

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

LIFE SPINE, INC., a Delaware Corporation,

Plaintiff,

v.

MICHAEL BUTLER, an individual,

Defendant.

Case No. 2025 CH 06287

Hon. Thaddeus L. Wilson

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Defendant Michael Butler files this Opposition to *Plaintiff’s Emergency Motion for Temporary Restraining Order and Preliminary Injunction*. (the “Motion”).

INTRODUCTION

At the outset, there is a jurisdictional and venue issue that Plaintiff nowhere addresses.¹ Plaintiff relies on its 2020 employment agreement with Mr. Butler as the basis for this Court’s jurisdiction and venue in Cook County. However, that employment agreement was terminated when Plaintiff terminated Mr. Butler’s employment as Chief Executive Officer (“CEO”) in mid-March 2025. There is no survival clause in that employment agreement providing that any term, such as the term requiring return of property, survived the termination of Mr. Butler’s employment and that agreement. Additionally, Mr. Butler does not reside in Cook County (nor does Life Spine), and Mr. Butler never consented to personal jurisdiction. With no surviving obligations/rights under the employment and lacking a basis to hail Mr. Butler into Cook County, Plaintiff cannot turn to this Court for relief. Plaintiff must go elsewhere or rely on another basis to seek its requested relief.

¹ Because of this jurisdictional and venue issue, Plaintiff’s appearance in this matter is expressly limited and done solely to file this Opposition. For the avoidance of doubt, Plaintiff and his counsel are not making a general appearance in this matter.

Should this Court address the merits of Plaintiff's argument, the TRO should be denied because Plaintiff violates this Court's Standing Order. That Order provides as follows:

True emergencies are **rare**. All emergency motions must state the basis for the movant's claim of an emergency. The movant must demonstrate that the situation was **not reasonably foreseeable** and could lead to irreparable harm, if relief is not obtained prior to the time that the motion can be heard on the Court's regular motion call. **Matters that have become urgent by reason of a party's failure to seek timely relief do not constitute emergencies.**

Standing Order, § III(D)(1) (emphases added).

Plaintiff's Motion violates this clear and unequivocal standard. Counsel for Plaintiff and Defendants were discussing Gizmo, Zibo Dante, and Plaintiff's claims about proprietary information back in April and early May 2025. But Plaintiff's counsel stopped engaging, sat on its rights, and now faked this emergency to get this Court's attention.

As the Court will see from this Opposition, Mr. Butler's Certification and supporting Exhibits, Plaintiff chose to not engage with Defendant's counsel about Gizmo and Life Spine's property for at least the last four weeks. In fact, the underlying facts and circumstances that Plaintiff complains about have not changed since at least early May 2025 (if not earlier). Accordingly, this matter squarely fits within the definition of a non-emergency. Any alleged urgency here is due to Plaintiff's inaction. Plaintiff's tactics should not be rewarded.

Pulling back the curtain on Plaintiff's allegations, this Court will see that Plaintiff's lawsuit and its requested TRO represent the latest act of retaliation against Mr. Butler after he sought to vindicate his rights in court. On April 1, 2025, Mr. Butler commenced a lawsuit (the "Lender Liability Lawsuit")² against Plaintiff's lenders (the "Lenders") and certain of its directors (the

² The Lender Liability Lawsuit is captioned *Michael S. Butler et al. v. St. Cloud Capital Partners III, SBIC, LP, et al.*, Case No. 2025 CH 03730. Your Honor was initially the presiding Judge in that case. A true and correct copy of the Verified Complaint filed in the Lender Liability Lawsuit

“Conflicted Directors”) seeking declaratory, injunctive and monetary relief based on claims for, among other things, breaches of fiduciary duty, aiding and abetting breaches of fiduciary duty, conversion and constructive fraud. These claims arise out of the Lenders’ wrongful and egregious actions since they seized control of Plaintiff’s Board of Directors in November 2024. Following that lawsuit, one of the Lenders filed a lawsuit against Gizmo claiming that Gizmo is responsible for Life Spine’s \$25 million loan, which is in default.³ The Lenders are also seeking to foreclose on Gizmo’s assets. The pattern of retaliation against Mr. Butler orchestrated by the Lenders is clear.

On the merits, Plaintiff has not come close to demonstrating that a TRO should issue. Plaintiff has not established that (a) it has a right that needs to be protected, (b) it will likely succeed on the merits of its claims, or (c) it will be irreparably harmed. Plaintiff’s unverified complaint, along with the barebones generic declarations provided do not justify the relief Plaintiff seeks.

Mr. Butler will first address the alleged theft of trade secrets, which lacks merit.

On page 11 of the Motion, Plaintiff buried a critical fact. Mr. Butler is currently (and has been for over a decade) a member of Plaintiff’s Board of Directors. Mr. Butler is also the majority shareholder in Life Spine. Given his status, Mr. Butler is entitled to be in possession of Plaintiffs’ confidential, proprietary information, including any trade secrets.

