

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

MARQUEE DENTAL PARTNERS, LLC	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	No. 17-_____
	)	
NATHAN COX	)	
	)	
<i>Defendant.</i>	)	
	)	

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff Marquee Dental Partners, LLC (“Marquee”) brings the following complaint for injunctive and other relief against Defendant Nathan Cox (“Cox”) and states as follows:

**INTRODUCTION**

1. This case shows what it means to be a faithless corporate executive.
2. Until ten days before the filing of this case, the person at the center of events, Nathan Cox, served as Marquee Dental Partners, LLC’s Vice President of Business Development and Chief Development Officer. Before Mr. Cox left Marquee’s employment, he concealed the confidential and proprietary information Marquee paid him to collect, develop, and maintain for its exclusive use; provided information instead to multiple Marquee competitors—while still employed by Marquee—in an effort to land a higher paying job; and deleted nearly all of his email on his way out the door.
3. The part of Mr. Cox’s job at issue in this case essentially called for three things. *First*, Mr. Cox was supposed to identify, gather information about, and develop relationships with up-and-running dental practices that might be suitable additions for Marquee’s regional

network of offices. Mr. Cox was responsible for assessing potential network acquisitions and communicating those assessments, together with the facts, data, impressions, and analysis underlying them, to Marquee's executive team, consisting of (in addition to Mr. Cox) Marquee's Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer (whose formal title is VP of Financial Operations and Chief Accounting Officer).

4. *Second*, Nathan Cox was responsible for discussing with the team whether and on what terms to make offers for dental practices and dentists to join Marquee's network and, in instances where decisions to make such offers were taken, to follow up, along with others, and try to ensure that offers were made on acceptable terms.

5. *Third*, as a member of the executive team, Nathan Cox was required to participate in strategic business decisions made by the highest level of management at Marquee. Cox regularly attended weekly executive team meetings in Marquee's Nashville offices and participated in Marquee's meetings with its board of directors.

6. In essence, Nathan Cox was supposed to cultivate relationships and gather information on Marquee's behalf; assess, communicate, and share those relationships and that information with his employer; and use those relationships and that information to help Marquee grow its network.

7. Nonetheless, while serving as a Marquee executive—and notwithstanding legal and ethical obligations; compensation amounting to some \$300,000 to \$400,000 annually; and trust placed in him by Marquee—Nathan Cox “shopped” to Marquee's competitors the very opportunities he was paid to identify, develop, cultivate, assess, communicate, and follow up exclusively for Marquee.

8. Eventually, Mr. Cox appears to have sold Marquee's opportunities, relationships, data, and information, all developed at Marquee's expense, to a high bidder: BelHealth Investment Partners out of New York, which Mr. Cox claimed offered him a pay package worth \$4,910,000.

9. When Marquee found out that Mr. Cox was being solicited to join one of Marquee's competitors, and even when Marquee developed evidence of Mr. Cox's attempts to sell Marquee's relationships, trade secrets, and confidential information to competitors, Marquee sought an acceptable, outside-of-court resolution.

10. Rejecting these overtures, Mr. Cox resigned from Marquee, effective December 1, 2017; deleted over 8,200 emails from his Marquee account within one week of his departure; and left the country during the week following his resignation.

#### **NATURE OF ACTION**

11. This is an action brought for breach of the duty of loyalty and breach of fiduciary duty, conversion of corporate property, misappropriation of trade secrets, usurpation of corporate opportunity, tortious interference with business opportunities, breach of contract, and other wrongs against former Marquee executive Nathan Cox, who diverted Marquee's corporate opportunities, disclosed Marquee's trade secrets and confidential information, and concealed information from Marquee while sharing that same information with Marquee's competitors.

#### **PARTIES**

12. Plaintiff Marquee Dental Partners, LLC is a Delaware Limited Liability Company with its principle place of business in Nashville, Tennessee.

13. Defendant Nathan Cox is a former employee of Marquee, and is resident of Huntsville, Alabama.

## **JURISDICTION AND VENUE**

14. This Court has original jurisdiction over this action under 28 U.S.C. § 1332 because the parties are citizens of different states, and the matter in controversy exceeds \$75,000.00 excluding interest and costs.

