

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PRIME ALLIANCE BANK, INC.,
a Utah banking corporation;
and SERTANT CAPITAL, LLC,
a Delaware limited liability company,

Case No. 1:23-cv-10564-LJM-PTM
Hon. Laurie J. Michelson

Plaintiffs

v

THE GREAT LAKES TISSUE COMPANY,
a Michigan corporation,

Defendant.

_____/

David L. Powers (P39110)
Smith, Martin, Powers & Knier, P.C.
Counsel for Plaintiffs
900 Washington Avenue
P. O. Box 219
Bay City, MI 48707-0219
989-892-3924
dpowers@smpklaw.com

Robert S. McWhorter (P49215)
Buchalter, A Professional Corporation
Counsel for Plaintiffs
500 Capitol Mall, Ste. 1900
Sacramento, California 95762
916-899-1099
rmcwhorter@buchalter.com

_____/

**PLAINTIFFS' EX-PARTE MOTION FOR TEMPORARY RESTRAINING
ORDER PENDING FINAL RULING ON
VERIFIED MOTION FOR POSSESSION**

Plaintiffs, Prime Alliance Bank, Inc. (“PAB”), and Sertant Capital, LLC (“Sertant”) (collectively, “Plaintiffs”), state:

PROCEDURAL BACKGROUND

1. On March 10, 2023, Plaintiffs filed a Verified Complaint for Claim and Delivery for Damages. (ECF No. 1)

2. On March 16, 2023, Plaintiffs filed a Verified Motion for Possession Pending Final Judgment (“Possession Motion”). (ECF No. 4.) In the Possession Motion, Plaintiffs seek to recover possession of Equipment (“Equipment”) owned by Plaintiffs but leased to Defendant The Great Lake Tissue Company (“GLT”) under a Master Lease Agreement (“Master Lease”) and a Lease Schedule No. 1 (“Schedule No. 1”) (collectively, “Lease”).

3. On March 18, 2023, this Court entered an order (“Denial Order”) scheduling a hearing on the Possession Motion for **April 17, 2023, at 2:00 p.m.** (ECF No. 9.) In this order, this Court denied Plaintiffs’ request for a temporary restraining order because Plaintiffs had not met the notice requirements under Rule 65 of the Federal Rules of Civil Procedure. (ECF No. 9, p. 4.) However, this Court indicated that Plaintiffs may refile a motion for temporary restraining order once notice of the Possession Motion was given to GLT.

GOOD CAUSE EXISTS TO ENTER A TEMPORARY RESTRAINING ORDER

4. Rule 65(b) of the Federal Rules of Civil Procedure governs temporary restraining orders. It provides that a court “may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if (A) specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be granted.”

5. MCR 3.105(E)(2)(a) provides that upon the filing of a motion for possession if good cause is shown, “must order the defendant to refrain from damaging, destroying, concealing, disposing of, or using so as to substantially impair its value, the property until further order of the court.”¹

6. Good cause exists to enter a temporary restraining order. GLT breached the Lease by (a) failing to pay rent due in and after January 2023, (b) changing its ownership and management without GLT’s prior written consent, thereby materially deteriorating GLT’s creditworthiness; (c) refusing to permit Plaintiffs to inspect the Equipment or GLT’s financial condition. (Verified Compl. [ECF No. 1], ¶¶ 14(a), 14(b), 15, 29, 30, Exs. 6, 10, 12.) Plaintiffs retained title to, or alternatively a first-priority security interest in, the Equipment. (Verified Compl. [ECF No. 1], Ex. 1, § 12, p. 5.) Upon default under the Lease, Plaintiffs are entitled to immediate possession under the Lease. (Verified Compl. [ECF No. 1], Ex. 1, § 17, p. 7.) Further, Plaintiffs have the right to possession under the Uniform Commercial Code. Cal. Com. Code § 9609(a)(1)-(2); MCL § 440.9609(1)(a)-(b). As a result, Plaintiffs are likely to succeed in their claim and delivery action because GLT unlawfully detained the Equipment to which Plaintiffs had a right to possess.

