its own authority. After RT got its own authority, they did not run any trucks with Curry's placard or DOT number. After RT got its own authority Curry's no longer deducted fuel tax or provided insurance. In addition, before RT got its own authority, its log books went to Curry's. Afterwards they did not because it was not required.

On August 8, 2012, Ryner and Jason Curry had a conversation. According to Ryner, this was the first time they had talked since April, when Ryner quit personally hauling for Curry's. During this August conversation Ryner told Curry that he was moving on. According to Ryner, Curry cut him off and said this was the last load he would ever haul for Curry's. According to Ryner, RT did not abandon any of Curry's loads after this phone call.

Ryner testified that RT did not solicit customers of Curry's before it stopped hauling for Curry's.

Ryner admitted that he did make the comment about Dotson and Shafer having a book of business. He claims there was no talk about an actual book. According to Ryner, the reference was to a book of knowledge in their heads. According to Ryner, neither brought such a document to RT. RT has never used any such document. He has never seen any such document. Ryner testified that his company has used no information of Curry's since RT quit hauling for

Curry's. He did not personally solicit any freight of Curry's before RT stopped hauling for Curry's. Ryner testified that RT is not using any confidential information. Information he had access to when hauling for Curry's was not confidential because it was widely available. To him, his knowledge regarding how trucking companies obtain loads is nothing unique.

On redirect Ryner testified that he would not know the minimum price Curry needed to charge to make a profit. He further testified that he does not know it now. This information would not have been on the confirmation sheet he referred to.

When Exhibit 1 was presented to him, he did not read it word for word. Ryner testified that this was because of what Janet Bennett told him. He did read Exhibit A before he signed it.

Ryner was questioned about the provision at the top of page 5 on Exhibit 1 (a termination clause). Ryner testified that he did not seek to terminate the agreement per this provision. He said it was never brought up.

On recross Ryner testified that what Curry charges has no relevance to him.

(10) Todd Kirchner

Kirchner testified that he works for Curry's. He has been operations manager for not quite a year. Before that he was a dispatcher for four and a half years. Dotson was his supervisor when he worked as a dispatcher. Kirchner handled outbound dispatch. According to him, Curry's had three dispatchers and Dotson helped from time to time. All worked together, desk to desk, in a row. They worked as a team.

According to Kirchner, the most demanding customer was Winegard and its suppliers. That was because Winegard had limited storage and used on-time delivery to make sure that their production line could continue to run. Kirchner testified that Curry's handled five loads per day

for Winegard and its suppliers, sometimes as many as eight loads a day. They charged more for the Winegard loads.

Kirchner testified that some loads were better paying. They were asked to distribute those loads equally. According to Kirchner, Jason Curry told he, Shafer, and Dotson this in early 2012. This policy was not always followed when he was a dispatcher. Kirchner testified that toward the end of Dotson's tenure with the company there was favoritism. Kirchner testified that Dotson asked that we get RT's trucks to Chicago so they could get back for Winegard loads.

Kirchner testified that he dispatched loads for RT. He was not aware the RT got loads from any source other than Curry's.

According to Kirchner, Shafer stopped working for Curry's in early August of 2012. Within a matter of days RT stopped hauling for Curry's.

Dotson stopped working for Curry's in early August of 2012. At that point, Kirchner became operations manager.

Winegard's switch to RT was abrupt. Kirchner testified that he had never seen a customer leave this abruptly before.

Kirchner testified that the operations manager has the most contact with the decision-makers of Curry's customers. The operations manager is involved with pricing. The operations manager sets rates and knows the rate Curry's has to get to maintain a profit.

Kirchner testified that Curry's has a contact list in its Prophecy dispatch system. Not all of that contact information is shared with Curry's drivers. The information shared is only the general phone number for shipping and receiving and not the contact names. Kirchner noted that these contact names are also not shared with the owner/operators who contract with Curry's.

When RT quit hauling for Curry's it had a detrimental impact on Curry's business, in that it took trucks out of the mix. Kirchner also testified that Shafer's and Dotson's departures had a detrimental impact on the business.

Kirchner was asked if a list of contacts from its competitors would give Curry's an advantage. He answered yes, that a list of contacts would give you an advantage over making cold calls. Kirchner testified that a list of competitors' rates would also give you an advantage. Kirchner did state that he did not dispatch for Winegard loads while working as a dispatcher.

On cross-examination Kirchner acknowledged that he had been a driver for previous companies. None of them required a non-compete. He admitted that he was not the point man or dispatcher for Winegard. Kirchner acknowledged that Winegard would not have communicated with him regarding certain trucks carrying its loads.

Kirchner testified that on a typical day Curry's would haul approximately 30 loads. He then clarified to note that all 90 trucks were in service unless down for repairs.

Kirchner testified that he did try to regain the Winegard business and did not know why he was unable to do so.

CONCLUSIONS OF LAW AND RULING

Curry's petition raises claims of breach of contract, conspiracy, and intentional interference with business relationships against the defendants Dotson, Ryner, Shafer, and RT.

A) CURRY'S COVENANTS NOT TO COMPETE AGAINST SHAFER, RYNER, AND DOTSON ARE NOT ENFORCEABLE.