15. This Court also has original jurisdiction under 28 U.S.C. §§ 1331 and 1367 because this Complaint states a federal cause of action under the Defend Trade Secrets Act, 18 U.S.C. § 1836 *et seq.*, and the Court has supplemental jurisdiction over the pendent state law claims.

16. This Court has personal jurisdiction over Cox, and venue is proper in this District under 28 U.S.C. § 1391(a), because Cox is a former employee of Marquee, which has its principle place of business in Nashville, Tennessee. Although Cox resides in Huntsville, Alabama, as a Marquee employee, he had office space in Marquee's Nashville headquarters, regularly traveled to that office for executive team meetings, and worked in Tennessee, including in Nashville, to identify and develop business opportunities for Marquee.

## **FACTUAL BACKGROUND**

### **A. Marquee and Its Business.**

17. Marquee was founded in February 2015.

18. Its business model is to purchase existing dental practices and then provide administrative services to those practices so the doctors and support staff can focus on clinical services and patient care. For example, Marquee provides its dental practices with services such as finance and accounting, office management, human resources, insurance, and oversight to ensure regulatory compliance. Marquee does not provide any clinical services.

19. Marquee currently owns dental offices in Tennessee, Alabama, and Kentucky.

20. In addition to purchasing pre-existing dental practices, Marquee also creates new dental practices from the ground up, which Marquee calls “de novo” practices. To build these practices, Marquee identifies dentists to run the practice, locates and secures office space (sometimes building new space), and provides the practice with support staff and the same administrative services offered to Marquee’s other practices.

21. Marquee’s goal has been, and continues to be, to expand Marquee’s network by creating new practices and by adding existing practices that meet certain criteria and are located within a certain geographic footprint.

**B. Marquee’s Employment of Nathan Cox.**

22. Marquee hired Nathan Cox in early January 2016 as its Vice President of Business Development and Chief Development Officer. Cox’s primary role was to assist Marquee in identifying additional dental practices and dentists to join Marquee’s network. His duties at Marquee included developing contacts with practices that met certain financial, geographic, and practice-type criteria, cultivating relationships with potential future network members, and gauging their interest in joining Marquee’s network.

23. Throughout the period of Cox’s employment with Marquee, he was one of four members of Marquee’s executive team, in addition to the CEO, COO, and the CFO (whose formal title is VP of Financial Operations and Chief Accounting Officer). As a member of the executive team, Cox regularly attended weekly executive team meetings in Marquee’s Nashville offices and participated in Marquee’s executive-level decisions. As an executive of Marquee, Cox also participated in Marquee’s quarterly meetings with the board of directors.

24. Marquee paid Cox a base salary of \$200,000 per year, together with commissions on new affiliations, calculated using certain characteristics of the practice and the cumulative

number of network additions within the year. Cox's compensation in 2016 was over \$340,000. In 2017, Cox was paid over \$292,000, which included an advance of approximately \$92,000.

25. As an employee, Cox was also eligible for health insurance and for Marquee's 401(k). Marquee also reimbursed Cox's travel expenses and cell phone expenses. Cox had a Marquee-issued laptop and a Marquee email address.

26. Cox was assigned office space in Marquee's Nashville offices, which he used when he was attending weekly executive meetings and occasionally when he had meetings with potential practices in the Nashville area. When not in Marquee's offices, Cox tended to work remotely, either from his home in Huntsville, Alabama or while traveling to identify and meet with practices and dentists that might be potential additions for Marquee's network.

**C. Additions to Marquee's Network.**

27. During the period of Cox's employment at Marquee, Marquee's standard process for adding new practices began with Cox working alone to identify practices that met certain criteria, to develop relationships with the owners of those practices, and to gauge the owner's potential interest in joining Marquee's network. During this process, Cox collected detailed information on each of these practices, including number of offices, doctors, hygienists, and operatories. He also built relationships with dentists and the owners of dental practices to understand when they might be interested in joining a network like Marquee's.

