Firm No. 39408

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

ARC WORLDWIDE, INC. and LEO BURNETT COMPANY, INC.,	)	**12CH40478**
Plaintiffs,	)	
vs.	)	Case No. 2012 CH _______
	)	Judge
AMANDA ASHLEY, NATE BUECHLER, ALLISON CHAPLAIN, JEREMIAH DY-JOHNSON, KRISTY GIBBS, LISA HAMMING, DAVID RASHO, and MATTHEW JOHNSON,	)	
Defendants.	)	

VERIFIED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiffs Arc Worldwide, Inc. and Leo Burnett Company, Inc. (collectively "Burnett-Arc"), by their attorneys, and, for their verified complaint against Defendants Amanda Ashley, Nate Buechler, Allison Chaplain, Jeremiah Dy-Johnson, Kristy Gibbs, Lisa Hamming, David Rasho, and Matthew Johnson, state as follows:

Introduction

This emergency injunction proceeding arises out of the orchestrated and sudden *en masse* resignations late on Friday, November 2, of a group of employees instrumental to the ongoing work on a multi-million dollar project for Kellogg Company. The project involved a database marketing product which would be highly valuable to its competitors. The purpose of the mass defection was to create a crisis in the work on the project, such that Kellogg would feel compelled to hire the defecting employees—*i.e.*, Defendants—and in doing so Defendants necessarily would need to use Burnett-Arc's proprietary information to complete the project. Burnett-Arc brings this action to enforce its contractual rights with Defendants, to protect its proprietary information and trade secrets, and for a temporary restraining order and preliminary injunction to maintain the *status quo* while Burnett-Arc fights to keep the project.

The Parties

1. Arc Worldwide, Inc. is a Delaware corporation with its principal place of business at 35 West Wacker Drive, Chicago, Illinois.

2. Leo Burnett Company, Inc. is a Delaware corporation with its principal place of business at 35 West Wacker Drive, Chicago, Illinois.

3. Burnett is an advertising company. Arc is a subsidiary of Burnett and its marketing services arm, specializing in digital communications, direct and database marketing, promotions and shopper marketing. Burnett and Arc cooperate on work for many clients, including Kellogg Company of Battle Creek, Michigan ("Kellogg").

4. Defendants are individuals who, until their en masse resignations late in the day on Friday, November 2, 2012, were employed with Burnett-Arc in Chicago. On information and belief, all are residents of Cook County, Illinois.

The Business

5. The Optimization Practice at Burnett-Arc focuses on helping clients build long-term relationships with their customers through data-driven and statistical analysis, which is generally known as Customer Relationship Management ("CRM"). The CRM process typically involves the consolidation and integration of existing client databases; the ongoing collection and analysis of customer data, including analysis of data from customer loyalty program participation; statistical modeling; the development of marketing campaign strategies; the development of customized email and other communications to customers; and analyzing the effectiveness of marketing campaigns through appropriate metrics.

Burnett's Long-Standing Relationship with Kellogg

6. Kellogg has been a client of Burnett for over 60 years. Over the years, Burnett has invested an almost incalculable amount of time and effort in developing and maintaining that client relationship.

7. In addition to Burnett's ongoing creative work for Kellogg, Burnett-Arc and Kellogg are parties to a contract denominated as Statement of Work No. 2, 2012 Statement of Work for Customer Relationship Marketing/Loyalty Initiatives. This contract has been largely performed on Burnett-Arc's end by members of the Optimization Practice described above. Statement of Work No. 2 is part of an ongoing relationship between Burnett-Arc and Kellogg to implement, enhance and expand Kellogg CRM programs.

8. Burnett-Arc has expended substantial time and effort in securing the CRM engagement from Kellogg and then in developing and implementing the CRM/Loyalty initiative with Kellogg. Approximately five years ago, Burnett-Arc approached Kellogg to discuss the possibility of Kellogg starting a CRM program. After implementing a CRM program for a single Kellogg brand starting in 2007, Burnett-Arc's efforts resulted in the parties entering into the Statement of Work No. 1 for the year 2011, which was followed by the current contract for 2012, Statement of Work No 2. Burnett-Arc and Kellogg are presently in negotiations for Statement of Work No. 3, for work in 2013.

