

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PIPING ROCK HEALTH PRODUCTS, LLC,

Plaintiff,

-against-

GERARDO CORTES and the DOE COMPANY,

Defendants.

COMPLAINT

Case No.:

Plaintiff, PIPING ROCK HEALTH PRODUCTS, LLC (“Plaintiff” or the “Company” or “Piping Rock”), by and through its attorneys, Jaspan Schlesinger LLP, as and for its complaint against the defendant, GERARDO CORTES (“Cortes”) and an unidentified defendant company doing business in California, the DOE COMPANY (the “Doe Company”, collectively, with Cortes “Defendants”), respectfully alleges the following:

PRELIMINARY STATEMENT

1. This action seeks emergency and permanent equitable relief and damages from Defendants for Cortes’s misappropriation of Plaintiff’s trade secrets, unfair competition, breach of fiduciary duty, tortious interference with prospective economic advantage, and breaches of multiple contracts.

2. In the days before he resigned from the Company in April 2022, Cortes uploaded and transferred to himself hundreds of documents containing confidential and proprietary information belonging to Piping Rock (the “Customer List and Confidential Files”).

3. These Customer List and Confidential Files included, *inter alia*, millions of customer contact information and marketing materials, which Piping Rock has spent over a decade and tens of millions of dollars compiling and maintaining.

4. Upon his hiring, Cortes was provided and executed multiple agreements detailing Piping Rock's exacting confidentiality policies and attended trainings in which those policies were reviewed in depth. Cortes was, therefore, aware that maintaining the confidentiality of the Company's trade secrets was of the utmost importance to Piping Rock, and that he had strict confidentiality and fiduciary obligations to the Company as a result thereof.

5. Before his departure, Cortes admitted to his supervisor that he was leaving Piping Rock to work remotely for a company located in California, whose identity is currently unknown but is referred to herein as "the Doe Company." Upon information and belief, Cortes has shared or intends to share Piping Rock's confidential and proprietary information with the Doe Company.

6. Piping Rock discovered that Cortes had misappropriated its Customer Lists and Confidential Files through its regular practices and policies, as detailed in the Piping Rock Associate Handbook (the "Associate Handbook", attached hereto as Exhibit A).

7. Upon information and belief, Cortes stole Piping Rock's confidential trade secrets for his own benefit and for that of his new employer, the Doe Company, and to compete unfairly and wrongfully against Piping Rock.

8. By this Complaint, Piping Rock seeks an order from the Court prohibiting Defendants from using or disseminating Piping Rock's confidential information, prohibiting Defendants from soliciting any of Piping Rock's customers named in the Customer List and Confidential Files, directing Defendants to return or destroy all information and things, and any copies thereof, that Cortes misappropriated from Piping Rock, compensatory damages, punitive damages, and any other available relief as further described below.

PARTIES

9. Defendant, Gerardo Cortes, is a natural person who resides at 87 Cedarhurst Avenue, Selden New York 11784.

10. Defendant, the Doe Company, is an unidentified company doing business in California.

11. Plaintiff, Piping Rock is a limited liability company organized and existing under the laws of New York. Its principal place of business is located at 3900 Veterans Memorial Highway, Suite 200, Bohemia, New York 11716.

JURISDICTION AND VENUE

12. The Court has jurisdiction over Plaintiff's claims pursuant to 18 U.S.C. § 1836(c) and 18 U.S.C. § 1030 because Plaintiff brings claims pursuant to the Defense of Trade Secrets Act of 2016 and the Computer Fraud and Abuse Act of 1986, respectively.

13. Venue is appropriate in the Eastern District of New York as Piping Rock and Cortes reside within the district and the primary acts of misconduct occurred therein.

14. Venue is also appropriate in the Eastern District of New York by the agreement of the parties. Piping Rock and Cortes agreed in the applicable Employee Confidentiality and Proprietary Rights Agreement that “[a]ny action or proceeding by either Party to enforce this Agreement shall be brought only in any state or federal court located in Suffolk County in the state of New York. The Parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.”

STATEMENT OF FACTS

Background

15. Piping Rock, founded in 2011, is a global retailer of natural products, including, *inter alia*, vitamins, supplements, exotic herbs and holistic oils.

16. Piping Rock is a family company spanning three generations, with the stated goal of “mak[ing] superior quality vitamins, supplements and natural products affordable and easy to access for everyone.”