7. Plaintiffs will be irreparably harmed unless this Court enters a temporary restraining order directing GLT to refrain from damaging, destroying, concealing, disposing of, or using to substantially impair the value of the Equipment. GLT deliberately obstructed Plaintiffs from obtaining critical information about the Equipment or GLT’s financial condition. GLT refused to permit Plaintiffs to inspect the Equipment, despite multiple requests. From approximately February 10, 2023, to

¹ California law governs the Lease. California law permits a court to enjoin a party to an action who “is doing, or threatens, or is about to do . . . some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.” Cal. Civ. Proc. Code 526(a)(3).

February 16, 2023, Plaintiffs' counsel contacted Kip Boie and GLT's counsel requesting access to inspect the Equipment. (Verified Compl., ¶¶ 29, 30, Ex. 10, 12.) To date, GLT has not permitted any inspection. (Verified Compl., ¶ 30.)

8. The threat of additional looming harm lingers over the Equipment. GLT has undergone two changes in management in less than two years, with its most recent change in about January 2023 without Plaintiffs' prior consent. (Verified Compl. [ECF No. 1], ¶ 14(b).) Since filing the Complaint, Plaintiffs learned that GLT's former management (Kip Boie and Jeff Prange) do not reside in Michigan. (Powers Decl., ¶ 7.) GLT is financially distressed, impairing its ability to safeguard the Equipment adequately. In December 2022, the roof of the building where the Equipment is located partially collapsed. GLT's engineer purportedly recommended that the building housing the Equipment be condemned. (Verified Compl. [ECF No. 1], Ex. 1.) The Cheboygan City Manager placed barricades on the sidewalk at GLT's building due to the danger presented. (Powers Decl., ¶ 8, Ex. 1.) Plaintiffs have been advised GLT's bills have not been paid since last June, and unknown equipment was being scrapped. (Powers Decl., ¶ 7.) As a result of the foregoing, Plaintiffs believe that the Equipment has fallen into, or may fall into, disrepair, thereby substantially diminishing its value.

9. Since filing the Complaint, Plaintiffs discovered that Ronald H Van Den Heuvel may serve as a "consultant" to GLT on behalf of the new owners. Mr. Van Den Heuvel was previously affiliated with Tissue Depot, LLC, and served as its Registered Agent. Mr. Van Den Heuvel has been convicted of fraud in two federal actions in Wisconsin. On March 22, 2022, he filed a letter in those actions stating that he was going to work at the "Cheboygan Tissue Mill."

10. If the Equipment is damaged, destroyed, concealed, disposed of, or used to impair its value substantially, Plaintiffs will likely be left without any remedy

given that GLT is already indebted over \$2.2 million to Plaintiffs and GLT's business operations are in turmoil.

11. GLT will not suffer any harm by this Court's granting temporary injunctive relief directing GLT to refrain from damaging, destroying, concealing, disposing of, or using so as to substantially impair the value of, the Equipment. GLT is already prohibited under the Lease from taking the actions. (Verified Compl., Ex. 1 [§ 13].)

12. Moreover, GLT will not suffer any harm by this Court's granting temporary injunctive relief because of its limited duration. Plaintiffs request entry of a temporary restraining order to allow this Court time to rule on the Possession Motion, which is scheduled for April 17, 2023.

13. The public interest favors awarding possession of the Equipment to Plaintiffs to protect against any loss of property due to GLT's unlawful detainment.

**SERVICE OF THE POSSESSION MOTION
AND NOTICE OF THE EX-PARTE MOTION**

14. This Motion is based on this Ex-Parte Motion, the accompanying brief, the Declaration of David Powers ("Powers Declaration"), the concurrently filed proposed temporary restraining order, the other papers, pleadings, and records on file with this Court, including the Verified Complaint and the Possession Motion, and on such other evidence and argument as may be presented at the hearing on this Motion.

15. As more fully outlined in the Powers Declaration, Plaintiffs served the Summons, the Complaint, the Possession Motion, and the Denial Order by personally delivering a copy on March 24, 2023, to the person in charge of GLT's office at 437 S. Main Street, Cheboygan, Michigan ("GLT Office"); and mailing a copy by regular U.S. Mail and by Certified Mail to GLT at the GLT Office. (Powers Decl., ¶¶ 9, 11,

Ex. 2.) This service complies with Rule 4(h)(1)(A) of the Federal Rules of Civil Procedure and MCR 2.105(D)(2).