9. The three Statements of Work for Kellogg have each been substantial projects, and together they total several million dollars. Moreover, the Kellogg CRM project is and has been for Burnett-Arc a "flagship" project that has greatly enhanced Burnett-Arc's image and reputation in the market for CRM initiatives, thereby enabling Burnett-Arc to leverage its Kellogg experience to effectively compete for new business. For example, over the past few

months, Burnett-Arc has sent Defendant Gibbs, one of the leaders on the Kellogg CRM project, to make presentations to another of Burnett-Arc's current clients on Burnett-Arc's CRM experience and capabilities.

10. In their work for Burnett-Arc, especially on the Kellogg CRM project, each Defendant was privy to highly sensitive and confidential information that is not known to the public, including information as to Burnett-Arc's CRM marketing practices and strategies, its proprietary methodologies and analytics, as well as other sales, pricing and financial information. Knowledge and use of such information by Defendants or their new employer would give them an unfair competitive advantage in competing against Burnett-Arc and would deprive Burnett-Arc of the value of its investment in its Optimization group and in the Kellogg CRM project in particular. For example:

(a) Burnett-Arc has developed a proprietary survey methodology to measure the impact of marketing communications by comparing consumer behavior.

(b) Burnett-Arc has also developed an email analytics process that significantly expands the usefulness of email metrics in measuring the effectiveness of the email process.

(c) Burnett-Arc has also developed a unique proprietary system for marketing demand forecasting.

11. Burnett-Arc takes reasonable steps to maintain the secrecy and confidentiality of its confidential information. One of these steps is to require its employees to contractually promise to maintain the confidentiality of information. Each Defendant agreed to such a restriction. See Exhibits A through H, attached hereto and incorporated herein by this reference.

The *En Masse* Resignations

12. Late afternoon on Friday, November 2, 2102, seven of the 11 active employees working on the Kellogg CRM project announced that they were resigning effective immediately from Burnett-Arc, as did one employee who had worked on Burnett-Arc's CRM project for another account. The seven on the Kellogg CRM project were Defendants Amanda Ashley, Nate Buechler, Allison Chaplain, Kristy Gibbs, Lisa Hamming, David Rasho, and Matthew Johnson. Defendant Jeremiah Dy-Johnson had worked to some extent on the Kellogg CRM project, but primarily on another CRM account.

13. On that date, November 2, 2012, at approximately 2:41 p.m., Gibbs sent an email to Steve Grosklaus, Executive Vice-President and the Director of the Optimization Practice at Burnett-Arc, asking to meet with him. After 3:00 p.m., the three most senior of the eight defecting employees – Gibbs, Rasho and Johnson – came into Grosklaus's office and informed Grosklaus that the three of them were leaving the company, effective immediately, to start their own business. Thereafter, Rasho instructed the group not to say anything further. Grosklaus said that the group would need to submit a letter of resignation, which they did. Grosklaus learned later in the day from Hamming and Dy-Johnson that they were resigning and from two other company managers that the other defecting employees were resigning as well.

The Roles of the Defecting Employees

14. Of the eight persons who defected, two – Gibbs and, until October 12, 2012, Johnson – had reported directly to Steve Grosklaus, Executive Vice-President and the Director of the Optimization Practice at Burnett-Arc. Gibbs was Sr. Vice President and Director, Optimization, and the highest paid of the group; she had been employed with Burnett-Arc since

March 31, 2003. Johnson was Director, Optimization; he had been employed with Burnett-Arc since May 31, 2005.

15. Gibbs has a skill set and knowledge base unique within Burnett-Arc and, to the company's knowledge, unique within the optimization industry. She was the strategist and "architect" behind the CRM project; and she also was a "hands on" coder of data. Gibbs would work each weekend pulling together disparate data from which future consumer-directed communications would be created. Moreover, with her departure along with the seven other defections, Burnett-Arc will be challenged in recreating the data that she worked with. This could jeopardize Burnett-Arc's ability to fulfill its obligations to Kellogg.