Moreover, Plaintiff nowhere comes close to demonstrating that Mr. Butler has misappropriated anything. As stated in his Certification, Mr. Butler is not improperly in possession of Plaintiff’s trade secrets, nor is he at risk of using any trade secrets against Life Spine. What Mr.

is attached hereto as **Exhibit A**. Moments before this Court was scheduled to hear Mr. Butler’s request for a TRO in that lawsuit, one of the defendants filed a motion to substitute judge. Judge Joel Chupack is now presiding over the Lender Liability Lawsuit.

³A true and correct copy of the second complaint, captioned *St. Cloud Capital Partners III, SBIC, L.P. v. Gizmo Medical, LLC and Michael S. Butler*, Case No. 2025 L 005934, is attached hereto as **Exhibit B**. Judge Joel Chupack is presiding over this lawsuit as well.

Butler does possess is two Life Spine laptops, which Plaintiff never asked to be returned and which Mr. Butler believed he could retain as a director on Plaintiff's Board (and as the majority shareholder of the company). Had Life Spine simply responded to Mr. Butler's lawyer about the return of property, Mr. Butler would have done so weeks ago. To avoid any issue now, Mr. Butler will do so through counsel.

Plaintiff has not carried its burden of demonstrating that Plaintiff has been deprived of any business opportunity in any way. Moreover, there is no evidence offered by Plaintiff—aside from vague and generic allegations—that Mr. Butler has, or will pass any information on to competitors. Mr. Butler is currently a Director of Plaintiff and he knows full well what his fiduciary duties are. He has faithfully performed those duties and will continue to do so.

Plaintiff's arguments regarding Gizmo and Zibo Dante also do not warrant a TRO.

Mr. Butler owns Gizmo outright. Gizmo is a majority (80%) owner of Zibo Dante. In light of these uncontroverted facts, Mr. Butler cannot tortiously interfere with his own companies' business relationships with a customer (Life Spine). When Plaintiff was told that Gizmo was a majority owner of Zibo Dante earlier this spring, Plaintiff told Zibo Dante and Gizmo that Plaintiff would not move forward with instrumentation. Yet now Plaintiff changes its tune in an effort to manufacture a TRO.

Plaintiff's business relationship with Gizmo and Zibo Dante is not based on a written agreement. Instead, there were a series of purchase orders placed. Plaintiff placed orders with Gizmo. Zibo Dante completed those orders in China. Gizmo then caused the products to be delivered to Plaintiff. These transactions were the way Plaintiff, Gizmo and Zibo Dante have done business for years. In these circumstances, neither Gizmo nor Zibo Dante is obligated to continue to supply Life Spine. Plaintiff cannot credibly dispute this.

Plaintiff makes vague references to “onerous demands” imposed recently, but Plaintiff has not told this Court the full story. Plaintiff nowhere mentions the fact that it owes Gizmo and Zibo Dante more than \$2 million for instrumentation provided between 2023 and 2025.

In addition to hiding that seven-figure open accounts receivable, Life Spine fails to acknowledge President Trump’s imposition of 125% tariffs on China imports. In April 2025—around the same time that the Lenders formally directed Plaintiff that the Lenders must receive any payments owed to Gizmo—***Plaintiff*** told Gizmo and Zibo Dante to no longer continue the importation process because of tariffs. Again, these events began over two months ago, demonstrating that no emergency exists.

Finally, there is nothing stopping Plaintiff from using other vendors to obtain surgical instruments it may need. Zibo Dante is not the only manufacturer of these instruments, and Plaintiff is free to contract with someone else.

Accordingly, in this case, no “exceptional circumstances” are present. No emergency exists. And Plaintiff’s conclusory and self-serving allegations fail to establish necessary elements for obtaining a TRO. Plaintiff’s Motion should therefore be denied, and no TRO should issue.

RELEVANT BACKGROUND

A. Mr. Butler, Gizmo and Zibo Dante

Mr. Butler formed Gizmo Medical, LLC (“Gizmo”) as a limited liability company under the laws of Delaware, and it has operated pursuant to a written Operating Agreement since January 2009. *See* Certification of Michael Butler (“Butler Certification” or “Butler Cert.”), ¶ 2. Mr. Butler is and has been the sole member, President and CEO of Gizmo since it was formed. *Id.*, ¶¶ 2-3.

Mr. Butler made a capital contribution of \$400,000—from his own funds and not from any of Plaintiff’s fund—to Gizmo upon its formation. *Id.*, ¶ 3. Plaintiff has never made a capital

contribution to Gizmo, and Mr. Butler has never diverted any of Plaintiff's funds to make Mr. Butler's capital contribution. *Id.*

Since 2014, Gizmo has owned 80% of the shares and equity of Zibo Dante Economic and Trade Co. Ltd. ("Zibo Dante"), a limited liability company organized under the laws of the People's Republic of China. *Id.*, ¶ 4. The \$400,000 that Gizmo paid to acquire its 80% majority interest in Zibo Dante came from Gizmo; it did not come from Plaintiff. *Id.* The other minority-interest owners of Zibo Dante are Wu Tao and Xie Shuping, both of whom are Chinese citizens who live in China. *Id.*, ¶ 6. Plaintiff has never held an ownership interest in Gizmo or Zibo Dante. *Id.*, ¶ 7.