28. If the practice's owner was willing to proceed further, Marquee would enter into a non-disclosure agreement with the practice. This non-disclosure agreement required Marquee to keep confidential any financial or other sensitive information provided by the practice during its negotiations with Marquee. The non-disclosure agreement also restricted the practice's ability to disclose to others the fact that the practice was negotiating with Marquee.

29. Cox alone maintained information regarding which practices were negotiating with Marquee, as well as specific details about those practices. This information included facts, data, impressions, and analyses related to Marquee's potential business opportunities.

30. This information constitutes trade secrets and confidential information that is proprietary and valuable to Marquee. During the time he received or generated these trade secrets and confidential information, Cox knew or had reason to know that he had a duty to maintain the secrecy of the information or limit its use.

31. The trade secrets and confidential information received or generated by Cox were not shared with anyone outside of Marquee and were not shared widely within Marquee. In 2016 and early 2017, Cox provided "pipeline reports" to members of the executive committee, listing dental practices Cox represented to be candidates to join Marquee's network. These reports were not distributed beyond the four members of Marquee's executive team.

32. Pipeline reports and the identification of dentists open to affiliating with Marquee represent highly valuable business intelligence for Marquee and its competitors. There are hundreds of dentists who own one or two dentist practices in the Marquee service area.

33. Knowing which of those dentists is open to joining Marquee's network and when that affiliation is likely is very valuable business information, which is not generally known in the marketplace and which has significant economic value to Marquee. That is why Marquee has invested over \$500,000 in the past two years developing this information.

34. After Cox entered into preliminary negotiations with a dental practice interested in joining Marquee's network, Cox would consult with other members of the executive team to evaluate the opportunity, including the COO and the CFO.

35. They would then decide whether to present the opportunity to Jim Usdan, Marquee's President and CEO, and Usdan, in consultation with the other members of the executive team, would decide whether to issue a non-binding letter of intent. The non-binding offer would be given to the practice and negotiations would continue until a tentative agreement could be reached.

36. Once a tentative agreement was in place, Usdan would present the opportunity to Marquee's board of directors for approval. If approved, the deal would move to the closing process, which required negotiating an asset purchase agreement. The newly affiliated practice would then be handed-off to the COO and the operations team to begin integrating the practice.

**D. Marquee's Rapid Expansion and Revised Business Plan.**

37. In 2016 Marquee added an additional 23 practices, which it worked to integrate and assimilate into its business operations.

38. Because Marquee's network grew substantially in a short amount of time, Marquee faced challenges integrating the new practices and meeting its goals. As a result, Marquee's board of directors and its executive team (including Cox) made the decision at the end of 2016 that, in 2017, Marquee should focus on integrating those new offices instead of acquiring any new practices. Marquee's leadership team agreed that Marquee would plan to resume adding new practices after Marquee showed two consecutive quarters of profitability. Usdan told the executive team and the board that he believed Marquee would meet this goal in the second quarter of 2018.

39. As a result of this set of decisions, Cox expressed dissatisfaction with the anticipated pace of new acquisitions in 2017 and the effect this would have on his compensation due to reduced commissions.

40. To accommodate Cox, Marquee advanced him \$100,000 in December of 2016 against any commissions he might earn in the future. This advance was paid in bi-weekly installments beginning in early 2017. This money was an advance, not a bonus or lump-sum payment. By the terms of a written agreement regarding the advance, Cox was required to pay back any portion of the \$100,000 still owed to Marquee on his final day of employment.

41. Marquee resumed adding practices to its network ahead of the timetable anticipated in January of 2017.

42. At a board meeting held in July 2017 at Marquee's offices in Nashville, which Cox attended, the board instructed Marquee's executive team to start putting together a pipeline of potential candidates to join Marquee's network when the company resumed acquiring new practices. The board also directed Marquee to start identifying potential opportunities for creating new practices "de novo," as opposed to affiliating with existing practices.

43. In June and July of 2017, Marquee opened two de novo practices in Alabama.

44. On October 8, 2017, at Fred Ward's request, Cox provided Ward with what was supposed to be current information about Marquee's full pipeline of potential candidates to incorporate into a presentation Ward was giving to Marquee's investors.

