

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BRIGHTSTAR FRANCHISING, LLC,

Plaintiff,

v.

**EPN ENTERPRISES, LLC
and EDWARD P. NAVALES**

Defendants.

Case No. 14-cv-00838

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff BrightStar Franchising, LLC (“BrightStar”), for its complaint against defendants EPN Enterprises, LLC (“EPN”) and Edward P. Navales (“Navales”), states as follows:

INTRODUCTION

1. Defendant EPN is a former BrightStar franchisee that operated four franchised BrightStar agencies providing home health care services pursuant to written franchise agreements with BrightStar. Defendant Navales is EPN’s principal and the guarantor of its obligations under the franchise agreements.

2. After EPN committed repeated defaults of its franchise agreements, BrightStar terminated the franchise agreements for cause. This action arises out of EPN and Navales’s failure to comply with their post-termination obligations under EPN’s franchise agreements and Navales’s guarantees.

PARTIES

3. Plaintiff BrightStar Franchising, LLC is an Illinois limited liability company with its principal place of business in Gurnee, Illinois. Its sole member is a Delaware corporation with its principal place of business in Gurnee, Illinois.

4. Defendant EPN Enterprises, LLC is a Nevada limited liability company with its principal place of business in Antioch, California.

5. Defendant Edward P. Navales is a citizen and resident of the State of California and the sole member of EPN.

JURISDICTION AND VENUE

6. The Court has original subject matter jurisdiction of this action under 28 U.S.C. § 1332 in that this is a civil action between citizens of different States where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

7. Venue is proper in this judicial district under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this judicial district and because defendants expressly consented to the jurisdiction and venue of this Court in the written franchise agreements.

FACTUAL BACKGROUND

8. BrightStar is engaged in the highly-competitive business of providing a full range of home health care and nursing services to the general public across the country. BrightStar's services are distributed throughout the United States through authorized BrightStar franchisees who operate their franchised agencies pursuant to written agency franchise agreements with BrightStar.

9. Pursuant to these written agency franchise agreements BrightStar grants its franchisees the right to use the BrightStar names and marks, its proprietary and confidential methods and procedures for the operation of medical staffing services agencies, including its trade secrets, guidelines for providing personalized, domestic care services, a proprietary business system, and other proprietary and confidential materials and information relating to the establishment and operation of a franchised BrightStar agency (together, BrightStar's "Confidential Information"), as well as its operations manuals containing much of the Confidential Information (the "Operations Manuals"), all of which BrightStar and its affiliates have developed at great effort and expense and all of which together affords BrightStar and its authorized agencies a tremendous competitive advantage in the home health care industry.

EPN's Agency Franchise Agreements

10. On July 17, 2009, November 2, 2009, February 20, 2010 and February 28, 2011, BrightStar, as franchisor, entered into written agency franchise agreements with EPN, as franchisee, pursuant to which BrightStar granted EPN a limited license to operate BrightStar agencies in Fairfield, Sacramento, Antioch and Concord, California, each for a ten year term.

11. Navales personally guaranteed EPN's obligations under each of the franchise agreements.

12. BrightStar at all times fully performed all of its obligations under the franchise agreements.

Defendants' Post-Termination Obligations

13. Defendants acknowledged and agreed that, as BrightStar franchisees, they would receive, and they in fact received, BrightStar's Confidential Information and Operations Manuals for use solely in connection with the operation of their franchised BrightStar agencies.

Defendants agreed not to use or to disclose BrightStar's Confidential Information or Operations Manuals other than in connection with the operation of an authorized BrightStar agency and as expressly authorized under the franchise agreements.

14. In each of the franchise agreements EPN and Navales agreed that, upon termination of the franchise agreement, they would immediately cease using BrightStar's Confidential Information and Operations Manuals and return those materials to BrightStar, and assign to BrightStar all telephone numbers used in connection with the operation of their former BrightStar agencies.

15. In fact, Exhibit I to each of the franchise agreements includes a written Conditional Assignment of Franchisee's Telephone Numbers providing that upon termination of the franchise agreement, all telephone and facsimile numbers shall be assigned to BrightStar.

