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d/b/a McCune Masterworks

FILED
Superior Court of California
County of Los Angeles

JUN 17 2016

Sherri R. Carter, Executive Officer/Clerk
By Moses Soto, Deputy

36 - Alarcon

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

MCCUNE & COMPANY, LLC, a California
limited liability company, d/b/a MCCUNE
MASTERWORKS

Plaintiff,

v.

MONTY SHOOK, an individual; HAGOP
EDJOURIAN, an individual; JOHN FERRARI, an
individual; SYNERGY DESIGN CONCEPTS,
LLC, a California limited liability company; and
DOES 1-10, inclusive,

Defendants.

Case No. **BC 6 2 4 3 9 7**

COMPLAINT FOR:

- (1) MISAPPROPRIATION OF TRADE SECRETS;
- (2) CONVERSION;
- (3) TRESPASS TO CHATTELS;
- (4) UNFAIR COMPETITION;
- (5) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS; AND
- (6) CIVIL CONSPIRACY

DEMAND FOR JURY TRIAL

CIT/CASE: BC624397
LEA/DEF#:
RECEIPT #: CCH524880117
DATE PAID: 06/17/16 03:55 PM
PAYMENT: \$435.00
RECEIVED: 310
CHECK: \$435.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

COMPLAINT

FAYER GIPSON LLP

06/17/2016

1 Plaintiff McCune & Company, LLC ("McCune" or "Plaintiff") hereby alleges, on
2 information and belief, as follows:

3 **NATURE OF THE ACTION**

4 1. This is an action for misappropriation of trade secrets, conversion, trespass to
5 chattels, unfair competition, intentional interference with prospective economic relations, and
6 conspiracy against defendants Monty Shook ("Shook"), Hagop Edjourian ("Edjourian"), John
7 Ferrari ("Ferrari"), and Synergy Design Concepts, LLC ("Synergy") (collectively, with Shook,
8 Edjourian, and Ferrari, the "Defendants").

9 2. The Defendants wrongfully and willfully conspired with each other to destroy
10 Plaintiff's custom model and gift design and manufacturing business by creating a new competitive
11 company to misappropriate Plaintiff's longtime client, SBIZ/Equity Group, through dishonest,
12 deceptive and evasive means, including through unauthorized possession and use of Plaintiff's
13 intellectual property and computer and software resources – even while two of the Defendants,
14 Shook and Edjourian, were still employed by Plaintiff. The Defendants, without authorization, took
15 Plaintiff's intellectual property and personal property from Plaintiff's premises and used this
16 property to help set up their new business – which was nothing more than a continuation of
17 Plaintiff's business. In order to cover up their wrongful, deceitful and willful conduct, Defendants
18 intentionally, willfully, wrongfully and maliciously engaged in a pattern of evidence destruction –
19 erasing hundreds of incriminating emails and wiping clean the hard drive of a McCune office
20 computer.

21 3. As a direct result of Defendants' wrongful and intentional actions, Plaintiff was
22 forced to close the business known as McCune Masterworks and lay off all of its employees,
23 suffering damages of millions of dollars to be proven at trial. Meanwhile, Defendants directly
24 benefited from their wrongful and deceitful conduct with a multimillion-dollar contract with
25 SBIZ/Equity Group to produce the custom-designed and built annual gifts that Plaintiff and its
26 predecessors-in-interest had previously created for nearly twenty (20) years.

27 **PARTIES**

1 4. Plaintiff McCune & Company, LLC is a limited liability company organized and
2 existing under the laws of the State of California, with its principal offices in Van Nuys, California.
3 McCune was founded by Grant McCune, a pioneering special effects expert who worked on ground-
4 breaking films such as *Star Wars* and *Star Trek*. McCune Masterworks, a specially branded division
5 owned and operated by McCune, was a custom design and manufacturing shop focusing on high-end
6 models and gifts. It was created to help McCune evolve and survive as model makers during a time
7 when practical special effects – which constituted its original business – suffered with the advent and
8 proliferation computer generated effects.

9 5. Defendant Monty Shook is a natural person who is and was at all times relevant to the
10 action a resident of the County of Los Angeles. Shook is a special effects and custom design and
11 manufacturing artist. Shook was an employee of McCune for more than twenty years, previously
12 holding the position of Shop Supervisor.