"Nondisclosure-confidentiality agreements enjoy more favorable treatment in the law than do noncompete agreements. (. . .) This is because noncompete agreements are viewed as restraints

of trade which limit an employee's freedom of movement among employment opportunities, while nondisclosure agreements seek to restrict disclosure of information, not employment opportunities." *Revere Transducers, Inc. v. Deere & Co.*, 595 N.W.2d 751, 761 (Iowa 1999) (internal citations omitted); *See also, Uptown Food Store, Inc. v. Ginsberg*, 123 N.W.2d 59, 62-63 (Iowa 1963) ("In Sickles v. Lauman, 185 Iowa 37, 45, 169 N.W. 670, 673, 4 A.L.R. 1073, a case dealing with the assignment of the covenantee's interest in a covenant not to compete, we said:

> In discussion courts sometimes indulge in the loose generality that the law does not favor contracts in restraint of trade, and therefore an agreement by which a party undertakes not to enter a specific business in a specified city or town will be strictly construed. What the law does disfavor are contracts which unreasonably restrict the individual in his liberty of occupation and employment. But there is no public policy or rule of law which condemns or holds in disfavor a fair and reasonable agreement of this character, and such a contract is entitled to the same reasonable construction and the same effective enforcement that are accorded to business obligations in general.");

Lamp v. American Prosthetics, Inc., 379 N.W.2d 909, 911 (Iowa 1986) ("Courts are naturally reluctant to remake contracts, *see Ehlers*, 188 N.W.2d at 376 (Becker, J. dissenting) and agreements in restraint of trade are generally disfavored. *Id.* ('We start with the basic tenets that restraints on competition and trade are disfavored in the law. Exceptions are made under narrowly prescribed limitations.')"). "Restrictive covenants of employment are strictly construed against one seeking injunctive relief. They are in partial restraint of trade and are approved with some reluctance. Under certain circumstances they are recognized and enforced by injunctive proceedings." *Cogley Clinic v. Martini*, 112 N.W.2d 678, 681 (Iowa 1962).

> The general rule in Iowa is that we will enforce a noncompetitive provision in an employment contract if the covenant is reasonably necessary for the protection of the employer's business and is not unreasonably restrictive of the employee's

> rights nor prejudicial to the public interest. *Ehlers,* 188 N.W.2d at 369. Our rule is analogous to the Restatement rule which provides that a noncompetitive agreement is unreasonably in restraint of trade if '(a) the restraint is greater than is needed to protect the promisee's legitimate interest or (b) the promisee's need is outweighed by the hardship to promisor and the likely injury to the public.' Restatement (Second) of Contracts § 188(1).

Iowa Glass Depot, Inc. v. Jindrich, 338 N.W.2d 376, 381 (Iowa 1983); *See also*, *Tasco, Inc., v. Winkel*, 281 N.W.2d 280, 281 (Iowa 1979) ("We have recognized the validity of such a covenant 'if it is reasonably necessary for the protection of the employer's business and is not reasonably restrictive of employee's rights nor prejudicial to the public interest.'" (quoting *Ehlers v. Iowa Warehouse Co.*, 188 N.W.2d 368, 369 (Iowa 1971)); *Lamp,* 379 N.W.2d at 910 ("In deciding whether to enforce a restrictive covenant, the court will apply a three-pronged test: (1) Is the restriction reasonably necessary for the protection of the employer's business; (2) is it unreasonably restrictive of the employee's rights; and (3) is it prejudicial to the public interest?" (further citations omitted)).

"Moreover, the covenant must not be oppressive or create hardships on the employee out of proportion to the benefits the employer may be expected to gain." *Dental East, P.C. v. Westercamp*, 423 N.W.2d 553, 555 (Iowa Ct. App. 1988) (quoting *Ma & Pa, Inc. v. Kelly*, 342 N.W.3d 500, 502 (Iowa 1984)). "A restrictive covenant is strictly construed against the party seeking injunctive relief." *Board of Regents v. Warren*, No. 08-0017, 2008 WL 5003750, at *1, *3 (Iowa Ct. App. Nov. 26, 2008)(unpublished opinion)(further citation omitted). "The employer has the initial burden to show that enforcement of the covenant is reasonably necessary to protect its business." *Id.* at *4)(further citation omitted). While, "[t]he burden of proof that a contract is contrary to public policy is upon him who asserts it." *Cogley Clinic,* 112 N.W.2d at 682.

1) **There Was No Non-Compete or Confidentiality Agreement Between Curry's and Shafer**

Absent an enforceable non-compete agreement, Shafer would certainly be permitted to compete with Curry's. *Lemmon v. Hendrickson*, 559 N.W.2d 278, 280-281 (Iowa 1997) ("We note the Second Restatement of Agency which sets forth the expectations of an agent after termination of employment, as it relates to competition and solicitation of former customers: Unless it is otherwise agreed, after the termination of the agency, the agent: (a) has no duty not to compete with the principal... (Restatement (Second) of Agency § 396 (1958)."); *see also Kenyon & Landon, Inc. v. Business Letter, Inc.*, No.01-1386, 2002 WL 31309700, at *1, *4-5 (Iowa Ct. App. Oct. 16, 2002)(unpublished opinion) (affirming the trial court's jury instruction that "[u]nless it is otherwise agreed, an employee has no duty not to compete with his former employer.").