Gizmo operates as a contract manufacturer of instrumentation.⁴ *Id.*, ¶ 8. Gizmo invested in Zibo Dante to manufacture instrumentation for sale by Gizmo to customers located in the United States. *Id.* Put simply, Gizmo is in the business of being a vendor for a medical device company like Plaintiff. Neither Gizmo nor Zibo Dante competes with Plaintiff—they are a supplier to Life Spine. *Id.*, ¶ 9.

Plaintiff's and Mueller's assertion that Life Spine's employees did "all" of Gizmo's and Zibo Dante's United States-based work is highly misleading. *See* Motion, at 4; Mueller Decl., ¶ 23. Certain Life Spine employees did some work related to Gizmo (not Zibo Dante), which work was limited and, for the most part, concerned ensuring that invoices from Zibo Dante were accurate, and then creating invoices for Life Spine. *See* Butler Cert., ¶ 11. Life Spine and its management, including Richard Mueller, were aware of this for years. *Id.* The bulk of the interactions that Life Spine employees had with Gizmo and Zibo Dante were typical interactions between a vendor and its customers, as Life Spine and its management, including Richard Mueller, were aware. *Id.*

⁴ Gizmo and Zibo Dante do not manufacture Life Spine's spinal implants and other products. Life Spine has other vendors that produce those products and implants.

Gizmo and Zibo Dante have supplied instrumentation to Plaintiff for more than a decade. However, Life Spine has not had a written contract governing the vendor/supplier relationship with Gizmo and Zibo Dante since at least 2014. *Id.*, ¶ 13. From 2014 through early 2025, Gizmo and Zibo Dante supplied instrumentation to Plaintiff through purchase orders. *Id.*, ¶ 14.

By March 12, 2025—with Plaintiff firmly in the control of its Lenders—Plaintiff owed Gizmo and Zibo Dante more than **\$2 million** for instrumentation that Gizmo and Zibo Dante delivered to Plaintiff for the last two years. *Id.*, ¶ 16. Plaintiff did not pay because the Lenders ordered the company to not pay the \$2 million. *Id.*, ¶ 17.

On April 8, 2025, St. Cloud, as agent for the Lenders, issued a formal notice to Plaintiff, Gizmo, and Mr. Butler ordering Plaintiff that any payments should be made only to St. Cloud. *See id.*, ¶ 19 and Ex. A thereto. This formal notice followed years of the Lenders’ refusal to allow Life Spine to pay Gizmo. To this day, Plaintiff has not paid down any amount of its \$2 million-plus receivable owed to Gizmo and Zibo Dante for instrumentation. *Id.*, ¶ 18.

It is public knowledge that, beginning earlier this year, the new Administration in the United States began a trade war with increasing tariffs against China. These tariffs significantly increased the costs of importing instrumentation into the United States this year. In light of these significant issues – both the increased tariffs and Plaintiff’s failure to pay more than \$2 million for instrumentation – Mr. Butler communicated directly with Plaintiff about what it would take for Gizmo and Zibo Dante to continue to import and sell instrumentation to Plaintiff. *Id.*, ¶¶ 21-22 and Ex. B thereto.

For example, between April 9 and 11, 2025, Mr. Butler explained to Plaintiff that Plaintiff would need to pay for the instrumentation upon delivery. *Id.*, ¶ 22. Mr. Butler then followed up that tariffs were increasing to 125%. Plaintiff’s representative responded, “In light of these things

I've asked Wutao not to initiate the importation process." *Id.*, and Ex. B thereto.

Unbeknownst to Mr. Butler, Randy Lewis began communicating directly with Wu Tao and not Mr. Butler, which interfered with Mr. Butler's business relationship with Wu Tao. *Id.*, ¶ 23.

Specifically, on May 7, 2025, Randy Lewis sent an email to Wu Tao, which stated,

I'm sorry we've been kind of silent lately. I've been waiting for direction from the company on what we are able to do together. I have a couple questions for you as we try to get through the hard time. Are you able to continue working with Plaintiff and, if so, is that what you want to do? I hope you are well my friend.

Id., ¶¶ 24-25 and Ex. C thereto.

Wu Tao responded back to Randy Lewis, copying Mr. Butler. In that email, Wu Tao accurately stated, "Gizmo remains the majority owner of the manufacturing facility, and we cannot work around that fact. As I said to you, I need LS [Plaintiff] and Mike [Butler] work together to get a deal, then give me a final instruction how to deal with business." Wu Tao then stated, "[Plaintiff] currently owes the facility nearly **\$2 million**. Payments have been halted, and the outstanding balance remains unresolved. This raises large concerns about [Plaintiff's] reliability as a customer. You previously assured me that payments would resume, but to date, that hasn't happened. It caused factory difficult to operating production." Wu Tao ended by saying, "we would like to continue the business relationship. But [Plaintiff] must first address its past-due obligations." *Id.*, ¶ 25 and Ex. C thereto.