45. On October 18, 2017, Marquee's board of directors held a regular board meeting in Nashville, at which Cox presented information about his pipeline of potential candidates to add to Marquee's network. This information was substantially the same as the information that Cox had provided to Ward on October 8, 2017.

46. On November 22, 2017, during a conference call with Marquee's board and the executive team, the board instructed Marquee's management to actively resume affiliating with new practices to expand its network. During this call, Cox specifically described two practices

as candidates to be added by the end of the year: one in ██████████, Alabama and another in ██████████, Alabama.

**E. Cox Diverts Corporate Opportunities and Discloses Marquee’s Proprietary Information to Competitors.**

47. Shortly after this November 22 telephone call with Marquee’s board, Jim Usdan began asking Cox for information about his pipeline of potential opportunities.

48. Rather than provide the pipeline information promptly, Cox informed Usdan that he had an offer of employment from Light Wave Dental (“Light Wave”), a competitor of Marquee.

49. Cox provided Usdan with a paper copy of an October 11, 2017 email between Light Wave and himself (sent to Cox’s personal Google mail email account). In the email a representative from Light Wave states, “Attached is our LOI for purchase [*sic*] the dental offices *in Nathan’s pipeline* located in the Southeastern United States.” Dec. 10, 2017 J. Usdan Aff. Ex. 3 (emphasis added).<sup>1</sup> The email states that Light Wave “spent time building a financial forecast for acquiring the practices in *this pipeline*” and that Light Wave “hope[s] to “acquire 48 practices *from the pipeline.*” *Id.* (emphasis added). The email also discusses a schedule for acquiring practices that Cox identified for Light Wave in Nashville and North Alabama—Marquee’s geographic area.

50. Remarkably, this “48 *practice*” list that Cox allegedly identified for Light Wave was significantly larger than the 36 *office* list that Cox provided to Marquee’s COO and Board just weeks earlier as part of his Board presentation. Marquee has never been provided with that “48 practice list.”

---

<sup>1</sup> Exhibits to this Complaint are attached to the Affidavit of Jim Usdan (Dec. 10, 2017), Affidavit of Fred Ward (Dec. 10, 2017), and the Declaration of Matt Doyle (Dec. 8, 2017) filed in support of Marquee’s Motion for a Temporary Restraining Order and for a Preliminary Injunction filed in conjunction with this Complaint.

51. Cox also cultivated relationships with dentists on behalf of Light Wave. On October 20, 2017, Cox wrote to Justin Jory and David Wurtzbacher of Light Wave dental about his “great time traveling around and visiting with you guys” over “the last 3 days.” Dec. 8, 2017 M. Doyle Decl. Ex. 2. Cox even “look[ed] forward to doing [it] again soon” and asked how he “can help with the process of gathering financials etc or anything else you need.” *Id.* Cox also “looked[ed] forward to getting *back* together.” *Id.* (emphasis added). On October 23, just three days later, Cox sent an email to Jory and Wurtzbacher of Light Wave introducing them Dr. [REDACTED], as a potential affiliate for Light Wave—not Marquee. Dec. 8, 2017 M. Doyle Decl. Ex. 3.

52. Also on October 23, 2017, Cox forwarded to Jory and Wurtzbacher financial information about Dr. [REDACTED] in [REDACTED], Alabama. *See* Dec. 8, 2017 M. Doyle Decl. Ex. 4. Notably both of those practices are depicted on the “pipeline” Cox finally provided to Marquee on November 27, 2017, representing them as potential affiliates for *Marquee’s* network. *See* Dec. 10, 2017 F. Ward Aff. Ex. 2 (Line 1 ([REDACTED]) and Line 6 ([REDACTED])).

53. Around this time, Cox also informed Usdan that he had an offer to join BelHealth Investment Partners, LLC (“BelHealth”), another of Marquee’s competitors. Cox provided Usdan with a screenshot of an email from a BelHealth representative discussing potential compensation for Cox of up to \$4,910,000.