"In a breach-of-contract claim, the complaining party must prove: (1) the existence of a contract; (2) the terms and conditions of the contract; (3) that it has performed all the terms and conditions required under the contract; (4) the defendant's breach of the contract in some particular way; and (5) that plaintiff has suffered damages as a result of the breach." *Molo Oil Co. v. River City Ford Truck Sales, Inc.*, 578 N.W.2d 222, 224 (Iowa 1998). Curry's simply cannot prove the physical existence of a non-compete agreement entered into with Shafer. A signed non-compete or confidentiality agreement for Shafer are not in Curry's human resources files. Curry acknowledged that that he did not see Shafer such an agreement, nor has he seen a signed copy. Shafer testified that he was asked to sing an employment agreement when he returned to work for Curry's in 2010, but that he refused to sign one. Curry also sent a

letter/email to Shafer that references confidentiality and no-compete agreements. Shafer did not sign this letter/email. Nonetheless, Curry allowed Shafer to work for the company, and never asked Shafer about the agreements again. Because Curry's cannot establish the existence of a non-compete agreement, it most assuredly cannot sue Shafer for a breach of such an agreement.

2) **Ryner's Non-Compete Agreement With Curry's Was Not In Effect When Ryner Stopped Hauling For Curry's Because The Agreement Expired In December 2011**

In September 2008, Ryner formed RT and began hauling for Curry's under an Independent Contractor Operating Agreement (Exhibit A). The September 29, 2008, agreement did not include confidentiality or non-compete clauses. On December 29, 2008, Ryner entered into a subsequent Independent Contractor Operating Agreement with Curry's which included non-compete clauses (Exhibit 1). The agreements were required by law. Under both agreements, Ryner was working under Curry's authority and using Curry's Department of Transportation ("DOT") numbers.

In late 2009, Ryner began to haul under his own authority. There were no subsequent written agreements between Curry's and Ryner. At trial, Curry acknowledged that he was not aware of any agreement for any of RT's trucks other than the September 29, 2008 and December 29, 2008 Independent Contractor Operating Agreement. Additionally, he admitted that the contracts only reference one truck and that he did not have an agreement for each individual Ryner truck.

"Abandonment of a contract is the relinquishment, renunciation or surrender of a right." *In re Marriage of Christensen*, 543 N.W.2d 915, 918 (Iowa Ct. App. 1995)(citation omitted). "Whether or not an abandonment occurred depends upon the party's intent to abandon and acts

evidencing such an intent." *Id.* "The act of abandonment must be unequivocal and decisive." *Id.* "Abandonment of a valid contract may be accomplished by express agreement of the parties, or the parties, by conduct inconsistent with the continued existence of the original contract, may estop themselves from asserting any right thereunder." *Iowa Glass Depot, Inc.*, 338 N.W.2d at 380 (citation omitted). If there is no express agreement to abandon the contract, a court will "examine both the acts of the parties and the contract itself to determine whether the parties unequivocally and decisively relinquished their rights under the covenant." *Id.*

Here, the December 29, 2008 agreement does not contain an express agreement to abandon the contract. Therefore, a court will examine the parties' acts and the contract itself. From trial testimony, it is evident that once Ryner began hauling under his own authority and with his own DOT number, the relationship between Curry's and Ryner changed in various respects. Among the changes, the responsibility for fuel tax reporting changed; displaying Curry's placards was no longer required, just RT DOT numbers; DOT log books no longer had to be turned in to Curry's as this became Ryner's own responsibility; Curry's stopped providing liability insurance; the rate paid to Ryner changed from 75 percent to 80 percent; and, the compensation to the contractor was changed so that it had to be paid in up to 30 days, as opposed to 15. All significant changes. It is certainly reasonable to infer that these changes amounted to unequivocal and decisive relinquishments of the parties' rights under the September or December 2008 agreements.

Additionally, the December 2008 agreement was altered by hand so that the compensation from Curry's to Ryner was to be paid within 30 days, as opposed to 15 days. Under the DOT Federal Motor Carrier Safety Administration's regulations, Curry's was required

to pay Ryner within 15 days if the two parties were governed by a leasing operating agreement. 49 C.F.R. § 376.12(f). The change from 15 days to 30 days is further objective proof that the parties were not bound by the December 2008 agreement. Once Ryner began to haul under his own authority, the substantial changes in the relationship between Curry's and Ryner and the pay period alteration in the agreement show that the parties unequivocally and decisively abandoned the December 2008 agreement. Therefore, even if the covenant not to compete was reasonable and valid, the covenant expired on December 29, 2011, which is well before Ryner's alleged breaches in this matter. Paragraph 12(A) of Exhibit 1 notes, in part: "During the term of this agreement and for a period of two (2) years from the time of the termination of this agreement, Contractor shall not, directly or indirectly solicit or do business of a transportation nature with any of Carrier's customers who are serviced by Contractor as a result of this agreement as a result of this agreement unless otherwise agreed to in writing."

3) **Dotson Does Have Non-Compete And Confidentiality Clauses With Curry's**

Unlike Shafer and Ryner, it appears that Dotson was under non-compete and confidentiality clauses when he quit his operations manager position with Curry's in 2012. He became Curry's operation's manager in 2006. He signed an agreement with non-compete and confidentiality clauses on August 25, 2008. (Exhibit 3). Before that date, no one asked him to sign any non-compete or nondisclosure agreement during that time frame. While Dotson testified at trial that he was not aware of all of the pages in the agreement, the agreement itself shows that it contains 8 pages, and Dotson's signature is on page 8. The agreement itself shows Page 1 of 8, Page 2 of 8, etc., in the upper right-hand corner.