16. Moreover, Gibbs recently participated in a pitch to obtain CRM business from an existing client of Burnett-Arc. In preparation for that pitch and in its presentation, she was privy to highly sensitive and confidential information that is not known to the public. Its use or disclosure prior to an award of the work by that client would jeopardize Burnett-Arc's ability to obtain that work, if not cause Burnett-Arc to lose it outright.

17. In August 2012, following up on previous discussions, Gibbs told Grosklaus directly that she wanted to start her own business in the optimization field, while remaining at Burnett-Arc. Grosklaus informed her that she could not do that. Following their conversation, Gibbs sent Grosklaus an email saying that she was not going to pursue that idea and that she instead was interested in growing the CRM practice at Burnett-Arc. Grosklaus believed her, and increased her responsibilities within the optimization team. However, based on the mass resignations that occurred on November 2, 2012, that Gibbs helped bring about, it is apparent that Gibbs followed through on her expressed ambition to start a competing business.

18. Reporting up through Gibbs were Rasho and Hamming, while Ashley and Buechler functionally reported up through Gibbs. Rasho was Director, Optimization, and the second-highest paid of the group; he had been employed with Burnett-Arc since November 9, 2009. Rasho interacted on a near-daily basis with key client contacts at Kellogg, including its internal brand managers —that is, the Kellogg managers in charge of their various brands, such as Eggo, Special K, *etc*. Among other topics, he was in frequent communication with Kellogg's brand managers regarding the content of the messages to be delivered to Kellogg's customers via the outgoing e-mails and communications emanating from the CRM program. By virtue of his interaction with numerous brand managers, he has a wealth of "inside" information and information pertaining to the likes and dislikes of the various brand managers. No one but Rasho has the depth of knowledge regarding the brand managers, in the context of CRM initiatives, that Rasho possesses, and to Burnett-Arc's knowledge at this time, he has not left behind any documents containing his knowledge and insights gained from his close interaction with Kellogg's brand managers.

19. Moreover, Rasho recently participated in a credentials presentation to obtain CRM business from a major client of Burnett-Arc. In preparation for that presentation, Rasho was privy to highly sensitive and confidential information that is not known to the public. Its use or disclosure prior to an award of the work would jeopardize Burnett-Arc's ability to obtain that work, if not cause Burnett-Arc to lose it outright.

20. Hamming was Sr. Analyst, Optimization; she had been employed since September 13, 2010. Hamming worked in close conjunction with Gibbs. Among other things, she analyzed consumer behavior relative to the CRM program. For example, she analyzed what consumers who received e-mails from the CRM program opened (such as whether they opened

coupons embedded in the e-mail, clicked on hyperlinks embedded within the e-mail and, if so, which ones) and determined what that particular consumer was interested in. This allowed Burnett-Arc to create further outreach to the consumer based on information Burnett-Arc knows would be appealing to them and most likely to engage them with Kellogg products.

21. Ashley was Manager, Response Management; and she had been employed since September 24, 2007. Buechler was Sr. Analyst, Contact Management; and he had been employed since August 16, 2010. They primarily were responsible for quality control over the outgoing e-mail and SMS (text messaging) processes of the CRM project and for the execution of the e-mail and SMS campaigns that enabled Kellogg's cache of consumer-specific data to be mined and refined so as to reach the most likely consumer with information pertaining to the type of products they would be most likely to purchase.

22. Johnson, who had also reported directly to Grosklaus for a period of time, was Director, Optimization, at a compensation level approximately commensurate with that of Rasho; he had been employed since May 31, 2005. He functioned as the lead forecaster for the CRM project. His forecasting responsibilities included the use of past consumer behavior to predict future marketing demand. As part of this process, Johnson had to forecast the quantity of necessary promotional materials that Kellogg should keep on hand.

23. Chaplain was Manager, Optimization, and reported directly to Johnson; she had been employed since April 4, 2011. Chaplain engaged in statistical modeling designed to cull and analyze the accumulated data on a consumer—such as, for example, income level, purchasing history, coupon-use history, etc.—to determine what decisions that consumer may make, based on certain profiles suggested by the data. For example, some consumers stock up and save certain products; other consumers may be focused on more health-conscious products;

etc. Statistical modeling enables one to predict what a particular consumer will be most likely to purchase. This in turn allows the CRM program to target communications and coupons to the individual consumer. She also developed tests to understand incremental sales in the marketplace.