16. The Franchise Agreements further provide that if BrightStar incurs any damages, costs, and expenses, including reasonable attorneys' fees, as a result of any default or termination on the part of EPN, that EPN shall pay such damages, costs, and expenses to BrightStar promptly.

Termination of the Franchise Agreements

17. On May 7, 2013, BrightStar notified EPN that it was in default of the franchise agreements for failing to provide bank statements to BrightStar as required under the franchise agreements. The May 7, 2013 notice demanded that EPN cure its default and informed it that failing such cure, BrightStar might terminate the Franchise Agreements for cause.

18. On October 3, 2013, BrightStar again notified EPN that it was in default of the franchise agreements, this time for failing to maintain its mandatory Joint Commission

Accreditation. The October 3, 2013 notice demanded that EPN cure its default and informed it that failing such cure, BrightStar might terminate the franchise agreements for cause.

19. On November 20, 2013, BrightStar yet again notified EPN that it was in default of the franchise agreements, this time for failing to maintain its required insurance coverage in full force and effect. The November 20, 2013 notice demanded that EPN cure its default and that failing such cure, BrightStar might terminate the franchise agreements for cause.

20. Based on EPN's repeated defaults, on December 5, 2013, BrightStar notified EPN that BrightStar was invoking its right to terminate the franchise agreements for cause based on EPN's repeated breaches.

21. The notice reminded EPN and Navales of their post-termination obligations under the franchise agreements and Navales's guarantees, including their obligations to cease using BrightStar's Confidential Information and Operations Manuals, to return those materials to BrightStar, and to transfer to BrightStar the telephone numbers used in connection with EPN's former franchised BrightStar agencies.

**Defendants' Failure to Comply
With Their Post-Termination Obligations**

22. Notwithstanding termination of the franchise agreements and BrightStar's demand that they comply with their post-termination obligations, EPN and Navales have failed and refused to comply with their post-termination obligations.

23. Instead, EPN and Navales have simply changed the name of their former BrightStar agencies but continue to operate their agencies in competition with BrightStar and its authorized franchisee using BrightStar's Confidential Information and Operations Manuals, and using the same telephone number they used in connection with the operation of their former

franchised BrightStar agencies in order to divert to themselves calls intended for an authorized BrightStar agency and thereby to convert those business opportunities.

24. BrightStar, both directly and through counsel, has demanded that EPN and Navales honor their contractual commitments, but defendants have failed to and refuse to do so.

COUNT I - UNFAIR COMPETITION

25. BrightStar repeats and realleges ¶¶ 1 through 24 of its Complaint as and for this ¶ 25, as if fully set forth herein.

26. Defendants' use of BrightStar's Confidential Information and Operations Manuals in connection with their operation of a competing home health care business constitutes unfair competition.

27. As a direct and proximate result of defendants' unfair competition, BrightStar has been and, unless defendants' unfair competition is enjoined, is likely to continue to be, substantially injured by defendants' misconduct, including but not limited to the diminution in the value of its Confidential Information and Operations Manuals, and loss of its competitive advantage, among other irreparable harms.

28. BrightStar has no adequate remedy at law because the BrightStar Confidential Information and Operations Manuals are unique, were developed at great expenses and effort, and afford BrightStar and its authorized franchisees a competitive edge that is lost if defendants are permitted to continue to use them, none of which can be quantified and for which monetary damages alone cannot fully and completely compensate BrightStar.

29. Unless enjoined by the Court, defendants will continue to compete unfairly with BrightStar, to BrightStar's irreparable injury. This threat of future injury to BrightStar and its

business requires that injunctive relief issue to prevent defendants' continued unfair competition, and to ameliorate and mitigate BrightStar's injuries.

COUNT II - BREACH OF CONTRACT: FRANCHISE AGREEMENTS

30. BrightStar repeats and realleges ¶¶ 1 through 24 of its Complaint as and for this ¶ 30, as if fully set forth herein.

31. Defendant EPN's failure and refusal to comply with its post-termination obligations under the franchise agreements, including the obligations not to use or disclose BrightStar's Confidential Information or Operations Manuals, and to assign to BrightStar the telephone numbers used in connection with its former BrightStar agencies, constitute material breaches of the franchise agreements.