54. Marquee subsequently learned, from deleted emails recovered from Cox’s Marquee account, that Cox connected the owner of the very same practice in [REDACTED], Alabama with executives of BelHealth. Dec. 8, 2017 M. Doyle Decl. Ex. 1. Cox was also actively engaged in coordinating a meeting in early December for BelHealth with the very same dental

practice that Cox had identified as a candidate to “close by year end” on the November 22 conference call with Marquee’s board. Importantly, at the time of BelHealth’s competing overtures, the practice had already provided its financial information to Marquee, a key indicator of the owner’s interest.

**F. Nathan Cox Conceals Information and Resigns.**

55. Largely unaware of Cox’s behavior, Marquee attempted to retain Cox, offering him increased compensation to remain with Marquee. On November 27, 2017, Usdan met with Cox in person to review the proposed terms of a more generous compensation structure offered by Marquee.

56. As of the November 27, 2017 meeting with Usdan, Cox still had not provided Marquee with the pipeline Usdan starting requesting on November 22, 2017.

57. After his November 27 meeting with Usdan, Cox sent an email to BelHealth. That email stated that he “had my meeting with current CEO and he has advised me to think some things through. Although no non-compete, he feels they will come after me with a ‘common law’ argument that the pipeline should be their property and to not go after it. *They do not have the pipeline so I guess it could be whatever.*” (emphasis added). Dec. 8, 2017 M. Doyle Decl. Ex. 6, at 3.

58. Cox and the representatives of BelHealth arranged a conference call for 3:30pm Eastern Time. *Id.*

59. At 5:11 pm Central Time, Cox finally provided what he claimed was his “pipeline” to Marquee. Dec. 10, 2017 F. Ward Aff. Ex. 2.

60. This pipeline contained a significant number of discrepancies from the summary information Cox provided to Ward on October 8 and from the information Cox presented to

Marquee's board on October 18. For example, the number of operatories, dentists, hygienists, revenue, and EBITDA all differed from the October summary information, and only five of the 17 opportunities in the alleged pipeline were potentially viable for Marquee in the near term.

61. Again, as evidence of Cox's willful and deliberate attempt to divert opportunities away from Marquee and to his new employer, the list included only 17 names. Far short of the "48 practice" list Light Wave offered to purchase just weeks earlier.

62. Additionally, Cox had another, alternative pipeline sitting in his deleted-and-recovered Marquee email that contained different information from the pipeline he actually provided to Marquee. The alternative pipeline identified two practices that were not included in the pipeline Cox provided to Marquee. Additionally, for six of the opportunities that were provided to Marquee, certain of the information differs between the pipeline provided to Marquee and the alternative pipeline, including: numbers of locations, operatories, doctors, and hygienists; revenue and EBITA; and purchase price.

63. On Friday, December 1, 2017, Cox sent Usdan an email stating that he was resigning effective that day. Cox's email also stated that, as he and Usdan had discussed, Cox would continue to work with Marquee on closing or moving forward several opportunities in the next 30 days.

64. Despite Cox's commitment to work with Marquee to achieve certain goals before the end of the year, Cox informed Usdan by text message on Monday, December 4, 2017, that he was out of the country on vacation until Sunday, December 10, 2017.

65. After Cox's resignation, Marquee discovered that Cox attempted to delete approximately 8,200 emails from his Marquee account.

66. With the help of IT contractors, Marquee believes it was able to retrieve all of the emails that Cox attempted to delete.

67. Marquee has made repeated attempts to avoid litigation, including participating in a phone call with Cox on December 5, 2017, and sending a cease and desist letter to Cox on December 6, 2017, seeking an in-person meeting to attempt to resolve the parties' differences and chart a constructive path forward. Cox declined such a meeting.

**G. Harm to Marquee Caused by Cox's Conduct.**

68. Marquee is now in a position to expand its network and seeks to do so rapidly.

69. Marquee is only able to identify suitable dental practices to affiliate with by identifying interested practices, cultivating relationships with practices, collecting facts and impressions about the practices, and analyzing this information to determine whether the practices meet Marquee's criteria for an offer to join the Marquee network. Unless Cox brought an opportunity to the executive team, this information is entirely in Cox's possession.