From 2006 to August 25, 2008, Dotson worked for Curry's without the restrictive

covenants. He performed the functions of an operations manager the same before and after he signed the August 25, 2008 agreement. Additionally, Curry's pricing and rates were the same before and after he signed the agreement. Dotson testified that he does not use anything that he learned about pricing from Curry's at his current position with RT. Regardless, as discussed below, Dotson's non-compete agreement is not enforceable.

4) **A Non-Compete Agreement Is Not Reasonably Necessary To Protect Curry's Business**

"In deciding whether to enforce a restrictive covenant, the court will apply a three-pronged test: (1) Is the restriction reasonably necessary for the protection of the employer's business; (2) is it unreasonably restrictive of the employee's rights; and (3) is it prejudicial to the public interest?"). *Lamp,* 379 N.W.2d at 910. "The employer has the initial burden to show that enforcement of the covenant is reasonably necessary to protect its business." *Dental East, P.C.*, 423 N.W.2d at 555. The Iowa Supreme Court has stated that

> reasonableness of the restraint and the validity of the covenant seldom depend exclusively on a single fact. Rather, all the facts must be considered and weighed carefully, and each case must be determined in its entire circumstances. Only then can a reasonable balance be struck between the interests of the employer and the employee. (. . .) Proximity to customers is only one aspect. Other aspects, including the nature of the business itself, accessibility to information peculiar to the employer's business, and the nature of the occupation which is restrained, must be considered along with matters of basic fairness.

Iowa Glass Depot, Inc., 338 N.W.2d at 382.

In *Iowa Glass Depot v. Jindrich*, the Iowa Supreme Court did not enforce a non-compete agreement. *Id* at 385. Among the several factors that the court considered was whether the employee was given a designated area in which he routinely serviced his employer's customers. *Id.* at 383. The court compared that case with other route cases and determined that although the

employee had contact with the employer's customers, the employer's business "did not lend itself to the type of close personal relationship with the customers that a normal route salesman ordinarily would develop." *Id.*

Here, Curry's bears the burden of showing that the enforcement of the restrictive covenants is necessary to protect its business. During trial, various witnesses stated that a variety of trucking companies haul for a particular customer. Customer names and rate prices are easy to obtain in the industry. In general, the deciding factors for customers are whether the price and service are adequate, not close personal relationships. In fact, Curry himself testified that he does not have customers that haul only with Curry's. He admitted that most customers do not bind themselves to one carrier, as it would prevent negotiating better rates. Therefore, the trucking industry does not possess the type of close personal relationships between customers and trucking businesses that a non-compete clause is meant to protect.

Additionally, Curry's treatment of different employees and agents shows that a non-compete clause is not necessary to protect its business. Curry's utilizes employee drivers, owner/operators who work under Curry's authority, and owner/operators who work under their own authority. Curry testified at trial that the employee drivers and owner/operators are not prohibited from disclosing the identity of customers. Additionally, there are no agreements between Curry's and its employees to prevent them from disclosing rates or going to work for a competitor. If a non-compete agreement was reasonably necessary to protect Curry's business, the company policy would reflect that necessity by requiring all employees to enter into a non-compete agreement with Curry's.

Similarly, Curry testified that not all owner/operators have to sign a non-compete

agreement if they are operating under their own authority. Namely, Curry's does not have written non-compete or non-solicitation agreements with Cook and Sons, P.J. Trucking, and Holstein. Additionally, Curry stated that all of these companies have access to Curry's rates and that nothing prevents them from telling others what Curry's charges its customers. Curry created a situation in which only certain owner/operators, like Ryner, were required to sign non-compete agreements. If a non-compete agreement was reasonably necessary to protect Curry's business, Curry's would require that all owner/operators be bound by such an agreement.

Also, the fact that most other trucking companies do not require their employees to sign restrictive covenants supports the proposition that such agreements are not reasonably necessary to protect Curry's business. At trial, Dotson testified that he was associated with the trucking industry for approximately 23 years and that none of his previous employers asked for a confidentiality agreement. Likewise, Cory Richardson testified that he has worked in the trucking industry for approximately 20 years, during which he worked for approximately 6 companies. No other employers had ever required Richardson to sign a non-compete agreement. Todd Kirchner also testified that he had worked for previous trucking employers who did not require him to sign a non-compete agreement.

(a) ***Customer contacts***

Iowa courts have not encountered a controversy where an employer trucking company has attempted to enforce a non-compete agreement against a driver or a dispatcher, as in the present case. However, the Missouri Court of Appeals has addressed such a case. In *Brown v. Rollet Bros. Trucking Company*, a plaintiff dispatcher signed a non-compete, confidentiality, and non-solicitation agreement with his former employers, one or more trucking companies who are

affiliated with each other, in which he agreed not to compete for 3 years after the end of his employment. *Brown v. Rollet Bros. Trucking Co.*, 291 S.W.3d 766, 771 (Mo. Ct. App. 2009). After resigning from the defendant companies, he began working as a dispatcher for another freight brokerage company which terminated his employment after an attorney for one of the defendant companies sent a letter to his new employer claiming that the plaintiff was violating his non-compete agreement. *Id.* The plaintiff brought a declaratory judgment action asking the court to declare that the non-compete and confidentiality agreement was unenforceable against him. *Id.*