17. Piping Rock’s business is dependent on the development and maintenance of its customer relationships. Piping Rock keeps records of its customers and all data associated with those customers in a detailed Customer List.

18. The Customer List, which contains data from Piping Rock customers from at least 2015 until now, is an asset that has taken Piping Rock over a decade to build.

19. Piping Rock’s Customer List currently contains email addresses and other information for over 4.8 million customers.

20. Piping Rock has spent tens of millions of dollars developing this Customer List over the last decade.

21. For example, from January 1, 2021 to December 31, 2021, Piping Rock spent at least \$5,962,127.35 to acquire 322,616 customers and to keep 312,651 customers.

22. Just in March 2022, it cost Piping Rock more than \$25 to acquire each individual new customer. Piping Rock spent \$345,984 to acquire 13,447 customers. That is, \$25.67 per new customer.

23. Therefore, the Customer List that is the subject of this lawsuit is one of Piping Rock's most valuable assets, and the confidentiality of the information contained therein is essential to the development of the Company's business.

Piping Rock Hires Cortes in February 2018

24. Piping Rock hired Cortes in February 2018 as an e-mail marketing manager.

25. Cortes was a highly compensated employee, receiving an annual salary of nearly \$92,000 at the time he quit in April 2022.

26. Cortes's job duties included managing Piping Rock's email marketing efforts to Piping Rock's millions of customers, including creating the emails that the customers would receive, analyzing which marketing campaigns were effective, and managing the Company's customer relationships.

27. In order to fulfill his job duties, Piping Rock provided Cortes access to its Customer List and other confidential information. However, such access was always limited to the fulfillment of his specified job duties or as otherwise expressly authorized by Piping Rock.

28. Cortes's access to Piping Rock's Customer List and other confidential information was further governed by the Company's policies and procedures detailed in the Piping Rock Associate Handbook and the Employee Confidentiality and Proprietary Rights Agreement (the "Confidentiality Agreement", attached hereto as Exhibit B).

Cortes Signs and Is Bound by the Associate Handbook

29. At or around the time of his hiring, Cortes received the Associate Handbook. (*See* Exhibit A). Cortes acknowledged his receipt of the Associate Handbook and his agreement to abide by it. (*Id.*)

30. The Associate Handbook detailed the Company's personnel policies and expected standards of conduct.

31. One of these policies was the Company's "Business Ethics and Conduct" policy. This policy requires all employees "to conduct business in accordance with the letter, spirit and intent of all relevant laws and to refrain from any illegal, dishonest or unethical conduct." It further states that "[c]ompliance with the Company's Code of Business Conduct is the responsibility of every Associate." (Exhibit A at 8).

32. The Associate Handbook prohibits "[s]tealing, misusing, destroying or removing from company premises without authorization any company property or the property of any employee." (*Id.* at 27).

33. The Associate Handbook further provides that "no Associate will disclose any documents outside the Company with any person outside the Company which will impact the Company's integrity and will have any conflict of interest with Company. In the event if anyone is found involved thereabout, disclosure will be seriously dealt with." (*Id.* at 28).

34. The Associate Handbook also details the Company's "Confidentiality Policy." (*Id.* at 29).

35. The Confidentiality Policy defines "Company property" as "not only tangible property such as desks and computer terminals, but also intangible property such as information and data on those computer terminals." It notes that,

[o]f particular importance are proprietary information and confidential information. Proprietary information includes all information obtained by Company Associates during the course of their work Confidential information is any company information that is not generally known to the public or our industry. *Customer lists and files*, production information, personnel files, employee medical information, computer records, financial and marketing data, formulas and trade secrets are examples of confidential information.

* * *

You may not disclose or use proprietary or confidential information except as your job requires.

* * *

Although we wish to respect Associates' privacy, there may be times when in order to prevent or investigate claims of harassment, theft or other wrongdoing, an authorized company representative may monitor phone calls, regular mail and electronic mail (e-mail).

* * *

In the managing the operations of our business, certain staff members become privy to sensitive information about the business, our customers, and our Associates. This information must remain confidential both internally (within the company) and externally (outside the company, including spouses and family members). Do not discuss it with others beyond what is required to perform your job unless you are given specific authority to do so.