70. If Marquee's competitors, including BelHeath and Light Wave, have access to Marquee's information about the identity and characteristics of potential opportunities and the dentist's or owner's willingness to engage in discussions, Marquee's competitors can use this information to either purchase these identified dental practices before Marquee can or engage in competitive negotiations for these practices. This could negatively affect the terms of Marquee's negotiations with those practices.

71. Additionally, if Marquee's competitors purchase dental practices within Marquee's current geographic market that meet Marquee's criteria, Marquee cannot add those practices to its own network.

72. Further, several of the competitors that Cox provided this information to do not have a current presence in Marquee's market. Diverting these practices to Marquee's competitors will unfairly assist those competitors in entering the markets where Marquee competes.

73. Cox is still in possession of Marquee's trade secrets and confidential information because he has yet to return his Marquee-issued laptop and because he forwarded emails from his Marquee account to his personal Gmail account, n23cox@gmail.com.

74. Cox is likely in possession of confidential and proprietary information that he acquired as a Marquee employee but that Marquee is not aware of because Cox has not shared the information with the company, December 1, 2017.

75. Further, Cox has failed to pay back the money he has received on the \$100,000 advance that Marquee has paid in installments since early 2017. That money was due on Cox's final day of employment.

76. Cox has represented to Marquee that he has not yet begun employment with a competitor of Marquee. However, if Cox begins, or has begun, working with another employer in substantially the same role he had with Marquee, and in the same or similar geographic market, he will inevitably use Marquee's trade secrets and confidential information to benefit Marquee's competitors.

## **CAUSES OF ACTION**

### **Count I: Breach of the Duty of Loyalty**

77. Marquee incorporates the foregoing Paragraphs 1-76 by reference as though fully set forth herein.

78. Marquee employed Cox as Vice President of Business Development and Chief Development Officer and member of its executive team from January 2016 to December 2017. Marquee paid Cox a salary and commissions and provided him with benefits.

79. As an employee of Marquee, Cox had a duty of loyalty to Marquee.

80. Cox was obligated to act solely for the benefit of Marquee and was precluded from engaging in conduct adverse to Marquee's interests.

81. Cox breached his duty of loyalty by acting adversely to Marquee and by engaging in demonstrable business activity in direct competition with Marquee, including by withholding information from Marquee that Cox acquired within the scope of his employment and by attempting to divert business opportunities from Marquee to Marquee's competitors.

82. Marquee has sustained or will sustain damages, in an amount to be determined, as a direct and proximate result of Cox's violation of his duty of loyalty to Marquee.

### **Count II: Breach of Fiduciary Duty**

83. Marquee incorporates the foregoing Paragraphs 1-82 by reference as though fully set forth herein.

84. As Vice President of Business Development and Chief Development Officer and member of the executive team, Cox owed Marquee a fiduciary duty of care. This duty required Cox to act in Marquee's best interests and maintain its confidential and proprietary information.

85. Cox has failed to meet this duty by withholding information and using Marquee's confidential and proprietary information for the benefit of himself and others and to the detriment of Marquee. In so doing, Cox has breached his fiduciary duty to Marquee.

86. Marquee has sustained or will sustain damages, in an amount to be determined, as a direct and proximate result of Cox's violation of his fiduciary duty to Marquee.

### **Count III: Unfair Competition**

87. Marquee incorporates the foregoing Paragraphs 1-86 by reference as though fully set forth herein.

88. Cox had a duty to Marquee not to take advantage of Marquee's confidential and proprietary information for the benefit of himself and others and to the detriment of Marquee.

89. Cox maliciously, knowingly, willfully, in bad faith, and in disregard of Marquee's rights engaged in unfair competition. These acts of unfair competition include, but are not limited to, Cox's breach of his duty of loyalty and fiduciary duty and his attempts to divert business opportunities from Marquee to Marquee's competitors.

90. Marquee has sustained or will sustain damages in an amount to be determined as a direct and proximate result of unfair competition by Cox.