The plaintiff was a dispatcher for the defendants.' *Id.* "When customers would call with a load to haul, they would often offer to pay a certain amount per ton for the haul. If the offered rate was the same or higher than the established rate on the defendant's rate sheet, plaintiff could accept it." *Id.* at 775. The court noted that the "[p]laintiff also testified that he was not aware of any customer or prospective customer who was willing to pay a higher rate to give business to defendants simply because plaintiff was the dispatcher setting up the haul." *Id.* The court also noted that "whoever answered the phone took the call, and customers never asked to speak to a particular dispatcher." *Id.* "No customers followed [the plaintiff] when he left defendants' employ." *Id.*

Under Missouri law, "non-compete restrictions are enforceable only to protect certain narrowly-defined and well-recognized interests, specifically, customer contacts and trade secrets." *Id.* at 773. The defendant trucking companies argued that the non-compete agreement "is enforceable to protect their customer contacts and goodwill because plaintiff had substantial contacts while employed by defendants. 'Customer contacts' is defined as the influence an

employee acquires over his or her employer's customers through personal contact." *Id.* at 774. "The quality, frequency, and duration of an employee's exposure to an employer's customers are crucial in determining the covenant's reasonableness." *Id.* (quoting *Healthcare Services of the Ozarks v. Copeland*, 198 S.W.3d 604, 611 (Mo. 2006). The court rejected the defendant companies' argument by stating that "[a]n employer must show that the employee had contacts of the kind enabling him to influence customers. (. . .) In other words, the opportunity for influencing customers must exist." *Id.* at 775. The court reasoned that the opportunity for influencing customers does not exist in the trucking "industry generally, and in defendants' business specifically, [because] the customer's decision to ship with a specific broker was wholly based on rates and was unconnected to the identity of the dispatcher who relayed the rates to the customer and set up the haul." *Id.* The court found that "defendants' brokerage business did not become associated in a customer's mind with plaintiff and plaintiff did not possess the degree of influence over any customers that would justify enforcement of the Agreement under a 'customer contacts' theory." *Id.* at 776.

Here, the facts are a bit different than in *Brown*, but the underlying rationale of that case supports the finding that Ryner, Dotson, and Shafer did not have an opportunity to influence customers. Unlike in *Brown*, Curry's assigned certain dispatchers and employees to certain customers. For example, Curry testified that Dotson was the main contact for Winegard at Curry's, while Dotson testified that Shafer was the main contact for that customer at Curry's. Additionally, unlike in *Brown*, some customers wanted specific drivers or owner/operators to haul their merchandise. Specifically, Shafer testified that Winegard wanted RT trucks to haul their loads because Winegard wanted to get the job done.

However, here, as in *Brown*, customers used more than one company to haul their freight. Additionally, the customers here often set the price that they were willing to pay for their freight to be hauled, and the trucking company had the option to accept the price or not. Lastly, this Court considers the Missouri Court of Appeals' rationale that the trucking industry is not the type of industry where the opportunity for influencing customers exists.

(b) ***Pricing information and customer lists***

Iowa courts have stated that "[i]n considering whether a restrictive covenant is reasonably necessary to protect an employer's business, we also look to whether the employee has obtained confidential knowledge and the nature of the business and the occupation." *Board of Regents*, No. 08-0017, 2008 WL 5003750, at *4. In *Titan International, Inc. v. Bridgestone Firestone North America Tire, LLC*, the United States District Court for the Southern District of Iowa considered whether the plaintiff's pricing, pricing strategies, and customer lists were trade secrets that were misappropriated by the defendants. *Titan Int'l, Inc. v. Bridgestone Firestone N. Am. Tire, LLC.*, 752 F.Supp.2d 1032 (S.D. Iowa 2010). In this diversity action, the court applied Iowa common and statutory law to grant the defendant's motion for summary judgment and dismissed the case. *Id.* at 1051.

"The elements of a claim of misappropriation of trade secret under the Iowa Uniform Trade Secrets Act and Iowa common law are practically indistinguishable." *Id.* at 1039. "There are three recognized prerequisites for relief based on the appropriation of a trade secret: (1) existence of a trade secret, (2) acquisition of the secret as a result of a confidential relationship, and (3) unauthorized use of the secret." *Lemmon v. Hendrickson*, 559 N.W.2d 278, 279 (Iowa 1997). The *Titan International* court held that the plaintiff "failed to demonstrate that its pricing

information constitutes a trade secret as that concept is recognized in the law." *Titan Int'l Inc.*, 752 F.Supp.2d at 1042. The court found that the plaintiff's "pricing and pricing strategy 'could properly be acquired' by others[;]" the "pricing and pricing strategies were known outside" the plaintiff's company; that "customer pricing information ultimately belonged to the customer and can be divulged by the customer to anyone if the customer is willing to provide that information[;]" and that the plaintiff's pricing strategy was not a static process. *Id.* at 1040-41. Specifically as to the plaintiff's pricing strategy being a non-static process, the court explained that the plaintiff "indicated that the pricing strategies vary depending on the customer's needs." *Id.* at 1041. Additionally, the court found that the plaintiff's customer lists did not constitute a trade secret "because that information was readily ascertainable in the marketplace[.]" *Id.* at 1044.