* * *

All Associates are required to comply with this policy. Any violations will result in disciplinary action up to and including discharge.

(*Id.* at 29-33) (emphasis added).

36. The Associate Handbook also contains a "Conflicts of Interest" policy. This policy prohibits any activity if it will, *inter alia*, "[c]reate a conflict with the business interests and purposes of the company." (*Id.* at 35).

37. The Associate Handbook also contains an "Electronic Communications" policy. This policy provides

Company Property

Electronic equipment, including but not limited to computers, telephones, pagers, printers and fax machines, used or owned by the company and all information stored on this equipment is company property. Company *reserves the right to review and disclose any information sent, received or stored on this equipment.* For example, the company may review and

disclose any electronic mail (e-mail), voice mail, computer passwords, fax documents and computer files found on company equipment.

Confidentiality

Much of the information stored in the company’s electronic equipment is confidential; disclosure can only be made at the company’s discretion, any unauthorized disclosure to outsiders or coworkers is prohibited The company’s policy on confidentiality (see page [29]) applies to information and communications on all company electronic equipment.

Business Use

During work hours, you may use the company’s electronic equipment only for business related purposes Personal use of the company electronic equipment is restricted to after regular work hours and must not interfere or conflict with business use. You should not expect that *any* information on company equipment is private.

(Exhibit A at 36) (emphasis in original).

38. Finally, the Associate Handbook makes plain that the Company may conduct searches of company property or of personal property that an employee brings onto company premises in order to “stop theft” and “protect the interests of the company,” amongst other things. (*Id.* at 39).

39. Cortes reviewed the Associate Handbook, and, on February 26, 2018, signed an acknowledgment stating

I have received a copy of the Company Associate Handbook. I understand that it is my obligation to understand all of the rules, policies, terms and conditions and to abide by them. If I have any questions regarding these policies, I will ask my Supervisor or the *human resources director*. I understand and agree that employment at Company is “at will.” I also understand and agree that any provision of this handbook may be amended or revised at any time by Company with or with notice.

(*Id.*, at 46) (emphasis in original).

40. The Associate Handbook referenced herein remained in effect throughout the course of Cortes’s employment.

**Cortes Signs and Is Bound by the Employee
Confidentiality and Proprietary Rights Agreement**

41. At the time of his hiring, Cortes was also provided with Piping Rock's Confidentiality Agreement. (*See* Exhibit B).

42. In the Confidentiality Agreement, Cortes acknowledged that

during the course of employment by the Employer, he will have access to and learn about confidential, secret and proprietary documents, materials and other information, in tangible and intangible form, of and relating to the Employer and its businesses and existing and prospective customers, suppliers, investors and associated third parties (“**Confidential Information**”). The Employee further understands and acknowledges that this Confidential Information and the Employer's ability to reserve it for the exclusive knowledge and use of the Employer is of great competitive importance and commercial value to the Employer, and that improper use or disclosure of the Confidential Information by the Employee might cause the Employer to incur financial costs, loss of business advantage, liability under confidentiality agreements with third parties, civil damages and criminal penalties.

(Exhibit B, § 1(a)) (emphasis in original).

43. The Confidentiality Agreement defines “Confidential Information” broadly. Confidential Information under the agreement

includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly to or indirectly to: business processes, practices, methods, policies, plans, publications, documents, research, operations, services, strategies, techniques, agreements, contracts, terms of agreements, transactions, potential transactions, negotiations, pending negotiations, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, web design, work-in-process, databases, manuals, records and reports, articles, systems, material, sources of material, supplier identity and information, vendor identity and information, *customer identity and information*, financial information, results, accounting information, accounting records, legal information, *marketing information*, advertising information, pricing information, credit information, design information, payroll information, staffing information, personnel information, developments, internal controls, security procedures, graphics, drawings, sketches, *sales information*, costs formulae, product plans, designs, ideas, inventions, unpublished patent

applications, original works of authorship, discoveries, specifications, and manufacturing information, of the Employer or its businesses or any existing or prospective customer, supplier, investor or other associated third party, or of any other person or entity that has entrusted information to the Employer in confidence.

(Id) (emphasis added).