In response, Randy Lewis stated, "[t]here's been some uncertainty about exactly what Gizmo is and what the relationship is to Zibo Dante. With you stating that Gizmo is a majority owner of the factory and that you are an affiliate, I'm not going to be able to respond." Mr. Butler replied, stating, "the Zibo Dante facility is majority-owned by Gizmo, and I retain 100% ownership of the Gizmo entities. This is not a matter of interpretation." Mr. Butler also stated, "your team received a cease and desist only after repeated attempts were made to bypass Gizmo and engage

the facility directly, despite being respectfully asked not to and while carrying a significant outstanding balance. That action was taken solely to preserve the operational integrity of the business, particularly considering the broader restructuring underway at Plaintiff.” *Id.*, ¶¶ 26-27 and Ex. D thereto.

Mr. Butler made it clear to Randy Lewis that he and Zibo Dante were interested in continuing the vendor-customer relationship: “If [Plaintiff] is serious about continuing production, the next steps are clear: resume payments to the facility, honor the obligations already incurred, and demonstrate a good-faith effort—without ambiguity or subterfuge. Our shared goal should be stability. That begins with clarity, compliance, meaningful communication, and trust.” *Id.*, ¶ 27 and Ex. D thereto.

The “cease and desist” referenced in Mr. Butler’s correspondence to Randy Lewis was sent after learning that Plaintiff’s personnel, including Randy Lewis, were trying to convince Wu Tao to cease his business relationship with Gizmo and Mr. Butler, even though Mr. Butler Gizmo owns 80% of Zibo Dante. *Id.*, ¶ 28 and Ex. E thereto. Despite that cease-and-desist letter, Plaintiff continued to try to convince Wu Tao to end his business relationship with Gizmo and Mr. Butler. *Id.*, ¶ 29. As a result, a second cease-and-desist letter was sent to Plaintiff on May 9, 2025. *Id.*, ¶ 30 and Ex. F thereto. Plaintiff never responded to that second correspondence.

Gizmo has not generated income for years. *Id.*, ¶ 31. Why? Because Plaintiff has been its only customer and Plaintiff (at the Lenders’ direction) withheld payment of more than \$2 million for instrumentation provided to Plaintiff, and which Plaintiff accepted without issue. *Id.*, ¶ 32.

According to Plaintiff, Wu Tao and Mr. Butler have “proposed terms to Plaintiff that are far more onerous than the terms on which Zibo Dante was previously providing products to Plaintiff.” Lewis Decl., ¶ 4. But Life Spine has no written contract governing the vendor/supplier

relationship with Gizmo and Zibo Dante. Butler Cert., ¶ 13. Moreover, it appears that Plaintiff believes it should receive free supplies from its vendors. Mr. Butler is aware of no obligation suggesting that he, Gizmo, or Zibo Dante must provide Plaintiff with products for free, particularly when Plaintiff owes, and refuses to pay, more than \$2 million in open accounts receivable.

Through Mr. Butler's work experience in the medical device and instrumentation field, developed over the course of 30 years, he is familiar with the market for instrumentation. *Id.*, ¶ 33. Based on this knowledge, Mr. Butler knows that there are hundreds of other manufacturers and suppliers of instrumentation available to Plaintiff. *Id.* Yet Plaintiff says nothing about its ability to go elsewhere for instrumentation.

B. Mr. Butler's Access to Plaintiff's Confidential Business Information as a Current Director

Mr. Butler founded Plaintiff in 2004. Butler Dec., ¶ 34. He served as Plaintiff's CEO from the founding through his termination as CEO in mid-March 2025. *Id.* Since 2004, Mr. Butler has served as a member of Plaintiff's Board of Directors; he continues to serve as a Director today. *Id.*

On March 12, 2025, the Conflicted Directors voted to remove Mr. Butler as CEO. *Id.*, ¶ 35. During that Board meeting, the Lenders' principal Director initially stated that there was no cause for my termination. *Id.* That Director then stated in substance, "We can make one up." *Id.* Since Mr. Butler's termination, the Conflicted Directors and Mueller have provided Plaintiff's employees and third parties with shifting and untruthful information about Mr. Butler's employment status, falsely suggesting in one draft press release that he agreed to "step back" from his operational role. *Id.*

Even though Mr. Butler's employment as Chief Executive Officer was terminated in mid-March 2025, he has continued to serve as a Director. *Id.*, ¶ 36. As a Director, Mr. Butler received and continues to receive confidential and proprietary information about Plaintiff's business, even

as recently as Thursday of this week. *Id.*, ¶ 37. Mr. Butler has continued to honor his fiduciary obligations as a Director. *Id.*

There simply is no truth to Richard Mueller’s assertion that Mr. Butler has refusing to return “some of Plaintiff’s most critical and sensitive intellectual property.” Mueller Decl., ¶ 5. He is in possession of two laptops that belong to Plaintiff. Butler Cert., ¶ 39. However, Plaintiff never asked for them to be returned, which Mr. Butler understood to be because he continued to be a Director. *Id.* As stated in Mr. Butler’s Certification, he will return the two laptops promptly. *Id.*

Richard Mueller also alleges that Mr. Butler possess an external hard drive owned by Plaintiff that contains trade secrets. Mueller Decl., ¶ 6. But, as Mr. Butler states in his Certification, he is not in possession of any of Plaintiff’s external hard drives. Butler Cert., ¶ 40.