16. GLT is purportedly now owned by Patriot Advanced Environmental Technologies, LLC (“PAET”), a Wisconsin limited liability company whose Chief Executive Officer is Jeffrey Prange. Great Lakes Tissue Group, LLC (“GLTG”), an unknown limited liability company, is reportedly the minority owner of PAET. Mr. Prange and GLTG are represented by attorneys Donald Swenson and Song Lo, respectively. (Powers Decl., ¶ 5.)

17. GLT’s former management consisted of Jeffrey Prange and Kip Boie. Plaintiffs have been advised that these individuals do not reside in Michigan. (Powers Decl., ¶ 5.) As a result, Plaintiffs’ counsel emailed the Summons, the Complaint, the Possession Motion, and the Denial Order to Mr. Prange and his lawyers, Song Lo and Donald Swensen. (Powers Decl., ¶ 4, Ex. 2.)

18. Upon information and belief, GLT’s counsel is Tim Hansen from Hansen Reynolds, a Wisconsin law firm. On March 27, 2023, Plaintiffs’ counsel, Mark Scott, emailed a copy of the Summons, the Complaint, the Possession Motion, and the Denial Order to Tom Janczewski, attorney at Hannsen Reynolds, who acknowledged receipt. (Powers Decl., ¶ 14, Ex. 5.)

19. On March 31, 2023 at 1:29 p.m. (Eastern Time), Plaintiffs’ counsel, Robert McWhorter called Hansen Reynolds [(414) 455-7676] and left a message on the voicemail of Tom Janczewski, notifying him of Plaintiffs’ filing of this Motion and the relief sought. (Powers Decl., ¶ 19.) On March 31, 2023 at 1:35 p.m. (Eastern Time), Mr. McWhroter called GLT’s main number [(231) 627-0200] and left a voicemail notifying GLT of the filing of this Motion and the relief sought. (Powers Decl., ¶ 19.) Mr. McWhorter emailed Tim Hansen and Tom Janczewski and at thansen@hansenreynolds.com and TJanczewski@hansenreynolds.com to notify him of the filing of this Motion and the relief sought. Plaintiffs’ counsel will email and

mail a copy of this Motion overnight to Hansen Reynolds. A proof of service will be filed with this Court. In addition, Plaintiffs' counsel will deliver via overnight mail a copy addressed to GLT at the GLT Office. (Power Decl., ¶ 19.)

Relief Requested

Plaintiffs respectfully request that this Honorable Court (a) enter a temporary restraining order directing GLT and its agents, representatives, employees, officers, directors, shareholders, and other persons acting on behalf of GLT to refrain from damaging, destroying, concealing, disposing of, moving, or using so as to substantially impair the value of the Equipment pending further order of this Court; (b) require security to be posted in such amount as this Court deems appropriate; and (c) grant other relief as is just and equitable.

Dated: March 31, 2023

Respectfully Submitted

SMITH, MARTIN, POWERS & KNIER, PC

By: /s/ David L. Powers
DAVID L. POWERS (P39110)
Counsel for Plaintiffs
900 Washington Ave., P.O. Box 219
Bay City, MI 48707-0219
Tel: (989) 892-3924
dpowers@smpklaw.com

Dated: March 31, 2023

BUCHALTER, a Professional Corporation

By: /s/ Robert S. McWhorter
ROBERT S. MCWHORTER (P49215)
Counsel for Plaintiffs
500 Capitol Mall, Ste. 1900
Sacramento, CA 95762
Tel: (916) 899-1099
rmcwhorter@buchalter.com

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Counsel for Plaintiffs
500 Capitol Mall, Ste. 1900
Sacramento, California 95762
916-899-1099
rmcwhorter@buchalter.com

_____/

**BRIEF IN SUPPORT OF PLAINTIFFS' *EX-PARTE* MOTION FOR
TEMPORARY RESTRAINING ORDER PENDING FINAL RULING ON
VERIFIED MOTION FOR POSSESSION**

I. INTRODUCTION

This is a legal emergency. Plaintiffs Sertant Capital, LLC (“Sertant”) and Prime Alliance Bank, Inc. (“PAB”) leased equipment to Defendant, The Great Lakes Tissue Company (“GLT”). They still hold title to, or alternatively a security interest in, that equipment. After GLT stopped paying rent on its lease, Plaintiffs demanded access to inspect the equipment. GLT denied that request. Meanwhile, GLT’s financial condition deteriorated. It stopped paying utilities, scrapped unknown equipment, and allowed its building to fall into disrepair. In January 2023, Patriot Advanced Environmental Technologies, LLC (“PAET”) acquired GLT without Plaintiffs’ prior written consent, who retained Ronald H Van Den Heuvel, a convicted fraudster formerly associated with the “Tissue Depot,” a company in Wisconsin now owned by PAET. Because of this relationship, Plaintiffs fear that PAET may transfer the Equipment to its “Tissue Depot” facility.