44. In the Confidentiality Agreement, Cortes then agreed

(i) to treat all Confidential Information as strictly confidential; (ii) not to directly or indirectly disclose, publish, communicate or make available Confidential Information, or allow it to be disclosed, published, communicated or made available, in whole or part, to any entity or person whatsoever (including other employees of the Employer) not having a need to know and authority to know and use the Confidential Information in connection with the business of the Employer and, in any event, not to anyone outside of the direct employ of the Employer . . . ; and (iii) ***not to access or use any Confidential Information, and not to copy any documents, records, files, media or other resources containing Confidential Information, or remove any such documents, records, files, media or other resources from the premises or control of the Employer, except as required in the performance of the Employee's authorized employment duties to the Employer or with the prior consent of the Employer***, in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent).

(Id., § 1(b)) (emphasis added).

45. The duration of the confidentiality obligations detailed in the Confidentiality Agreement are ongoing, commencing “immediately upon the Employee first having access to such Confidential Information” and continuing “during and after his employment by the Employer until such time as such Confidential Information has become public knowledge other than as a result of the Employee’s breach of this Agreement” (*Id.*, § 1(c)).

46. The Confidentiality Agreement also contains a section regarding Security. In that section, Cortes agreed “not to access or use any Facilities and Information Technology Resources except as authorized by Employer” and “not to access or use any Facilities and Information

Technology Resources in any manner after the termination of the Employee's employment by the Employer, whether termination is voluntary or involuntary." (*Id.*, § 3(a)).

47. Cortes agreed to certain Exit Obligations in the Confidentiality Agreement, namely that he would

provide or return to the Employer any and all Employer property, including . . . manuals, reports, files, books and records of any kind, compilations, work product, e-mail messages, texts, recordings tapes, disks, thumb drives or other removable storage devices, hard drives, data and all Employer documents and materials belonging to the Employer and stored in any fashion, including but not limited to those that constitute or contain any Confidential Information or Work Product, that are in the possession or control of the Employee . . . [and] delete or destroy all copies of any such documents and materials not returned to the Employer that remain in the Employee's possession or control, including those stored on any non-Employer devices, networks, storage locations and media in the Employee's possession or control.

(*Id.*, § 3(b)).

48. Finally, Cortes agreed that,

[i]n the event of a breach or threatened breach by the Employee of any of the provisions of this Agreement . . . the Employer shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that monetary damages would not afford an adequate remedy, and without the necessity of posting any bond or other security.

(*Id.*, § 7).

49. Cortes and a representative of Plaintiff executed the Confidentiality Agreement on February 26, 2018.

50. Plaintiff has at all times complied with its obligations under the Confidentiality Agreement.

After Approximately Four Years of Employment, Cortes Resigns from Piping Rock

51. Cortes worked as an e-mail marketing manager for the Company for slightly more than four years. During that time, he had access to Confidential and Proprietary information, as defined in the Associate Handbook and Confidentiality Agreement. This information included Piping Rock's valuable Customer List and Confidential Files.

52. Cortes was at all relevant times aware that he was authorized to access this information only in the course of his duties as an e-mail marketing manager for Piping Rock.

53. Cortes understood that this access was limited and could not be transferred to any third party or, indeed, to himself for any use beyond those specifically detailed by the Company.

54. On April 7, 2022, Cortes resigned from Piping Rock via e-mail to his direct supervisor, Egor Zhogov. Cortes provided two weeks' notice such that his last day at Piping Rock was April 21, 2022. (*See* April 7, 2022 Resignation Email, Exhibit C).

55. In a subsequent oral conversation with his supervisor, Cortes indicated that he was leaving Piping Rock for a remote marketing position with a California company, the Doe Company.

Piping Rock Discovers Cortes Misappropriated Its Customer List and Other Confidential Documents

56. In the days following Cortes's resignation, Piping Rock discovered that he had misappropriated its Customer List, along with a substantial number of other, confidential files.

57. As part of its practices and procedures, as detailed in the Associates Handbook, Piping Rock conducted a review of the electronic files accessed by Cortes prior to his departure.

58. During this review, Piping Rock's IT specialists determined that Cortes had uploaded over 250 documents and files to WeTransfer.com ("WeTransfer") from his workstation at Piping Rock in the two days preceding his resignation.

59. WeTransfer is an Internet-based computer file transfer service that allows individuals and companies to transfer large files electronically.