### **Count IV: Intentional Interference with Business Relations**

91. Marquee incorporates the foregoing Paragraphs 1-90 by reference as though fully set forth herein.

92. Cox knew that part of his responsibilities at Marquee were to develop, utilize, and maintain Marquee's confidential and proprietary information solely for the benefit of Marquee.

93. However, Cox has used Marquee's confidential and proprietary information to the detriment of Marquee by intentionally and willfully interfering with Marquee's ongoing negotiations with its clients prospective clients. In doing so, Cox has interfered with Marquee's ability to conduct its business operations and has redirected business opportunities to himself or others that rightfully belong to Marquee.

94. Marquee has sustained or will sustain damages, in an amount to be determined, as a direct and proximate result of Cox's unfair competition.

### **Count V: Conversion**

95. Marquee incorporates the foregoing Paragraphs 1-94 by reference as though fully set forth herein.

96. Cox converted Marquee's confidential and proprietary information and/or property for use and benefit by himself and others by intentionally exercising dominion over same and using it for his own pecuniary gain in defiance of Marquee's rights.

97. Cox has failed to return the converted confidential and proprietary information and/or property.

98. Marquee has sustained or will sustain damages in an amount to be determined as a direct and proximate result of conversion by Cox.

### **Count VI: Misappropriation of Trade Secrets—Defend Trade Secrets Act (DTSA)**

99. Marquee incorporates the foregoing Paragraphs 1-98 by reference as though fully set forth herein.

100. The identity of Marquee's potential candidates for adding to its network, as well as associated facts, data, impressions, and analyses related to the suitability of the practices and dentists all constitute trade secrets within the meaning of the Defend Against Trade Secrets Act, 18 U.S.C. § 1836 *et seq.*

101. Marquee derives economic value from those trade secrets not being generally known to, or easily ascertainable by, the general public or competitors.

102. Marquee takes reasonable efforts under the circumstances to protect its trade secrets and maintain the secrecy thereof.

103. Cox misappropriated Marquee's trade secrets by disclosing or using the trade secrets without consent when Cox knew or had reason to know, at the time of disclosure or use,

that his knowledge of the trade secrets was acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secrets or limit the use of the trade secrets.

104. Cox's misappropriation was willful and malicious within the meaning of 18 U.S.C. § 1836(b)(3)(C), such that exemplary damages in an amount of twice the award under 18 U.S.C. § 1836(b)(3)(B) should be awarded to Marquee.

105. Cox's misappropriation was willful and malicious within the meaning of 18 U.S.C. § 1836(b)(3)(D), such that attorneys' fees should be awarded to Marquee.

106. Marquee has sustained or will sustain damages in an amount to be determined as a direct and proximate result of trade secret misappropriation by Cox.

107. Marquee is entitled to damages and injunctive relief pursuant to T.C.A. §§ 47-25-1703 and 1704.

**Count VII: Misappropriation of Trade Secrets—Tennessee Uniform  
Trade Secrets Act (TUTSA)**

108. Marquee incorporates the foregoing Paragraphs 1-107 by reference as though fully set forth herein.

109. The identity of Marquee's potential candidates for adding to its network, as well as associated facts, data, impressions, and analyses related to the suitability of the practices and dentists all constitute trade secrets within the meaning of the Tennessee Uniform Trade Secrets Act, T.C.A. §§ 47-25-1701 *et seq.*

110. Marquee derives economic value from those trade secrets not being generally known to, or easily ascertainable by, the general public or competitors.

111. Marquee takes reasonable efforts under the circumstances to protect its trade secrets and maintain the secrecy thereof.

112. Cox misappropriated Marquee's trade secrets by disclosing or using the trade secrets without consent when Cox knew or had reason to know, at the time of disclosure or use, that his knowledge of the trade secrets was acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secrets or limit the use of the trade secrets.

113. Cox's misappropriation was willful and malicious within the meaning of T.C.A. § 47-25-1704(b), such that exemplary damages in an amount of twice the award under T.C.A. § 47-25-1704(a) should be awarded to Marquee.

114. Cox's misappropriation was willful and malicious within the meaning of T.C.A. § 47-25-1705(3), such that attorneys' fees should be awarded to Marquee.