32. As a result of EPN's continuing breaches, BrightStar has suffered and will continue to suffer actual, substantial, and irreparable harm, including but not limited to the diminution in the value of its Confidential Information and Operations Manuals, and loss of its competitive advantage, among other irreparable harms.

33. BrightStar has no adequate remedy at law because the BrightStar Confidential Information and Operations Manuals are unique, were developed at great expenses and effort, and afford BrightStar and its authorized franchisees a competitive edge that is lost if defendants are permitted to continue to use them, none of which can be quantified and for which monetary damages alone cannot fully and completely compensate BrightStar.

34. Unless enjoined by the Court, EPN will continue to use BrightStar's Confidential Information and Operations Manuals, to refuse to return those to BrightStar, and to refuse to assign to BrightStar the telephone numbers used in connection with the operation of its former franchised BrightStar agencies. This threat of future injury to BrightStar and its business

requires that injunctive relief issue to prevent EPN's continued misconduct, and to ameliorate and mitigate BrightStar's injuries.

COUNT III – BREACH OF CONTRACT: GUARANTEES

35. BrightStar repeats and realleges ¶¶ 1 through 24 of its Complaint as and for this ¶ 35, as if fully set forth herein.

36. Defendant Navales's failure and refusal to comply with the post-termination obligations under the franchise agreements, including the obligations not to use or disclose BrightStar's Confidential Information or Operations Manuals, and to assign to BrightStar the telephone numbers used in connection with its former BrightStar agencies, constitute material breaches of his guarantees of the franchise agreements.

37. As a result of Navales's continuing breaches, BrightStar has suffered and will continue to suffer actual, substantial, and irreparable harm, including but not limited to the diminution in the value of its Confidential Information and Operations Manuals, and loss of its competitive advantage, among other irreparable harms.

38. BrightStar has no adequate remedy at law because the BrightStar Confidential Information and Operations Manuals are unique, were developed at great expense and effort, and afford BrightStar and its authorized franchisees a competitive edge that is lost if defendants are permitted to continue to use them, none of which can be quantified and for which monetary damages alone cannot fully and completely compensate BrightStar.

39. Unless enjoined by the Court, Navales will continue to use BrightStar's Confidential Information and Operations Manuals, to refuse to return those to BrightStar, and to refuse to assign to BrightStar the telephone numbers used in connection with the operation of EPN's former franchised BrightStar agencies. This threat of future injury to BrightStar and its

business requires that injunctive relief issue to prevent Navales's continued misconduct, and to ameliorate and mitigate BrightStar's injuries.

ARBITRATION

40. The franchise agreements between BrightStar and EPN contain arbitration provisions in which the parties agreed to submit claims or disputes – except for those seeking preliminary and permanent injunctive relief or specific performance – to binding arbitration.

41. In this action, plaintiffs seek only injunctive relief to enjoin defendants' misconduct as set forth in this Complaint. BrightStar is contemporaneously filing an arbitration demand seeking damages caused by defendants' breaches of the franchise agreements and Navales's guarantees.

PRAYER FOR RELIEF

WHEREFORE, BrightStar respectfully prays for the following relief against defendants, jointly and severally:

- A. A preliminary and permanent injunction ordering defendants, and each of them, and their respective agents, servants and employees, and those people in active concert or participation with them, immediately to (1) return to BrightStar all of its Confidential Information and Operations Manuals, (2) take all steps necessary to assign to BrightStar or its designee all of the telephone numbers used in connection with the operation of their former franchised BrightStar agencies, (3) comply with all of the remaining post-termination obligations set forth in the franchise agreements, and (4) cease any and all use of BrightStar's Confidential Information and Operations Manuals;

- B. An order that defendants file with the Court and serve upon BrightStar and its counsel within ten (10) days after entry or any injunction or order issued herein, a written report, under oath, setting forth in detail the manner in which they have complied with such injunction or order;
- C. An award of the costs and expenses, including reasonable attorneys' fees and costs, incurred by BrightStar in connection with this action; and
- D. Such other and further relief as the Court deems just and proper.

Dated: February 6, 2014

Respectfully submitted,

BRIGHTSTAR FRANCHISING, LLC

By: /s/ Fredric A. Cohen
One of its Attorneys

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