60. The documents and files that Cortes uploaded to WeTransfer include, without limitation, Piping Rock's Customer List and Confidential Files.

61. Upon information and belief, this was done at the specific instance and request of the Doe Company.

62. Piping Rock's IT specialists then discovered that, once Cortes uploaded the documents to WeTransfer, he transferred those documents to his own personal email address.

63. In addition to uploading these files to WeTransfer, Cortes also copied these files to a thumb drive, which he never returned to the Company.

64. The information contained in these files—namely, customer lists and related marketing information—are the crux of Piping Rock's direct to consumer business, which Piping Rock has developed over the last decade, at a cost of millions of dollars. This information will permit the Doe Company to use email to market its products directly to the Piping Rock's four million plus customers.

65. As is evident through the Company's extensive confidentiality protections described above, it is essential that Piping Rock and its employees keep these customer lists and related marketing information confidential. This is because such proprietary information would dramatically decrease in value if made publicly available, particularly to Piping Rock's competitors like the Doe Company.

66. Upon information and belief, Cortes has provided or intends to provide the Customer List and Confidential Files to the Doe Company for Defendants' mutual benefit.

AS AND FOR A FIRST CAUSE OF ACTION
Violation of the Defend Trade Secrets Act of 2016 (18 U.S.C. § 1836(b))
(All Defendants)

67. Plaintiff repeats and realleges the allegations made above as if fully set forth herein.

68. Piping Rock's Customer List and Confidential Files, which are not available to the public, are business records that constitute protectible trade secrets.

69. Cortes, at the specific instance and request of the Doe Company, misappropriated Piping Rock's trade secrets when he uploaded the Customer List and Confidential Files to his personal flash drive on April 21, 2022 and to the WeTransfer file sharing platform and transferred those documents to his own, personal computer or other electronic device.

70. Upon information and belief, the Doe Company received, or is about to receive, the misappropriated Customer List and Confidential Files from Cortes.

71. Piping Rock's Customer List and Confidential Files relate to its products, which are used in interstate and foreign commerce. Piping Rock's business is international, and its Customer List includes information regarding customers across the United States and abroad.

72. Piping Rock has, at all times, taken reasonable measures to keep their Customer List and Confidential files secret. These measures include, without limitation, requiring all employees with access to the trade secrets to (i) enter into the Confidentiality Agreement; (2) acknowledge Piping Rock's policies and procedures detailing in the Associates Handbook; and (iii) attend trainings in which these issues are discussed extensively, both during the initial onboarding process and on a regular and/or annual basis.

73. Piping Rocks' Customer List and Confidential Files derive their own independent economic value due to not being generally known to, and not being readily ascertainable through proper means by another person.

74. Plaintiff is entitled to an emergency order allowing law enforcement to seize Defendants' computers and personal electronic devices containing the misappropriated Customer List and Confidential Files, and any electronic or paper copies thereof.

75. Piping Rock is also entitled to an injunction against Defendant Doe Company from utilizing any information contained in the Customer List and Confidential Files.

76. Other equitable relief beyond seizure would be inadequate because Cortes would evade, avoid, or otherwise not comply with such an order.

77. Plaintiff will suffer immediate and irreparable injury if the seizure is not ordered. Plaintiff's Customer List is at the heart of its business, and Plaintiff derives tens of millions of dollars in income as a result of its customer relationships. Defendants' use of that information will irreparably diminish the value of the Customer List, which Plaintiff has spent over a decade and significant resources developing. Moreover, Plaintiff spends significant sums of money every month to acquire and maintain these customers in order to derive its revenue.

78. In the alternative, Plaintiff is entitled to a temporary restraining order and preliminary injunction enjoining Defendants from utilizing Plaintiff's trade secrets and requiring them to return the trade secret documents and records to Plaintiff, and to delete all copies thereof, wherever these may be, in electronic or any other format. Plaintiff will suffer irreparable harm, as described above, in the event the Court denies its application for a temporary restraining order and preliminary injunction.

79. As a direct and proximate result of Defendants' misappropriation of Plaintiff's trade secrets, Piping Rock has suffered damages in an amount to be determined at trial, but not less than \$5,000,000.

AS AND FOR A SECOND CAUSE OF ACTION
Violation of the Computer Fraud and Abuse Act of 1986 (18 U.S.C. § 1030)
(Against Cortes)

80. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

81. Cortes intentionally accessed computers—including his own work computer as well as the computer server upon which Plaintiff stored its trade secrets—without the authority to do so and for his own personal gain.