24. Dy-Johnson was Analyst, Optimization; he had been employed since January 18, 2011. He is the only one of the eight defecting employees who did not work primarily on the Kellogg CRM project. He most recently worked on the CRM project that Burnett-Arc is performing for another client. His expertise is in name generation—that is, in identifying potential consumers to be targeted as part of a marketing campaign. Prior to working for Burnett-Arc, he had worked with Buechler at another employer's. Dy-Johnson's skill set fits with the optimization group, and it makes sense that in starting up a new optimization company they would want Dy-Johnson as part of their team.

Effect of the *En Masse* Resignations

25. The timing of the resignations was intentionally designed to maximize the defecting employees' ability to persuade Kellogg that they were the only people capable of completing the CRM project. Additionally, the defecting employees know the time deadlines under which Burnett-Arc is operating on the Kellogg project and in leaving when they did, it is apparent that they assumed Burnett-Arc would not be able to meet the client's deadlines and that, as a result, the client would have "no choice" but to hire Defendants as the replacement for Burnett-Arc. Moreover, the timing of the resignations will, at a minimum, delay and disrupt the negotiation of and the work to be performed under the upcoming 2013 Statement of Work.

26. On Monday, November 4, 2012, Burnett-Arc engaged in discussions internally, and on November 5, 2012, Burnett-Arc discussed with Kellogg representatives how Burnett-Arc

might meet the deadlines for the project given the defections. There is no guarantee Burnett-Arc will be successful in the effort.

27. Finding employees already in its employ is its only viable option to deliver the work on the Kellogg CRM project. This is so because it takes months to locate qualified persons in this field. There are scant qualified persons capable of performing the functions in optimization that the defecting employees performed. Defendants know that, too, and it is obvious that they factored that into the timing of their resignations, as they know Kellogg will not endure a delay of up to six months or more for Burnett-Arc to try to fill these suddenly open positions.

28. Moreover, the harm to Burnett-Arc of these abrupt defections goes beyond the potential loss of this particular project for Kellogg. The ability to perform successfully a sophisticated CRM project like the Kellogg project is in high demand in the industry. The Kellogg CRM project is a showcase project that would have enabled Burnett-Arc to leverage what the company learned from the project to create similar optimization products for other clients. If the defecting employees are permitted to continue working on and finish this project, they then will try to claim the project as their own in efforts to showcase it to other potential clients, thus depriving Burnett-Arc of the value of its investment in this project.

<u>Defendants' Violated Their Obligations to Burnett-Arc</u>

29. As a condition of their employment, Defendants Ashley, Buechler, Chaplain, Dy-Johnson, Hamming, and Rasho had executed agreements containing the following confidentiality and non-solicitation covenants:

> <u>Non-Solicitation</u>
>
> You agree that for one year following the termination of your employment with Leo Burnett, for any reason, you will not directly or indirectly:

> • Attempt in any manner to solicit from any Leo Burnett client, except on our behalf, business of the type performed by Leo Burnett or to persuade any person, firm, or corporation which is a client to cease doing business or to reduce the amount of business which any such client has customarily done or contemplates doing with Leo Burnett whether or not the relationship between such client and Leo Burnett was originally established in whole or part through your efforts; or
>
> • Employ or attempt to employ or assist anyone else to employ any person who is then, or at any time during the then preceding twelve months was, in our employ; or
>
> • Render any services of the type rendered by Leo Burnett or any Leo Burnett client unless such services are rendered as a consultant to Leo Burnett, or you have the express written permission of Leo Burnett to do so.
>
> Confidentiality
>
> You agree that any information relating to Leo Burnett, or the products and services of a specific individual client of Leo Burnett, which was available to you in connection with the performance of your job, is and shall remain the property of Leo Burnett, and/or that specific client. You understand and agree that all of this information and all similar materials are confidential and proprietary and that under no circumstances will you divulge, reveal, share, publish or give any of such information or materials to any third party. The confidentiality provisions of this document will remain in force during and after your employment with Leo Burnett, unless such information becomes publicly known or you are released from this confidentiality agreement by written release by Leo Burnett.