In addition, Richard Mueller also alleges that Mr. Butler is “in possession of several Plaintiff trade secret prototype medical devices, including prototypes of unreleased spinal implants.” Mueller Decl., ¶ 6. As Mr. Butler states in his Certification, the only prototype that he can think of is a prototype that he had on his desk at Life Spine’s office. But he did not take it, and he has no knowledge about its whereabouts. Butler Cert., ¶ 41. Beyond that one piece of equipment, to the best of Mr. Butler’s knowledge and ability, he is not in possession of any prototypes of Life Spine. *Id.*

Also false is Richard Mueller’s assertion that Mr. Butler “posted renderings of some of Plaintiff’s proprietary medical device prototypes (one of which is unreleased) on Gizmo’s website.” Mueller Decl., ¶ 6. First, Gizmo’s website, which was created years ago, has been public and available to all of Plaintiff’s personnel for years. Butler Cert., ¶ 43. Its existence and its contents were common knowledge within Plaintiff, and amongst Plaintiff’s employees. *Id.* Second, Plaintiff gave approval to Gizmo to place images of Plaintiff’s medical devices on the website, and

those same images have been widely disseminated by Plaintiff on social media, as well as to customers and potential customers in marketing materials, among other things. *Id.*, ¶ 44.

Third, contrary to Richard Mueller’s vague allegations, Gizmo’s website does not contain renderings of any unreleased medical device prototypes of Plaintiff. *Id.*, ¶ 45. And fourth, there is nothing proprietary on Gizmo’s website. *Id.*, ¶ 46.

In its Motion and supporting declarations, Plaintiff never identifies any such improper images. Gizmo’s website was and has continued to be publicly accessible since Plaintiff and Mr. Butler exchanged correspondence regarding the images that appear on Gizmo’s website over a month ago. As the Court can see from that correspondence sent several weeks ago, Plaintiff never alleged that Gizmo had unreleased prototypes on its website. *Id.*, ¶ 47 and Exs. F and G thereto.⁵

In fact, in correspondence to Plaintiff dated May 9, 2025, Mr. Butler specifically asked Plaintiff directly: “If you believe that there is other property of Plaintiff that Gizmo has, please identify it.” *Id.*, ¶ 50 and Ex. F thereto. Plaintiff never responded to that letter and, to this day, Plaintiff has never identified any specific property that Plaintiff claims Gizmo or Mr. Butler continues to possess improperly. *Id.*, ¶ 51.

Instead, over a month after Mr. Butler’s counsel sent that May 9th correspondence, and with no further communication, Plaintiff commenced this lawsuit against Mr. Butler.

TRO LEGAL STANDARD

Plaintiff may obtain a TRO only in the case of an extreme emergency. *See* Standing Order, § III(D)(1); *see also First Mid Wealth Mgmt. Co. v. Chamblin*, 2023 IL App (5th) 230361-U, ¶ 15,

⁵ The Court is respectfully referred to Gizmo’s website (www.gizmomed.com). As the Court will see, Gizmo never purported to manufacture any of Plaintiff’s products, and there are no logos or other identifying information that would indicate that any products are property of Plaintiff. Butler Cert., ¶ 49. Tellingly, the Complaint and TRO motion contain no screenshots identifying these purported Life Spine products.

2023 Ill. App. Unpub. LEXIS 816 (Ill. App. Ct. 5th Dist. May 25, 2023) (the situation did “not support the existence of an emergency extreme enough to warrant the issuance of a TRO”); *Paddington Corp. v. Foremost Sales Promotions, Inc.*, 13 Ill. App. 3d 170, 174 (Ill. App. Ct. 1st Dist. 1973) (the “trial court must be satisfied of the existence of such an extreme emergency that [a TRO] is required,” and that “expect[s] that such circumstances are extremely rare”).

In addition to requiring a true emergency, a temporary restraining order ““is a drastic remedy which may issue only in exceptional circumstances and for a brief duration.”” *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 567 (Ill. Ct. App. 5th Dist. 2010) (quoting *Afscme v. Ryan*, 332 Ill. App. 3d 965, 966 (Ill. Ct. App. 1st Dist. 2002)).

A party seeking a temporary restraining order must establish each of the following elements: (a) it possesses a certain and clearly ascertained right which needs protection; (b) it will suffer irreparable harm without the protection of an injunction; (c) there is no adequate remedy at law for its injuries; (d) there is a substantial likelihood of success on the merits; and (e) in the absence of preliminary relief, it would suffer greater harm than would the defendant if relief were to issue. *See Joseph J. Henderson & Son v. City of Crystal Lake*, 318 Ill. App. 3d 880, 883 (Ill. App. Ct. 2nd Dist. 2001); *see also Chicago Sch. Reform Bd. of Trs. v. Martin*, 309 Ill. App. 3d 924, 939 (Ill. App. Ct. 1st Dist. 1999).