82. Cortes was simply not entitled to access the Customer Lists and Confidential Files at the time he obtained that information. This is in accordance with the Company's computer use policy and procedures, which forbids employees from accessing particular files, folders and databases for personal use, and especially for the purposes of transferring the information to the Doe Company.

83. Cortes obtained the Customer List and Confidential Files from Plaintiff's computer records.

84. Plaintiff has and continues to suffer irreparable harm as a result of Defendant's misappropriation of these trade secrets and is therefore entitled to injunctive relief on this count.

85. As a direct and proximate result of Defendant's misappropriation of Plaintiff's trade secrets, Piping Rock has suffered damages in an amount to be determined at trial, but not less than \$5,000,000.

AS AND FOR A THIRD CAUSE OF ACTION
Misappropriation of Trade Secrets
(Against All Defendants)

86. Plaintiff repeats and realleges the allegations made above as if fully set forth herein.

87. Piping Rock's Customer List and Confidential Files, which were not available to the public, constitute protectible trade secrets.

88. Defendants are using the information contained in Piping Rock's Customer List and Confidential Files for their own, personal benefit, in violation of the duties Cortes owed to his employer.

89. Cortes obtained access to Piping Rock's Customer List and Confidential Files by improper means, including, but not limited to, uploading, and transferring the documents to his personal computer via the WeTransfer file-sharing platform, to a thumb drive, and, subsequently transferring or preparing to transfer those documents to the Doe Company.

90. Plaintiff has and continues to suffer irreparable harm as a result of Defendants' misappropriation of these trade secrets and is therefore entitled to injunctive relief on this count.

91. As a direct and proximate result of Defendants' misappropriation of Plaintiff's trade secrets, Piping Rock has suffered damages in an amount to be determined at trial.

AS AND FOR A FOURTH CAUSE OF ACTION
Unfair Competition
(All Defendants)

92. Plaintiff repeats and realleges the allegations made above as if fully set forth herein.

93. Defendants misappropriated the fruits of Plaintiff's labor when Cortes transferred to himself Plaintiff's Customer List and Confidential Files in advance of his termination from the Company, and, upon information and belief, transferred or prepared to transfer that information to

the Doe Company. This information constitutes proprietary sales information belonging to Piping Rock.

94. Cortes obtained access to Plaintiff's Customer List and Confidential Files through the abuse of his fiduciary and confidential relationship with his employer.

95. Cortes acted in bad faith in transferring Plaintiff's Customer List and Confidential Files to himself via the WeTransfer file-sharing platform as he intended to use Plaintiff's confidential and proprietary information for his own personal benefit and for that of the Doe Company.

96. Cortes did so to benefit himself by misappropriating the fruits of Plaintiff's labor in developing its client relationships.

97. Upon information and belief, Defendants are utilizing Plaintiff's Customer List and Confidential Files to solicit business for themselves.

98. Plaintiff has and continues to suffer irreparable harm as a result of Defendants' unfair competition and is therefore entitled to injunctive relief on this count.

99. As a direct and proximate result of Defendants' unfair competition, Piping Rock has suffered damages in an amount to be determined at trial.

AS AND FOR A FIFTH CAUSE OF ACTION

Breach of Fiduciary Duty

(Cortes)

100. Plaintiff repeats and realleges the allegations made above as if fully set forth herein.

101. As an employee of Piping Rock at the time he transmitted confidential information, including, without limitation, the Customer List and Confidential Files, to himself via WeTransfer and his personal thumb drive, Cortes owed fiduciary duties to Piping Rock, his employer.

102. Upon information and belief, Cortes has disclosed or is planning to disclose Piping Rock's confidential information for use in competition, either on his own or with his new employer the Doe Company. Such use of the confidential information constitutes a breach of the fiduciary duties Cortes owed to Piping Rock.

103. Piping Rock continues to suffer irreparable harm on account of Cortes's breach of his fiduciary duties and is therefore entitled to injunctive relief on this count.

104. As a direct and proximate result of Cortes's breaches of fiduciary duty, Piping Rock has suffered damages to be proven at trial.