See Exs. A through F attached hereto and incorporated herein by this reference. "Client" is narrowly defined as (a) an entity that was a client either at the time of, or within the one-year preceding, the employee's termination and for which the employee provided services, or (b) a prospective client to which a formal presentation had been made within 180 days of the employee's termination and in which the employee had participated. (*Id.*)

30. As a condition of their employment, Defendants Gibbs and Johnson had executed agreements containing confidentiality covenants substantially the same as the confidentiality

covenant agreed to by the other six Defendants as set forth above. See Exs. G and H attached hereto and incorporated herein by this reference.

31. As a condition of their employment, all Defendants were subject to the Leo Burnett Group Employee Handbook, which contains non-solicitation-of-clients and non-solicitation-of-employees covenants nearly identical to those set forth in Paragraph No. 29 of this complaint. See Exhibit I attached hereto and incorporated herein by this reference, which are copies of the relevant policies.

32. In addition to their contractual obligations discussed above, Defendants were subject to the Illinois Trade Secrets Act, 765 ILCS 1065/1 *et seq.*, and its protections afforded to trade secrets such as those possessed by Defendants.

33. By their actual and threatened conduct, Defendants have violated and/or threaten to violate their contractual, statutory, and common law obligations to Burnett-Arc. Such violations have caused, and/or threaten to cause, irreparable harm to Burnett-Arc for which it has no adequate remedy at law.

34. Following their abrupt resignations late on November 2, Plaintiffs' counsel e-mailed to seven Defendants and attempted messenger delivery to all eight Defendants on Saturday, November 3 of letters advising each of them that they could not provide service to Kellogg's or clients of Plaintiffs. The letters urged them to have their legal counsel contact Plaintiffs' counsel, and informed them that Plaintiffs would file legal action on Monday, November 5, if Defendants did not contact Plaintiffs' counsel. See Exs. J through Q attached hereto and incorporated herein by this reference, which are copies of the e-mails and the letters sent to Defendants. Attached hereto as Ex. R is a copy of the service sheet reflecting the

messenger service's efforts to serve the letters on Defendants. As of the filing of this complaint, neither Defendants nor any representative of Defendants has contacted Plaintiffs' counsel.

FIRST CLAIM FOR RELIEF

(Breach of Contract against all Defendants)

35. Plaintiffs reallege as if fully set forth herein the allegations contained in paragraphs 1-33 above.

36. Defendants have breached their agreements with Burnett-Arc by soliciting and/or threatening to solicit clients, most particularly Kellogg.

37. Defendants have breached their agreements with Burnett-Arc by soliciting Burnett-Arc employees, most obviously their solicitations of each other to resign en masse to, on information and belief, form a competing business.

38. Defendants have breached their agreements with Burnett-Arc by taking and using or disclosing, and/or threatening to use or disclose, Burnett-Arc's confidential and proprietary information.

39. Defendants' actual and/or threatened breaches of their agreements has damaged and/or will damage Plaintiffs in that it has deprived and/or will deprive Plaintiffs of clients, employees, confidential information, goodwill, and business revenue and profits that it would not lose, but for the breaches. Moreover, Defendants' actual breaches reflect their disregard of their continuing contractual obligations to Plaintiffs and evidence their intent to continue to violate their agreements.

40. Defendants' continued breaches of their agreements will cause irreparable injury to Plaintiffs by the unauthorized disclosure and use of Plaintiffs' confidential information, by the

unlawful diversion of customers away from Plaintiffs, and by the loss of employees unlawfully solicited.