Injunctive relief is such an extraordinary remedy that the plaintiff must plead facts which clearly establish its right to such relief. Consequently, allegations consisting of mere opinions, conclusions or beliefs are not sufficient to support an injunction. *Allstate Amusement Co. of Ill., Inc. v. Pasinato*, 96 Ill. App. 3d 306, 308 (Ill. App. Ct. 1st Dist. 1981); *see also, e.g., Bd. of Educ. v. Bd. of Educ.*, 112 Ill. App. 3d 212, 218 (Ill. App. Ct. 1st Dist. 1983) (denying request for injunctive relief finding plaintiffs’ allegations that they will be harmed because defendant’s actions

are illegal to be nothing more than ineffectual conclusions of law).

Moreover, facts alleged on information and belief will not suffice when seeking an injunction. *Maas v. Cohen Assocs., Inc.*, 112 Ill. App. 3d 191, 196 (Ill. App. Ct. 1st Dist. 1983). Neither will conclusory allegations unsupported by facts. *Belden v. Tri-Star Producing Co.*, 106 Ill. App. 3d 192, 202 (Ill. App. Ct. 5th Dist. 1982). “The extraordinary character of the injunctive remedy requires that it be awarded only where the complaint shows on its face a clear right to the relief, and the facts relied upon to establish such right must be alleged positively and with certainty and precision.” *Hope v. Hope*, 350 Ill. App. 190, 194 (Ill. App. Ct. 1st Dist. 1953).

ARGUMENT

A. There Is No Emergency, and Plaintiff’s Request Is Based on Vague and Conclusory Allegations that Do Not Support the Issuance of a TRO.

Plaintiff has not demonstrated that an extreme emergency exists warranting the extraordinary entry of a TRO. As demonstrated above, Plaintiff has been aware of all of the alleged conduct complained of for at least four weeks, if not months or even years. And, during that time, Plaintiff’s outside counsel was in contact with Mr. Butler’s counsel. Yet Plaintiff chose to stop engaging and then waited to file this lawsuit four weeks later. No true emergency exists. Plaintiff has to live with its choices and, based on those choices, a TRO is not warranted here.

In addition, Plaintiff has completely failed to set forth sufficient facts for this Court to grant Plaintiff a TRO. Plaintiff’s complaint is unverified so none of the allegations contained therein have been sworn to. However, even allegations in a verified complaint “do not constitute evidence except by way of admission.” 735 Ill. Comp. Stat. 5/2-605(a). And, many of the allegations in the complaint and the TRO’s supporting declarations are based on “information and belief,” which cannot satisfy the TRO standard. *See Maas*, 112 Ill. App. 3d at 196.

Moreover, Plaintiff’s Motion and “supporting” declarations are riddled with vague,

conclusory and completely self-serving allegations—if not outright mistruths. None of them are supported by any independent facts or evidence. As such, Plaintiff has not demonstrated “a clear right to the relief” it seeks because the facts relied upon do not establish such right “positively and with certainty and precision.” *Hope*, 350 Ill. App. at 194.

Based on the foregoing, Plaintiff has failed to present a record capable of supporting the entry of a TRO. Consequently, the Motion should be denied on this basis alone.

B. Plaintiff Has Not Satisfied All of the Necessary Elements Required for the Entry of a TRO.

1. Plaintiff Has No Right That Needs Protecting.

Much of Plaintiff’s arguments that attempt to demonstrate a “protected right” are centered around Mr. Butler’s alleged “misappropriation” of confidential information, including trade secrets. But there is no dispute that Mr. Butler is currently a Director of Plaintiff, and with that status, he is entitled to be in possession of such information, just like each of the other directors. *See, e.g., Henley Grp., Inc. v. Sante Fe S. Pac. Corp.*, CIV. A. No. 9569, 1988 Del. Ch. LEXIS 32, at *27 (Del. Ch. Mar. 11, 1988) (unpublished) (noting that by virtue of their position as directors, all board members may have access to the same confidential information as other board members).

“To ‘misappropriate’ means ‘to appropriate wrongly (as by theft or embezzlement).’” *Ferguson Enter., LLC v. RAKJR Co.*, No. 2023-0840-BWD, 2025 Del. Ch. LEXIS 44, at *11 n.9 (Del. Ch. Feb. 19, 2025) (unpublished) (quoting Merriam-Webster’s Dictionary); *see also Salzano v. North Jersey Media Gp. Inc.*, 993 A.2d 778, 793 (N.J. 2010) (noting that “[i]n common parlance, the terms ‘misappropriate’ and ‘steal’ are equivalent,” and looking to the dictionary definition of misappropriation as “[t]o appropriate wrongly” and “[t]o appropriate dishonestly for one’s own use: Embezzle”); *Seng-Tiong Ho v. Taflove*, 648 F.3d 489, 503 (7th Cir. 2011) (“A trade secret misappropriation involves the acquisition of a trade secret through improper means, which

requires the breach of a confidential relationship or other duty to maintain secrecy.”).