AS AND FOR A SIXTH CAUSE OF ACTION
Tortious Interference with a Prospective Economic Advantage
(All Defendants)

105. Plaintiff repeats and realleges the allegations made above as if fully set forth herein.

106. Piping Rock has business relationships with the customers named on the Customer Lists that Cortes transferred to himself via WeTransfer and his thumb drive and transferred or is preparing to transfer to the Doe Company.

107. Defendants were aware of the relationship between Plaintiff and those customers and acted with malice and used dishonest and improper means by misappropriating Piping Rock's confidential and proprietary information. These improper means include, without limitation, attempting to quickly transfer the information immediately prior to quitting and concealing that he was doing so, with the intent of using the Company's proprietary information to ultimately steal Piping Rock's customers for his own personal benefit or for that of his future employer, the Doe Company.

108. Upon information and belief, this interference may have already caused, and will continue to cause, harm to Piping Rock's business relationships.

109. Piping Rock continues to suffer irreparable harm on account of Defendants' tortious interference and is therefore entitled to injunctive relief on this count.

110. As a direct and proximate result of Defendants' tortious interference, Piping Rock has suffered damages to be proven at trial.

AS AND FOR A SEVENTH CAUSE OF ACTION
Breach of Contract - Employee Confidentiality and Proprietary Rights Agreement
(Cortes)

111. Plaintiff repeats and realleges the allegations made above as if fully set forth herein.

112. Cortes and Piping Rock entered into a valid and enforceable Employee Confidentiality and Proprietary Rights Agreement.

113. The Confidentiality Agreement specifies that Cortes's confidentiality obligations shall be effective during his employment by Piping Rock, as well as after any termination of his employment.

114. Piping Rock has, at all times, performed under the terms of the Confidentiality Agreement.

115. Cortes breached the Confidentiality Agreement when he transferred files, including, without limitation, Customer Lists and marketing materials, to himself via WeTransfer and thumb drive in contravention of the express terms of Section 1(b) of the Confidentiality Agreement.

116. Cortes breached the Confidentiality Agreement when he used Piping Rock's computers and "Information Technology Resources" to conduct the transfer of files as described herein, in direct contravention of Section 3 of the Confidentiality Agreement.

117. Cortes breached the Confidentiality Agreement when he failed to return the thumb drive, Customer Lists and other files that he transferred upon his resignation, and when he failed

to delete or destroy all copies thereof, in direct contravention of Section 3(b) of the Confidentiality Agreement.

118. Cortes breached the Confidentiality Agreement when, upon information and belief, Cortes shared the Customer Lists and marketing materials with his new employer.

119. Piping Rock continues to suffer irreparable harm on account of Cortes's breaches of the Confidentiality Agreement and is therefore entitled to injunctive relief on this count.

120. As a direct and proximate result of Cortes's breach of the Confidentiality Agreement, Piping Rock has suffered damages to be proven at trial.

AS AND FOR AN EIGHTH CAUSE OF ACTION
Breach of Contract – Associate Handbook
(Cortes)

121. Plaintiff repeats and realleges the allegations made above as if fully set forth herein.

122. Cortes and Piping Rock entered into a valid and enforceable contract when Cortes acknowledged his obligations under the Associate Handbook.

123. The Associate Handbook was in effect during the entirety of Cortes's tenure at Piping Rock.

124. Piping Rock has, at all times, performed under the terms of the Associate Handbook.

125. Cortes breached the Associate Handbook when he transferred Piping Rock's Customer Lists and Confidential Files via WeTransfer and via thumb drive to himself for his own personal benefit in direct contravention of Cortes's promise to "to conduct business in accordance with the letter, spirit and intent of all relevant laws and to refrain from any illegal, dishonest or unethical conduct."

126. Cortes breached the Associate Handbook when he removed from Piping Rock's premises the Customer Lists and Confidential Files via WeTransfer and via thumb drive in direct contravention of Cortes's promise to not "[s]teal[], misus[e], destroy[] or remov[e] from company premises without authorization any company property."

127. Cortes breached the Associate Handbook by acting in conflict of interest with the Company by misappropriating the Company's Customer Lists and Confidential Information for his own personal benefit, in direct contravention of his promise not to "disclose any documents outside the Company with any person outside the Company which will impact the Company's integrity and will have any conflict of interest with Company."