WHEREFORE, Plaintiffs pray:

A. That a temporary and preliminary injunction be issued, pending the outcome of trial of this claim, enjoining Defendants from: (1) soliciting or servicing Kellogg or any other client on whose account they worked during the last year of their employment with Plaintiffs; (2) soliciting or otherwise enticing any of Plaintiffs' employees to leave Plaintiffs' employ; and (3) using or disclosing Plaintiffs' confidential information, including but not limited to the information specific to the CRM project on which they had been working for Plaintiffs;

B. That a permanent injunction be issued enjoining Defendants from the acts for which temporary and preliminary injunctive relief has been sought;

C. That Plaintiffs be awarded all compensatory damages caused by Defendants' breaches of their agreements in the amount to be proved at trial;

D. That Plaintiffs recover their attorneys' fees, costs and expenses incurred herein; and

E. That Plaintiffs be granted such other and further relief as may be appropriate under the circumstances.

<u>**SCOND CLAIM FOR RELIEF**</u>

(Intentional Interference with Contract against all Defendants)

41. Plaintiffs reallege as if fully set forth herein the allegations contained in paragraphs 1-40 above.

42. As shown above, Plaintiffs' have enforceable agreements with each Defendant.

43. On information and belief, each Defendant was aware of the agreements between Plaintiffs and each other Defendant.

44. By their conduct, each Defendant intentionally interfered with Plaintiffs' contractual agreements with each other Defendant, in that each has encouraged, induced, and solicited some or all of the other Defendants to breach their obligations to Plaintiffs, resulting in the breaches set forth above in Plaintiffs' First Claim For Relief.

45. Defendants' malicious and intentional interference with Plaintiffs' agreements has damaged and/or will damage Plaintiffs in that it has deprived and/or will deprive Plaintiffs of clients, employees, confidential information, goodwill, and business revenue and profits that it would not lose, but for the breaches. Moreover, Defendants' conduct reflects their disregard of their obligations to refrain from intentionally interfering with Plaintiffs' agreements and evidence their intent to continue to interfere with them.

46. Defendants' continued interference with Plaintiffs' agreements will cause irreparable injury to Plaintiffs by the unauthorized disclosure and use of Plaintiffs' confidential information, by the unlawful diversion of customers away from Plaintiffs, and by the loss of employees unlawfully solicited.

WHEREFORE, Plaintiffs pray:

A. That a temporary and preliminary injunction be issued, pending the outcome of trial of this claim, enjoining Defendants from interfering with Plaintiffs' agreements with Plaintiffs' agreements with their co-defendants;

B. That a permanent injunction be issued enjoining Defendants from the acts for which temporary and preliminary injunctive relief has been sought;

C. That Plaintiffs be awarded all compensatory damages caused by Defendants' intentional interference with Plaintiffs' agreements in the amount to be proved at trial;

D. That Plaintiffs' be awarded exemplary damages for Defendants' tortious conduct;

E. That Plaintiffs recover their attorneys' fees, costs and expenses incurred herein; and

F. That Plaintiffs be granted such other and further relief as may be appropriate under the circumstances.

THIRD CLAIM FOR RELIEF

(Violation of Illinois Trade Secrets Act-765 ILCS 1065/1 *et seq.* against all Defendants)

47. Plaintiffs reallege as if fully set forth herein the allegations contained in paragraphs 1-46 above.

48. As a result of their positions with Plaintiffs, Defendants had access and exposure to Plaintiffs' trade secrets, particularly as they relate to the Kellogg CRM/Loyalty project. It is evident by the nature and circumstances of Defendants' sudden, *en masse* resignations that they intend to use and/or disclose those trade secrets in competition with Plaintiffs, if they have not already done so. Such use and disclosure is not made with Plaintiffs' consent and violates the Illinois Trade Secrets Act, 765 ILCS 1065/1, *et seq.* (the "Act").

49. As previously described, Plaintiffs have taken reasonable efforts to maintain the confidentiality of its trade secrets.

50. Plaintiffs derive independent economic value from its trade secrets not being generally known to, and not being readily ascertainable through proper means by, other persons who could obtain economic value from those trade secrets.

51. The use and disclosure of Plaintiffs' trade secrets in competition with Plaintiffs will damage Plaintiffs by actually depriving them of, or threatening to deprive them of, the economic value generated by not having the trade secrets known to others. Moreover, Defendants' behavior and circumstances in orchestrating the *en masse* resignations at a crucial time in the CRM project reflect their intent to use the trade secrets at a time most injurious to Plaintiffs and thus reflect their disregard of Plaintiffs' rights under the Act and evidence their intent to continue to violate Plaintiffs' statutory rights.