Federal Rules of Civil Procedure 64 and 65 and MCR 3.105(E)(2) authorize a federal court to enter a temporary retaining order to restrain a defendant “from damaging, destroying, concealing, disposing of, or using to substantially impair the value of property, once a verified motion for possession has been filed. On March 16, 2023, Plaintiffs filed a verified motion for possession (“Possession Motion”), scheduled to be heard on April 17, 2023. Plaintiffs request that this Court immediately enter a temporary restraining order pending a final ruling on the Possession Motion because if the Equipment is damaged, destroyed, concealed, disposed of, or used to impair its value substantially before this date, Plaintiffs will likely be left without any remedy. Any such damage or losses would be irrecoverable given GLT owes over \$2.2 million to Plaintiffs and its business operations are failing. Entry of a temporary restraining order imposes little, if any, harm on GLT because it already agreed under the lease to preserve and maintain the equipment and to turn it over to Plaintiffs upon default.

II. STATEMENT OF FACTS

On October 13, 2022, Sertant, as lessor, and GLT, as lessee, entered into a Master Lease Agreement (“Master Lease”) and a Lease Schedule No. 1 (“Schedule No. 1”) (collectively, “Lease”) under which GLT agreed to lease from Sertant machinery, equipment and other personal property such as boilers, vertical drill presses, telehandlers, and core machines (collectively, “Equipment”). (Verified Compl. [ECF No. 1], ¶ 8, Exs. 1, 2.)

Under the Lease, GLT agreed to pay \$68,082.30 per month in rent to Sertant for four years. (Verified Compl. [ECF No. 1], ¶ 9(b), Ex. 2, p. 1.) GLT agreed (i) to maintain the Equipment in good operating order, condition, repair, and appearance, (ii) to protect the Equipment from deterioration, (iii) to permit inspection of the Equipment, and (iv) to turn over possession of Equipment upon an Event of Default. (Verified Compl. [ECF No. 1], ¶¶ 9(a)-(i), Ex. 1, §§ 9, 12, 13, 16, 17.) The Lease confirmed that Sertant held title to, or alternatively, a perfected security interest in, the Equipment. (Verified Compl. [ECF No. 1], ¶ 9(a), Ex. 1, ¶ 12, Ex. 3.)

On or about October 13, 2022, Sertant partially assigned its rights under the Lease to PAB. (Verified Compl. [ECF No. 1], ¶ 11.)

Over the past few months, GLT’s financial and management conditions deteriorated. In December 2022, GLT’s roof collapsed, forcing it to lay off fifty workers. (Verified Compl. [ECF No. 1], ¶ 28, Ex. 9.) Beginning in January 2023, GLT stopped paying rent to Plaintiffs. (Verified Compl. [ECF No. 1], ¶ 14(a), Ex. 5.) In January 2023, PAET acquired ownership of GLT and replaced its management without Plaintiffs’ prior written consent in violation of the Lease. Plaintiffs only learned of this governance change on January 25, 2023. (Verified Compl. [ECF No. 1], ¶¶ 10, 15.)

On February 3, 2023, Plaintiffs demanded that GLT pay \$2,271,354.51, plus late charges, default interest, costs, and attorneys’ fees. (Verified Compl. [ECF No.

1], ¶¶ 17, Ex. 7.) They also demanded immediate possession of the Equipment. (*Id.*) GLT refused to pay Plaintiffs or relinquish control of the Equipment.

On March 10, 2023, Plaintiffs filed a Verified Complaint for Claim and Delivery for Damages. (ECF No. 1)

On March 16, 2023, Plaintiffs filed the Possession Motion. (ECF No. 4.)