128. Cortes breached the Associate Handbook by breaching Piping Rock's "Confidentiality Policy", which explicitly prohibits the disclosure of "Customer Lists and files", when he transferred Piping Rock's Customer Lists and Confidential Files via WeTransfer and via thumb drive to himself for his own personal benefit.

129. Piping Rock continues to suffer irreparable harm on account of Cortes's breaches of the Associate Handbook and is therefore entitled to injunctive relief on this count.

130. As a direct and proximate result of Cortes's breach of the Associate Handbook, Piping Rock has suffered damages to be proven at trial.

AS AND FOR A NINTH CAUSE OF ACTION
Unjust Enrichment
(The Doe Company)

131. Plaintiff repeats and realleges the allegations made above as if fully set forth herein.

132. Upon information and belief, the Doe Company has unfairly benefited from its receipt of Piping Rock's confidential and proprietary information.

133. Piping Rock has not received any compensation for the benefit improperly given to the Doe Company and, in fact, stands to lose business as a result of this unfairly conferred benefit.

134. Piping Rock continues to suffer irreparable harm on account of the Doe Company's unjust enrichment and is therefore entitled to injunctive relief on this count.

135. Piping Rock is entitled to damages as a result of the Doe Company's unjust enrichment, including the disgorgement of all monies, profits and gains which they have obtained or will unjustly obtain in the future at the expense of Piping Rock.

PRAYER FOR RELIEF

WHEREFORE, by reason of the foregoing, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendants, awarding:

- A. An order directing law enforcement to seize all computers and personal electronic devices belonging to Cortes, on which Cortes accessed the misappropriated files, including, without limitation, Cortes's personal computer, the thumb drive to which he directly transferred files from his work station at Piping Rock, and any electronic devices to which Cortes has transferred the misappropriated files, as well as any paper copies of any information belonging to Piping Rock;
- B. As order directing law enforcement to seize all computers and personal electronic devices belonging to the Doe Company, on which the Doe Company received and/or stored the misappropriated files, including any electronic or paper copies of any information belonging to Piping Rock;
- C. Temporary, preliminary, and permanent injunctive relief, including an order:
 - i. That Cortes and any other persons in active concert or privity or in participation with him, including, without limitation, Cortes's new employer, the Doe Company, be enjoined from soliciting, making any sales or providing any other services to any customer or third party identified in Piping Rock's Customer Lists or any other misappropriated confidential information belonging to Piping Rock;
 - ii. That Cortes and any other persons in active concert or privity or in participation with him, including, without limitation, Cortes's new employer, the Doe Company, be enjoined from using any confidential or proprietary information, or other information, obtained from Piping Rock or disclosing any such information to others;

- iii. That Cortes and any other persons in active concert or privity or in participation with him, including, without limitation, Cortes's new employer, the Doe Company, be enjoined to return to Piping Rock all assets or things misappropriated from Piping Rock, any and all originals, copies, facsimiles, electronic copies, or duplicates of documents containing confidential or proprietary information belonging to Piping Rock, and any assets or things derived from anything misappropriated from Piping Rock;
 - iv. That Cortes and any other persons in active concert or privity or in participation with him, including, without limitation, the Doe Company, Cortes's new employer, be enjoined to recall any originals, copies, facsimiles, electronic copies or duplicates of documents containing confidential or proprietary information belonging to Piping Rock from any and all third parties to whom Cortes has transferred such material and return such materials to Piping Rock;
 - v. That Defendants be required to account for all gains, profits, and advantages derived from their acts of misappropriation and other violations of law and contract;
 - vi. That all gains, profits, and advantages derived by Defendants from their acts of misappropriation and breach of contract be in constructive trust for the benefit of Piping Rock;
 - vii. That the Court require Defendants to file with the Court and to serve on Piping Rock a report in writing under oath setting forth in detail the manner and form in which they have complied with the Court's order;
 - viii. For such other injunctive relief as the Court may deem appropriate.
- D. Compensatory damages, in an amount to be determined at trial;
- E. Exemplary and punitive damages, in an amount to be determined at trial
- F. Attorneys' fees and costs, in an amount to be determined at trial;
- G. Applicable interest on the foregoing amount; and
- H. Such other and further relief as the Court may deem just and proper under the circumstances.

Dated: Garden City, New York
May 4, 2022

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