52. Defendants' threatened, if not actual, use and disclosure of Plaintiffs' trade secrets constitute misappropriations under the Act.

53. Defendants' threatened solicitation of Kellogg constitutes a misappropriation under the Act, as such solicitation is dependent on Defendants' possession and use of Plaintiffs' trade secrets.

54. The threatened or actual violations of the Act identified above have caused or threaten to cause irreparable injury to Plaintiffs for which they have no adequate remedy at law.

55. Defendants' threatened or actual use and disclosure of Plaintiffs' trade secrets is malicious and willful.

WHEREFORE, Plaintiffs pray:

A. That a temporary and preliminary injunction be issued, pending the outcome of trial of this claim, enjoining Defendants from using or disclosing Plaintiffs' trade secrets, particularly its trade secrets embodied within the Kellogg's CRM/Loyalty project;

B. That a permanent injunction be issued enjoining Defendants from the acts for which temporary and preliminary injunctive relief has been sought;

C. That Plaintiffs be awarded all compensatory damages caused by Defendants' threatened or actual use or disclosure of Plaintiffs' trade secrets in the amount to be proved at trial;

D. That Plaintiffs' be awarded exemplary damages for Defendants' malicious and willful misappropriation;

E. That Plaintiffs recover their attorneys' fees, costs and expenses incurred herein; and

F. That Plaintiffs be granted such other and further relief as may be appropriate under the circumstances.

FOURTH CLAIM FOR RELIEF

(Civil Conspiracy against all Defendants)

56. Plaintiffs reallege as if fully set forth herein the allegations contained in paragraphs 1-55 above.

57. As revealed by the facts set forth above, it is evident that Defendants had an agreement among and between themselves in which they orchestrated the unlawful solicitation of each other to resign from Plaintiffs and engage in competition, orchestrated the unlawful intent to solicit clients, and orchestrated as more fully described above the misappropriation of confidential information and trade secrets.

58. As revealed by the facts set forth above, it is evident that Defendants acted on their agreement and in furtherance of their conspiracy in ways that violated Plaintiffs' contractual, statutory, and common law rights.

59. The unlawful conspiracy described above has caused or threatens to cause irreparable injury to Plaintiffs for which they have no adequate remedy at law.

60. Defendants' conspiracy is malicious and willful.

WHEREFORE, Plaintiffs pray:

A. That a temporary and preliminary injunction be issued, pending the outcome of trial of this claim, enjoining Defendants from engaging in any acts in furtherance of their conspiracy;

B. That a permanent injunction be issued enjoining Defendants from the acts for which temporary and preliminary injunctive relief has been sought;

C. That Plaintiffs be awarded all compensatory damages caused by Defendants' unlawful conspiracy in the amount to be proved at trial;

D. That Plaintiffs' be awarded exemplary damages for Defendants' malicious and willful conspiracy;

E. That Plaintiffs recover their attorneys' fees, costs and expenses incurred herein; and

F. That Plaintiffs be granted such other and further relief as may be appropriate under the circumstances.

FIFTH CLAIM FOR RELIEF

(Breach of Duty of Loyalty against some or all Defendants)

61. Plaintiffs reallege as if fully set forth herein the allegations contained in paragraphs 1-60 above.

62. As a result of their employment with Plaintiffs, Defendants occupied positions of trust and confidence, and each had a duty of loyalty to Plaintiffs not to act against Plaintiffs' interests or in violation of Plaintiffs' rights while Defendants remained employed with Plaintiffs.

63. As revealed by the facts set forth above, Defendants breached their respective duties of loyalty to Plaintiffs.

WHEREFORE, Plaintiffs pray:

A. That Plaintiffs be awarded all compensatory damages caused by Defendants' breaches of their respective duties of loyalty to Plaintiffs in the amount to be proved at trial;

B. That Plaintiffs' be awarded exemplary damages for Defendants' malicious and willful conduct;

C. That Plaintiffs recover their attorneys' fees, costs and expenses incurred herein; and

D. That Plaintiffs be granted such other and further relief as may be appropriate under the circumstances.

ARC WORLDWIDE, INC. and
LEO BURNETT COMPANY, INC.

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