On March 18, 2023, this Court scheduled a hearing on the Possession Motion for **April 17, 2023, at 2:00 p.m.** (ECF No. 9.) It also denied Plaintiffs' request for a temporary restraining order in the Possession Motion because Plaintiffs had not met the notice requirements under Rule 65 of the Federal Rules of Civil Procedure. (ECF No. 9, p. 4.) Upon service of the papers, this Court invited Plaintiffs to refile a motion for a temporary restraining order, stating:

Sertant and PAB must immediately serve GLT or, if possible, refile a motion for a temporary restraining order that complies with all requirements of Federal Rule of Civil Procedure 65(b). If the former, Sertant and PAB should notify the Court once GLT has been given notice of Plaintiffs' motion for immediate possession pending final judgment and for a temporary restraining order.

(*Ibid.*)

III. THIS COURT SHOULD ENTER A TEMPORARY RESTRAINING ORDER TO PREVENT DAMAGE, DESTRUCTION, DETERIORATION, OR CONCEALMENT OF THE EQUIPMENT

Federal Rule of Civil Procedure 64 states, in relevant part, that "every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment." The Michigan Court Rules provide:

After a motion for possession pending final judgment is filed, the court, if good cause is shown, must order the defendant to:

(a) refrain from damaging, destroying, concealing, disposing of, or using so as to substantially impair its value, the property until further order of the court; and

(b) appear before the court at a specified time to answer the motion.

MCR. 3.105(E)(2). This court rule must be analyzed according to the temporary restraining order standard. *JPMorgan Chase Bank, N.A. v. Superior Carpet Supplies, Inc.*, No. 09-12134, 2009 U.S. Dist. LEXIS 146975, at *5 (E.D. Mich. June 19, 2009).

Rule 65(b) governs requests for temporary restraining orders. It provides that a court may issue “a temporary restraining order without written or oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b). Plaintiffs fully complied with this requirement. With this Motion, Plaintiffs submit the declaration of its attorney, David Powers, detailing Plaintiffs’ service of process and providing of notice concerning this motion.

In addition to Rule 65(b), a court must weigh four factors to determine whether to grant a temporary restraining order: “(1) whether the movant has shown a strong likelihood of success on the merits; (2) whether the movant will suffer irreparable harm if the injunction is not issued; (3) whether the issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuing the injunction.” *Overstreet v. Lexington-Fayette Urban Co. Gov’t*, 305 F.3d 566, 573 (2002); *Sutton Leasing, Inc. v. Veterans Rideshare, Inc.*, 468 F. Supp. 3d 921, 930 (E.D. Mich. 2020) (“*Sutton*”). These four factors are

not prerequisites to be met but factors to be balanced. (*Id.*) Here, these factors favor issuing a temporary restraining order.

A. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

To obtain a temporary restraining order, a plaintiff must show a likelihood of success on the merits of the issue most central to its claims rather than all of its claims. *Sutton*, 468 F. Supp. 3d at 938 (citing *Six Clinics Holding Corp., II v. Cafcomp Sys., Inc.*, 119 F.3d 393, 402 (6th Cir. 1997)). Like the *Sutton* court, this Court may focus on Plaintiffs' claim and delivery action when considering whether Plaintiffs have shown a likelihood of success on the merits.

To prevail on a claim and delivery action, Plaintiffs must prove that GLT unlawfully took or detained goods or personal property, to which Plaintiffs had a right to possess." *Id.* Plaintiffs' right to possession cannot be disputed. GLT breached the Lease by (a) failing to pay rent due in and after January 2023, (b) changing its ownership and management without GLT's prior written consent, thereby materially deteriorating GLT's creditworthiness; (c) refusing to permit Plaintiffs to inspect the Equipment or GLT's financial condition. (Verified Compl. [ECF No. 1], ¶¶ 14(a), 14(b), 15, 29, 30, Exs. 6, 10, 12.) Plaintiffs retained title to, or alternatively a first-priority security interest in, the Equipment. (Verified Compl. [ECF No. 1], Ex. 1, § 12, p. 5.) Upon default under the Lease, Plaintiffs are entitled to immediate possession under the Lease. (Verified Compl. [ECF No. 1], Ex. 1, § 17, p. 7.) Further, Plaintiffs have the right to possession under the Uniform Commercial Code. Cal. Com. Code § 9609(a)(1)-(2); MCL § 440.9609(1)(a)-(b). As a result, GLT is like to succeed in its claim and delivery action because GLT unlawfully detained the Equipment to which Plaintiffs had a right to possess. Therefore, this factor weighs in favor of granting injunctive relief.