Here, Mr. Butler continued to possess two laptops after he was terminated by Plaintiff, and while he has remained a Director. At no point did Plaintiff request the return of those laptops, and as a result, there is no merit to Plaintiff’s assertion that Mr. Butler “refused” to return this property. Plaintiff has not demonstrated that Mr. Butler has used any information in his possession improperly. There is no evidence whatsoever presented by Plaintiff indicating, much less establishing, that Mr. Butler did anything wrong with confidential information he is entitled to have. *See, e.g., Alpha Sch. Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 743–44 (Ill. App. Ct. 1st Dist. 2009) (denying request for preliminary injunction to enjoin former officer from misappropriating trade secrets where plaintiff failed to allege irreparable harm or that the defendant had used the confidential information improperly).

Plaintiff also asserts that a threatened business interest is an identifiable right, arguing that Mr. Butler’s “interference with Zibo Dante threatens Life Spine’s business interest.” Motion, at 7. But, as Plaintiff acknowledges (Mueller Decl., ¶ 23), Mr. Butler is the indirect, majority owner of Zibo Dante; he owns an 80% interest in that venture through Gizmo, which Mr. Butler owns outright. In essence, Plaintiff is asserting that Mr. Butler is interfering with his own business. That is illogical and cannot be a basis for tortious interference.⁶ As discussed below, interference with a third party is a necessary element of a tortious interference claim. No third party has been interfered with by Mr. Butler.

Plaintiff’s argument that alleged images of Life Spine products are on Gizmo’s website should be rejected. Plaintiff has not identified any images that are wrongfully on Gizmo’s website,

⁶ If anything, Life Spine is tortiously interfering with Gizmo’s ownership of Zibo Dante by trying to cut a side deal with Wu Tao.

and Gizmo’s website does not identify any of Plaintiff’s products. Even if there is such an image, it has been on the website for months—if not years—and Plaintiff has known about this for months. Mr. Butler’s lawyers even asked Plaintiff to identify any problematic images, yet Plaintiff’s lawyers never responded. Butler Cert., ¶ 50 and Ex. F. Plaintiff chose to sit on its hands and do nothing for months (or even years), demonstrating that no true emergency exists.

Accordingly, since Plaintiff is unable to satisfy its burden of showing that it has a right that needs to be protected, the Motion should be denied.

2. Plaintiff Has Not Demonstrated a Likelihood of Succeed on the Merits.

i. Plaintiff’s Breach of Contract Claim and ITSA Claim Will Not Succeed

With respect to Plaintiff’s breach of contract claim, despite the language in the employment agreement and the non-compete agreement (if valid),⁷ at all relevant times, Mr. Butler was a Director of Plaintiff and entitled to be in possession of Plaintiff’s confidential information. And, Plaintiff can point to no evidence that Mr. Butler has used this information improperly or somehow at the expense of Plaintiff. The Motion merely contains empty rhetoric supported by nothing more than conclusory and self-serving allegations—some of which are demonstrably false. This defeats Plaintiff’s argument.

In addition, despite Plaintiff’s extensive discussion of its Illinois Trade Secrets Act (“ITSA”) claim, this claim will also fail for the same reason that the breach of contract claim will fail. Mr. Butler was, and continues to be, entitled to be in possession of Plaintiff’s confidential information, including any trade secrets, given his status as a Director of Plaintiff at all relevant times. Because of this, Mr. Butler could not “misappropriate” this information as he is entitled to possess it. And, again, Plaintiff has not set forth any actual evidence that Mr. Butler has used this

⁷ A review of that agreement also raises serious questions about its authenticity and legality. Mr. Butler reserves all of his rights, claims, and objections in this regard.

information in any inappropriate way.

ii. *Plaintiff's Tortious Interference Claim Will Not Succeed*

Plaintiff's argument concerning its tortious interference claim is that Mr. Butler has "intentionally and unjustifiably interfered with Life Spine's manufacturing relationship with Zibo Dante[.]" Motion, at 10. As Plaintiff acknowledges, tortious interference with contract requires "the existence of a valid and enforceable contract between plaintiff" and a third party. *Id.* at 11 (citing *Philip I. Mappa Ints., Ltd. v. Kendle*, 196 Ill. App. 3d 703, 708 (Ill. App. Ct. 1st Dist. 1990)).

However, Plaintiff has failed to demonstrate that a valid contract exists between it and Zibo Dante. That is because there has been no written contract governing the vendor/supplier relationship with Gizmo and Zibo Dante since at least 2014; there were purchase orders that get filled by Zibo Dante and the products are imported by Gizmo for delivery to Plaintiff. There is no requirement—and Plaintiff has pointed to none—that Zibo Dante must accept any purchase orders from Plaintiff. Since there is no valid and enforceable contract, there can be no tortious interference with contract claim asserted against Mr. Butler.