In the present case, Curry was unable to point to any evidence where the defendants used confidential information to solicit Curry's customers at trial. Curry acknowledged that that Dotson's Confidentiality Agreement spells out what confidential information means. "'Confidential information' means all data and information relating to the business and management of the Employer, including proprietary and trade secret technology and accounting records to which access is obtained by the Employee, including Work Product, Production Processes, Other Proprietary Data, Business Operations, Computer Software, Computer Technology, Marketing and Development Operations, and Customers..." Exhibit 3. Furthermore, the Agreement spells out what "Customers" means, namely, the "names of customers and their representatives, contracts and their contents and parties, customer services, data provided by customers and the type, quantity and specifications of products and services

purchased, leased, licensed or received by clients of the Employer." *Id.*

As in *Titan International*, the identity of Curry's customers was readily ascertainable in the marketplace. Several witnesses at trial testified that customer names were not confidential information. Additionally, Kimberly Theobald testified that the Prophecy project that Dotson was involved with entailed updating customer contact names, emails, phone numbers, fax numbers, and directions to their facilities. While Dotson's Confidentiality Agreement states that some of this information is confidential, this information is readily ascertainable in the marketplace for anyone who has access to the internet. Therefore, enforcement of the non-compete agreement is not reasonable because Curry's customer's identities are not confidential.

Additionally, like in *Titan International* and in *Brown*, the rates that Curry's charges its customers are not confidential. Curry testified that Curry's does not have a special formula to set its price. In fact, Dotson, and others, testified that rates are generally standard across the trucking industry. Several owner/operators who operate under their own authority, including Cook and Sons, P.J. Trucking, and Holstein, have access to Curry's rates. Curry's pricing strategy is not static because Curry testified that the amount that he will accept from a customer for a particular load will vary from day to day. Theobald testified that while she was in brokerage she used an internet truck stop rate feature which gave her the industry-wide standards. The enforcement of the non-compete agreement is simply not reasonably necessary to protect Curry's business.

In *Titan International*, the court also analyzed the extent to which the plaintiff attempted to protect its pricing information from disclosure. *Titan Int'l, Inc.* 752 F.Supp.2d at 1042. In that case, the plaintiffs argued that their measures were reasonable, and included "(1) requiring all employees to abide by the employee handbook and the provisions therein to keep company

information confidential, (2) using password protections, (3) marking 'confidential' on certain documents, and (4) keeping certain information, such as pricing for particular accounts, secret and only allowing specific employees access to that information." *Id.* The court found that the plaintiff's measures were "general corporate security measures and not specifically designed to protect pricing." *Id.*

Here, the record supports a finding that Curry's enacted less stringent security measures than in *Titan International.* Apart from asking some employees to sign a confidentiality agreement, Curry's did not protect its pricing information in any other way. In fact, Curry's did not require Ryner to sign such an agreement during his employment at Curry's prior to December 29, 2008. Curry also acknowledged that employee drivers are not prohibited from disclosing the identity of customers, and neither are owner/operators under their agreements. Furthermore, Curry allowed Shafer to work without a non-compete agreement after Shafer refused to sign one, and Shafer had access to the same information before and after refusing to sign such an agreement.

Because Curry's cannot prove that a non-compete agreement is reasonably necessary to protect its business, the Court does not need to determine whether the non-compete agreement is unreasonably restrictive of the employee's rights and whether it is prejudicial to the public interest.

B) AGENCY LAW ALLOWS DOTSON, SHAFER, AND RYNER TO TAKE WITH AND USE GENERAL KNOWLEDGE THEY HAVE OBTAINED THROUGH THEIR PAST EMPLOYMENT AND EXPERIENCES IN THE TRUCKING INDUSTRY

Previously, the Iowa Court of Appeals has sanctioned a district court's jury instruction allowing the jury to find that an employee is allowed to take certain knowledge with him once he leaves his former employer. *Kenyon & Landon, Inc.*, No. 01-1386, 2002 WL 31309700, at *4. The relevant portion of the jury instruction stated:

> An employee is entitled to take with him his aptitude, skill, dexterity, manual and mental ability and such other general knowledge obtained in the course of employment. Unless it is otherwise agreed, an employee has no duty not to compete with his former employer. The employee is entitled to use general information concerning the method of business of his former employer and *the names of customers retained in his memory, if not acquired in violation of his duty as an agent.*

Id. (emphasis in original). Additionally, the United States District Court for the Northern District of Iowa has stated that there is a "general agreement of the courts that, absent a contractual limitation, once an employment relationship comes to an end, the employee is at liberty to solicit his former employer's customers and employees, subject to certain restrictions concerning the misuse of his former employer's trade secrets and confidential information." *Central States Industrial Supply, Inc. v. McCullough*, 279 F.Supp.2d 1005, 1044 (N.D. Iowa 2003). Lastly, the Iowa Supreme Court has stated that

> Although an employer has an interest in protecting his business from an employee's use of personal influence or peculiar knowledge gained in employment, the employer has no right to unnecessarily interfere with the employee following any trade or calling for which he is fitted and from which he may earn his livelihood. An employee cannot be precluded from exercising the skill and general knowledge he has acquired or increased through experience or even instruction while in the employment.

Iowa Glass Depot, Inc., 338 N.W.2d at 383.

Here, Curry's has not presented evidence that Dotson, Shafer, and Ryner learned anything other than general knowledge of the trucking industry while they were employed with Curry's.

Additionally, each defendant has been in the trucking industry for many years. For example, Dotson testified that he had been in the trucking industry for approximately 23 years. In fact, he testified that before coming to Curry's he had already learned the logistics of trucking, pricing, where the better paying loads were, and customer relations. Therefore, Dotson, Shafer, and Ryner were allowed to use general knowledge and experience that they had learned in the trucking industry during their employment with RT.