B. PLAINTIFFS WILL BE IRREPARABLY HARM ABSENT INJUNCTIVE RELIEF

To date, GLT has refused to grant Plaintiffs access to inspect the Equipment. Plaintiffs believe that GLT houses the Equipment in a dilapidated building and that GLT has denied access because the Equipment needs maintenance, has been scrapped, or has been transferred to another location (potentially to Wisconsin). (Powers Decl., ¶¶ 7, 18.) With new ownership in January 2023, GLT has purportedly not paid utilities. (Powers Decl., ¶ 7.) GLT's new management retained Ronald H Van Den Heuvel, a convicted fraudster, as a consultant. (Powers Decl., ¶¶ 15-17.) If the Equipment is damaged, destroyed, concealed, disposed of, or used to impair its value substantially, Plaintiffs will likely be left without any adequate remedy given that GLT is already indebted over \$2.2 million to Plaintiffs and GLT's business operations are in turmoil.

In contrast, GLT will not suffer any harm by this Court's granting temporary injunctive relief. Such relief will only last until this Court's final ruling on the Possession Motion. GLT is already prohibited under the Lease from taking the actions. For instance, the Lease states that (i) "no item of Equipment shall be removed from its location," and (ii) GLT must "maintain the Equipment in good working order, condition, repair, and appearance, and protect the Equipment from deterioration other than normal wear and tear." (Verified Compl., Ex. 1 [§ 13].) Accordingly, the balance of the harms falls in favor of granting injunctive relief.

C. THE PUBLIC INTEREST FAVORS INJUNCTIVE RELIEF.

The public interest weighs in favor of granting injunctive relief. "The public has an interest in ensuring the right to possession of one's own property is enforceable." *Sutton*, 468 F. Supp. 3d at 939. The public interest favors awarding

possession of the Equipment to Plaintiffs to protect against any loss of property due to GLT's unlawful detainment.

IV. NO SECURITY NEEDS TO BE POSTED FOR TEMPORARY RESTRAINING ORDER

Federal Rule of Civil Procedure 65(c) provides that a court may issue a temporary restraining order “only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” In *Glacier Sales & Eng'g, LLC v. Eagle Plastics Corp.*, No. 07-CV-13806-DT, 2007 U.S. Dist. LEXIS 66908, at *7 (E.D. Mich. Sep. 11, 2007) (“*Glacier*”), the court issued a temporary restraining order under MCR 3.105(E)(2) to prevent the damage and destruction of equipment pending a hearing on a motion for possession. In doing so, the court did not require security to be posted because the defendant agreed in the underlying contract to turn over possession of the equipment upon default without notice and without posing a bond. (*Id.*)

Like *Glacier*, GLT agreed to relinquish possession of the Equipment upon default. It also waived any damages caused by such repossession. The Master Lease states that upon default, Sertant may repossess the Equipment without notice to GLT, with GLT “waiving all further rights of possession of the Equipment and all claims for injuries suffered through or loss caused by the repossession or demand that [Sertant] redeliver the Equipment at [Sertant] expense.” (Verified Compl. [ECF No. 1], ¶ 7, Ex. 1 [§ 17].) By doing so, GLT waived any right to injuries or damages caused by repossession, making the posting of a bond unnecessary for the issuance of a temporary restraining to preserve to exercise its right of repossession.

V. CONCLUSION

Plaintiffs respectfully request that this Honorable Court (a) enter a temporary restraining order directing GLT and its agents, representatives, employees, officers,

directors, shareholders, and other persons acting on behalf of GLT to refrain from damaging, destroying, concealing, disposing of, moving, or using so as to substantially impair the value of the Equipment pending further order of this Court; (b) require security to be posted in such amount as this Court deems appropriate; and (c) grant other relief as is just and equitable.

Dated: March 31, 2023

Respectfully Submitted

SMITH, MARTIN, POWERS & KNIER, PC

By: /s/ David L. Powers
DAVID L. POWERS (P39110)
Counsel for Plaintiffs
900 Washington Ave.
P.O. Box 219
Bay City, MI 48707-0219
Tel: (989) 892-3924
dpowers@smpklaw.com

Dated: March 31, 2023

BUCHALTER, a Professional Corporation

By: /s/ Robert S. McWhorter
ROBERT S. MCWHORTER (P49215)
Counsel for Plaintiffs
500 Capitol Mall, Ste. 1900
Sacramento, CA 95762
Tel: (916) 899-1099
rmcwhorter@buchalter.com