In addition, even if there somehow was a valid and enforceable contract, that contract is not with a "third party." Through Gizmo, Mr. Butler owns and controls 80% of Zibo Dante. Thus, Plaintiff is asking this Court to find that Mr. Butler is interfering with himself, and not a third party. This defeats Plaintiff's tortious interference with contract claim as well.

Plaintiff's tortious interference with prospective economic advantage claim similarly fails. While Plaintiff attempts to set forth the elements of this claim (*see* Motion, at 11), it left out one very important factor: "Defendant's interference must be directed toward **a third party**." *Ybarra v. Centrust Bank, N.A.*, 2024 IL App (1st) 232072-U, ¶ 61, 2024 Ill. App. Unpub. LEXIS 2423 (Ill. App. Ct. 1st Dist. Dec. 13, 2024) (emphasis added). Since Mr. Butler has not done anything

with respect to a third party, Plaintiff cannot demonstrate that it will be successful on its tortious interference with prospective economic advantage claim.

Accordingly, since Plaintiff is unable to demonstrate that it likely will be successful on the merits of its claims, the Motion should be denied.

3. Plaintiff Has Not Demonstrated Irreparable Harm Absent a TRO

Plaintiff has no protected interest in its confidential information in this situation because Mr. Butler was authorized, as a director of Plaintiff, to be in possession of such information. Given this right to possess the information and no evidence that Mr. Butler is improperly using it, Plaintiff cannot demonstrate injury, let alone an irreparable injury.

Plaintiff's reliance on its tortious interference claims to demonstrate an irreparable injury also should be rejected for the same reasons discussed above. *See, e.g., Jefco Lab'ys, Inc. v. Carroo*, 136 Ill. App. 3d 793, 799 (Ill. App. Ct. 1st Dist. 1985) (denying request for preliminary injunction premised on alleged protectable interest in a contract because "even if there are damages, the proper remedy is a breach of contract action and not a preliminary injunction . . . for a court to grant injunctive relief, a plaintiff must prove injury to its legitimate business interests that is distinct from a defendant's breach . . ."). Because Plaintiff has no valid and enforceable contract with Zibo Dante, Plaintiff has no legal basis to force Zibo Dante—an entity in China—to supply it. And, even if a contract existed (and it does not), there has been no interference with a "third party" given that Mr. Butler controls 80% of Zibo Dante. Plaintiff has no one to blame for Gizmo not supplying Life Spine other than its Lenders, who refused to allow Life Spine to pay Gizmo (and thus, Zibo Dante).

Lastly, Plaintiff has not asserted that Zibo Dante is the only manufacturer that can produce its instruments. This is because there are hundreds of other manufacturers that can produce these products, and Plaintiff is free to work with them. But Plaintiff would have this Court believe that

neither Gizmo, Zibo Dante nor Mr. Butler is free to do the same; instead, Plaintiff is essentially asking this Court to order Gizmo, Zibo Dante and Mr. Butler to provide products to Plaintiff, free of charge (since Plaintiff has been prohibited by its Lenders from paying Gizmo its open accounts receivable). This essentially amounts to a mandatory injunction, which cannot possibly be granted on the record before the Court.

4. The Balance of Harms Does Not Favor Plaintiff.

Contrary to Plaintiff's flippant comment (Motion, at 14), the entry of a TRO here will cause significant harm to Mr. Butler. Despite being unable to assert a valid claim or a protectable right, Plaintiff would have this Court essentially order Mr. Butler and his companies to provide Plaintiff with products free of charge, given that the Lenders have refused to let Plaintiff pay the accounts receivable owed to Gizmo and Zibu Dante. This indentured servitude has no basis in the law.

Moreover, as demonstrated above and in the Butler Certification, aside from the two laptops which Mr. Butler has agreed to return, he is not in possession of any of Plaintiff's property, confidential or not. There is also nothing to remove from Gizmo's website; if Plaintiff has a specific complaint, it should have voiced that to Mr. Butler within the last month, instead of sitting silent on the sideline waiting to spring this lawsuit and request for a TRO on Mr. Butler with no notice.

Finally, equity does not favor Plaintiff given Plaintiff's own dilatory conduct. To the extent Plaintiff can muster any harm (which would pale in comparison to the harm that would be inflicted on Mr. Butler if a TRO is granted), Plaintiff chose not to engage on these issues at least four weeks ago with Mr. Butler's lawyer. And even then, Plaintiff told Mr. Butler and Wu Tao that it was going to cease importation through Zibo Dante. Plaintiff has no one to blame but itself, its controlling Lenders, and current management at the company for its concocted "emergency."

CONCLUSION

Michael Butler respectfully requests that the Court deny Plaintiff's request for a temporary restraining order and grant Mr. Butler such other relief as the Court deems just and proper.

Dated: June 20, 2025

/s/ Patrick M. Otlewski

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CERTIFICATE OF SERVICE

Patrick M. Otlewski, an attorney, hereby certifies that on June 20, 2025, he caused a copy of the foregoing to be served on Odyssey to all parties' counsel of record and also via email, as set forth below:

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Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

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