115. Marquee has sustained or will sustain damages in an amount to be determined as a direct and proximate result of trade secret misappropriation by Cox.

116. Marquee is entitled to damages and injunctive relief pursuant to T.C.A. §§ 47-25-1703 and 1704.

#### **Count VII: Breach of Contract**

117. Marquee incorporates the foregoing Paragraphs 1-116 by reference as though fully set forth herein.

118. Marquee advanced Cox \$100,000 in December 2016 against any commissions he might earn in the future. This advance was paid in bi-weekly installments beginning in early 2017. This money was an advance, not a bonus or lump-sum payment.

119. Marquee and Cox entered into a written agreement regarding the advance. Under the terms of this agreement, Cox was required to pay back any portion of the \$100,000 still owed to Marquee on his final day of employment.

120. Although Cox notified Marquee that has resigned his employment, Cox failed to pay back the money he received to date on the \$100,000 advance.

121. As a result, Cox is in breach of his agreement with Marquee.

122. Marquee is entitled to damages in an amount including, but not limited to, the portion of the \$100,000 advance that Marquee paid to Cox and which he has failed to repay.

### **PRAYER FOR RELIEF**

WHEREFORE, Marquee prays for relief and judgment against Defendant as follows:

A. That the Court issue a temporary restraining order and preliminary injunction that applies during the pendency of this action which enjoins Defendant, together with and all parties in active concert or participation with him who receive actual notice of the Order by personal service or otherwise:

1. Enjoining, as part of the temporary restraining order and preliminary injunction, the use or disclosure of Marquee trade secrets;
2. Ordering, as part of the temporary restraining order and preliminary injunction, the preservation of relevant information, whether in electronic or paper form;
3. Requiring Cox immediately to return his Marquee-issued laptop;
4. Requiring, part of the temporary restraining order and preliminary injunction, the prompt return, and recreation where necessary, of Marquee information not yet known to Marquee and to identify any other individuals or entities to which he provided, or who had access to, that information

5. Enjoining and barring, as part of the temporary restraining order and preliminary injunction, any contact with dental practices or dentists whom Cox has identified as a potential candidate for joining a dental services organization (whether Marquee or its competitors) or with whom he had any communications from January 1, 2017 to December 1, 2017 (except to the extent contact is made solely for purposes of obtaining dental treatment for Cox himself, or a close family member)
- B. The the Court issue a permanent injunction that enjoins Defendant, as well as his agents, servants, employees, attorneys, and all others in active concert or participation with him, from using, accessing, diverting, or disclosing Marquee's proprietary business opportunities and confidential or trade-secret information; and
- C. Judgment against Defendant on all counts of this Complaint;
- D. That the Court disgorge any compensation paid by Marquee to Defendant after his initial breach of fiduciary duty and duty of loyalty to Marquee;
- E. That the Court award as damages the portion of the \$100,000 advance that Marquee provided to Defendant;
- F. That the Court award Marquee damages and exemplary and exceptional damages where appropriate;
- G. That the Court award punitive damages;
- H. That the Court award Marquee reasonable attorney fees and non-taxable costs;
- I. That the Court award Marquee pre-judgment and post-judgment interest; and
- J. Such other relief for Marquee that the Court sees as just.

Dated: December 11, 2017

Respectfully submitted,

/s/ Jason W. Callen

Jason W. Callen (BPR # 26225)  
Paige Ayres Nutini (BPR # 34133)  
BUTLER SNOW LLP  
The Pinnacle at Symphony Place  
150 Third Avenue, South, Suite 1600  
Nashville, Tennessee 37201  
Tel: (615) 651-6700  
Fax: (615) 651-6701  
jason.callen@butlersnow.com  
paige.nutini@butlersnow.com

Robert R. Gasaway\*  
Michael A. Petrino\*  
KIRKLAND & ELLIS LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005-5793  
Tel: (202) 879-5000  
Fax: (202) 879-5200  
robert.gasaway@kirkland.com  
michael.petrino@kirkland.com

*Counsel for Plaintiff Marquee Dental Partners LLC*

\*Application for admission *pro hac vice* pending

39645489.v1