C) DOTSON, SHAFER, AND RYNER DID NOT ENGAGE IN UNLAWFUL BEHAVIOR AND THEREFORE CURRY'S CONSPIRACY CLAIMS FAIL AS A MATTER OF LAW

"Under Iowa law, '[a] conspiracy is a combination of two or more persons by concerted action to accomplish an unlawful purpose, or to accomplish by unlawful means some purpose not in itself unlawful.'" *Wright v. Brooke Group, Ltd.*, 652 N.W.159, 171 (Iowa 2002) (quoting *Basic Chems., Inc. v. Benson*, 251 N.W.2d 220, 232 (Iowa 1977)). "Civil conspiracy is not in itself actionable; rather it is the acts causing injury undertaken in furtherance of the conspiracy [that] give rise to the action." *Id.* at 172 (quoting *Basic Chems., Inc.* 251 N.W. 2d at 233). "Thus, conspiracy is merely an avenue for imposing vicarious liability on a party for the wrong conduct of another with whom the party has acted in concert." *Id.* "Thus, the wrongful conduct taken by a co-conspirator must itself be actionable." *Id.* "[I]f the acts alleged to constitute the underlying wrong provide no cause of action, then neither is there a cause of action for the conspiracy itself." 16 Am.Jur.2d *Conspiracy* § 50, at 275-76 (1998). "The burden of proof is on the plaintiff to prove misconduct; suspicion is not enough." *Bump v. Stewart, Wimer & Bump, P.C.*, 336 N.W.2d 731, 737 (Iowa 1983).

(a) *Curry's assertion that Ryner and RT received gravy loads*

During trial, Curry it was established that high-paying haul jobs and routes were called gravy jobs/loads. Curry testified that in early 2012, the company's freight was not being distributed equally and that he told Dotson, Shafer, and Kirchner that the gravy jobs could not all go to RT. He testified that this directive was followed for a short time, but that he received other complaints that RT was getting the better jobs and routes. However, Curry's did not provide any tangible or objective evidence to prove this assertion at trial. On the other hand, Shafer and Dotson testified that they did not funnel or direct higher paying jobs to RT. Shafer testified that if the customers wanted RT he would usually do that to keep them happy, not to benefit RT. In fact, he stated that Terry Wagner of Winegard, one of Curry's customers, wanted RT trucks to do Winegard's hauls while RT still hauled for Curry's in order to get the job done. The record supports a finding that Ryner, Shafer, and Dotson did not engage in tortious or unlawful activity in regards to the so-called "gravy" loads.

(b) ***The Prophecy system***

Dotson testified that Curry directed him to use the Prophecy system more efficiently for the benefit of Curry's. Theobald also testified that the Prophecy system improves the efficiently of the office, and that Curry's has gained a benefit from the update of that system. Curry's has not presented any objective evidence that Dotson committed any unlawful or tortious act involved with this update.

(c) ***The fuel surcharge issue***

According to Traci Hook, in June of 2012 Dotson asked her if she knew how to print a list with all of the customer contact information. She testified that she did not know how to do it

and referred Dotson to Scott Richardson. Dotson also wanted to know if she knew how to print out a customer rate schedule. Per Hook, Dotson also asked her for the matrix and web site she used to calculate Curry's fuel surcharge rate. Hook testified that she did not share this information with competitors. She also indicated that the matrix belonged solely to Curry's. However, there was no evidence to suggest that this information was used in any unlawful or tortious way.

(d) ***Dotson's phone***

Curry testified that Dotson returned the company phone and laptop when he quit. However, he testified that the phone was wiped clean when it was returned. Dotson testified that he merely reset the factory setting on his phone because he had a Facebook account and received personal calls on that phone. He simply used restore factory settings so that no personal information would be left on the phone. Dotson noted that he is not a big tech guy. He also pointed out that all the information on the phone was on the Prophecy software. This act was not tortious or illegal, particularly since the record does not reflect that Curry's had a company policy that prohibited an employee from restoring his phone to the factory setting.

(e) ***Ryner, Dotson, and Shafer's conduct before leaving Curry's employment***

The Iowa Supreme Court has stated that

> An insightful analysis of whether mere preparation to form a competing business organization is actionable as a breach of fiduciary obligation is found in *Cudahy Co. v. American Laboratories, Inc.*, 313 F.Supp. 1339, 1346 (D.Neb.1970), and *Bancroft-Whitney Co. v. Glen*, 64 Cal.2d 327, 49 Cal.Rptr. 825, 411 P.2d 921, 936 (Cal. 1966). Both cases conclude that such conduct is not actionable unless it is shown that something in the preparation to compete produced a discreet harm to the former business beyond the eventual competition that results from the preparation. We accept that conclusion as a reasonable approach to the problem.

Midwest Janitorial Supply Corp. v. Greenwood, 629 N.W.2d 371, 376 (Iowa 2001).

Here, there were several meetings between Shafer, Ryner, and Dotson while they were all employed or associated with Curry's, including a meeting at Perkins Restaurant in April 13, 2012. However, Curry testified that he is unaware of any evidence that Ryner used any confidential information from Curry's. According to Jason Curry, Curry's Transportation now has 120 employees. Curry's has backhoe, septic and repair facilities, as well as a contract with Freightliner. Curry acknowledged that RT does not have any of these operations, or a brokerage facility similar to the one that Curry's has. In 2012 Curry's Transportation had 19 million dollars in sales. This was higher than 2011, and 2011's figures were higher than those in 2010. Curry acknowledged that the company has added trucks, replaced older units, and added a couple of drivers since the defendants left its employ. He admitted that he has no knowledge of damage defendants have caused to his business. Curry acknowledged that the number of loads were comparable to what they were when the defendants left. Curry admitted that he wants to shut down RT. Since Curry's is unable to show a discreet harm to Curry's from Dotson, Ryner, or Shafer's conduct before leaving Curry's, their conduct was neither unlawful or tortious.

D) CURRY'S INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONSHIPS CLAIMS FAIL AS A MATTER OF LAW

Iowa law recognizes two separate claims for intentional interference with business relationships: intentional interference with contract and intentional interference with prospective business advantage. *Nesler v. Fisher and Co., Inc.*, 452 N.W.2d 191, 198-99 (Iowa 1990).

1) Intentional Interference With Contract

"Intentional interference with a contract requires proof that (1) plaintiff had a contract with a third party; (2) defendant knew of the contract; (3) defendant intentionally and improperly interfered with the contract; (4) the interference caused the third party not to perform, or made performance more burdensome or expensive; and (5) damage to the plaintiff resulted." *Burke v. Hawkeye Nat. Life Ins. Co.*, 474 N.W.2d 110, 114 (Iowa 1991).

Here, Curry's has failed to prove that it has a contract with any of Curry's customer. In its Post-Trial Brief, Curry's alleges that Dotson intentionally interfered with Curry's contract with RT. Curry's Post-Trial Brief at 12. However, Curry's has not presented any contract apart from the December 29, 2008 agreement between Curry's and RT's one truck. Also, Curry's alleges that RT intentionally interfered with Curry's contract with Dotson. *Id.* at 18. The court sees little evidence of that, and no evidence of damage to Curry's even if the allegation were true. Curry testified that he does not have any customers that haul only with Curry's. Moreover, Curry acknowledged that his company and his competitors often worked together to haul loads for customers. Curry's did not introduce any evidence at trial that Dotson, Ryner, or Shafer intentionally and improperly interfered with Curry's contract with a third party, nor that the interference caused the third party not to perform, or made performance more burdensome or expensive. Therefore, Curry's has not proved its claim of intentional interference with contract against Ryner, Dotson, or Shafer.

2) **Intentional Interference With Prospective Business Advantage**

The Iowa Supreme Court has stated that in order to prove intentional interference with prospective business advantage,

> The tort requires [the] plaintiff to prove the following by a preponderance of the evidence: 1. The plaintiff had a prospective contractual relationship with a third person. 2. The defendant knew of the prospective relationship. 3. The defendant intentionally and improperly interfered with the relationship in one or more particulars. 4. The interference caused either the third party not to enter into or to continue the relationship or that the interference prevented the plaintiff from entering into or continuing the relationship. 5. The amount of damages.

Tredrea v. Anesthesia & Analgesia, P.C., 584 N.W.2d 276, 283 (Iowa 1998) (quoting *Willey v. Riley*, 541 N.W.2d 521, 526-27 (Iowa 1995)). "Proof of intentional interference with a *prospective* contract or business relationship essentially calls for the evidence on the same elements [as intentional interference with contract] relative to *future* business." *Burke*, 474 N.W.2d at 114. "The primary distinction between the two causes of action is the nature and degree of proof required on the element of motive. In a claim of intentional interference with a prospective business advantage, plaintiff must prove that the defendant intended to financially injure or destroy the plaintiff." *Id.* "In cases of interference with existing contracts, proof of such purpose is not essential." *Id.* Additionally, "[i]f a defendant acts for two or more purposes, his improper purpose must predominate in order to create liability" in an intentional interference with prospective business advantage claim. *Tredrea*, 584 N.W.2d at 283 (quoting *Willey*, 541 N.W.2d 526-27).

Here, Curry's failed to prove by a preponderance of the evidence that Ryner, Dotson, or Shafer intentionally or improperly interfered with Curry's relationship with a third party. While the record holds some evidence that Dotson spoke with several of Curry's customers about Dotson leaving Curry's, this evidence does not amount to an intention to financially injure or destroy Curry's.

Additionally, Curry's failed to show that any alleged intentional or improper interference

by Ryner, Dotson, or Shafer's caused either a third party not to enter into or to continue the relationship with Curry or that the interference prevented Curry from entering into or continuing the relationship. While Curry testified that several trucking companies have either stopped or reduced their hauling with Curry's, Curry's has not shown that this is due to any intentional or improper interference on the part of Ryner, Dotson, or Shafer. Curry's has not met its burden in regards to the third, fourth elements of the tort of intentional interference with prospective business advantage. In addition, Curry's most assuredly has not shown that the defendants "intended to financially injure or destroy the plaintiff." In fact, nothing of the sort was demonstrated. Therefore, Curry's intentional interference with business relationships claims fail as a matter of law.

Given the above, there is no need for the court to consider plaintiff's request for injunctive relief.

RULING

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff's Petition is DENIED in its entirety.

IT IS FURTHER ORDERED that court costs are assessed against Plaintiff.

The Clerk shall E-mail a copy of this Ruling to counsel of record.

Dated this 27th day of August, 2013.

Joel W. Barrows
District Court Judge