13 6. Defendant Jack Edjourian is a natural person who is and was at all times relevant to
14 the action a resident of the County of Los Angeles. Edjourian is a special effects and custom design
15 and manufacturing artist. Edjourian was an employee of McCune for more than twenty years
16 previously holding the position of Production Designer.

17 7. Defendant John Ferrari is a natural person who is and was at all times relevant to the
18 action a resident of the County of Los Angeles. Ferrari is a manufacturer of custom designs. Ferrari
19 had been a vendor of McCune for more than a dozen years.

20 8. Defendant Synergy Design Concepts, LLC is a California limited liability company
21 located at 16709 Gramercy Place, Unit B, Gardena, CA 90247. It is corporate entity number
22 201535710148. Shook, Edjourian and Ferrari are the owners and officers of Synergy. Ferarri is the
23 agent for service of process for Synergy.

24 9. The true names and capacities, whether individual, corporate, associate or otherwise,
25 of Defendants sued herein as DOES 1-10, inclusive, are unknown at the present time and Plaintiff
26 therefore sues said DOES and each of them by such fictitious names. If necessary, Plaintiff will
27 seek leave of the Court to amend this Complaint to allege their true names and capacities when they
28 are ascertained.

10. Unless otherwise indicated herein, on information and belief, each of DOES 1-10, inclusive, participated in the activities described herein and rendered material assistance to the other Defendants in the actions alleged herein, conspired and agreed with and aided and abetted one or more of the other Defendants and at all relevant times each of the Defendants was the principal or agent, partner, joint venturer, co-venturer, co-conspirator, independent contractor, servant and/or employee of at least one other of the other Defendants and all of the acts performed by them or omissions alleged herein were made in the course and scope of their employment, agency, partnership or other such relationship and with knowledge, consent, approval and/or ratification of the principals and each of them. Unless otherwise indicated herein, each of the parties herein named as DOES 1-10 is responsible in some manner or fashion, and is by contract or otherwise, the successor, assign, joint venturer, co-venturer, co-conspirator, partner or alter ego of one or more of the Defendants, or was otherwise involved with the other Defendants in the wrongdoing alleged herein, and by virtue of such capacity, assumed the obligations herein owed by Defendants, and is liable and responsible for the damages on the facts alleged herein and for all the relief sought.

GENERAL ALLEGATIONS

11. The uniquely imaginative and detailed creations that McCune produced for its clients originated from the work of legendary model maker and special effects artist Grant McCune. Grant McCune began his career as an uncredited model maker who worked on the iconic shark for Steven Spielberg's film *Jaws*. Based in part on the strength of that work, Grant McCune was hired by an up-and-coming young filmmaker named George Lucas to create the spacecraft for the motion picture *Star Wars*, which earned Grant an Academy Award for Best Visual Effects. Grant was also nominated for an Academy Award for his work on *Star Trek: The Motion Picture* and went on to create visual effects for many high-profile projects, including the *Battlestar Galactica* television pilot, *Caddyshack*, *Die Hard*, *Spaceballs*, *Firefox*, and *Ghostbusters II* to name a few.

12. In 1992, Grant McCune founded a model-making and visual special effects company called McCune Design, Inc. ("McCune Design"), which was co-owned by his wife Katherine McCune. In or around 1994, Grant McCune hired Monty Shook as Shop Supervisor, and Jack Edjourian as Production Designer. Together they worked on such motion pictures as *Batman*

1 *Returns, Batman Forever, Spiderman, Spiderman 2, U-571, Rambo, X-Men 2, Serenity, Flightplan,*
2 *Dante's Peak, Iron Man 2, and Cabin in the Woods, as well as the Steven Spielberg produced mini-*
3 *series, The Pacific.*

4 13. Grant McCune passed away in 2010 of pancreatic cancer. At this time, the model-
5 making and visual special effects community was entering into a period of transition. For a number
6 of years, visual special effects had been moving away from models and practical effects towards
7 computer graphics. After Grant passed, this trend continued unabated, eating into McCune Design's
8 core business more and more with each passing year. It was under these dire circumstances that
9 Katherine McCune took over the day-to-day operations of McCune Design in late 2010.

10 14. As the industry continued to move from practical special effects filmed on miniature
11 models to computer-generated special effects, Katherine McCune opened McCune d/b/a McCune
12 Masterworks in 2012. The McCune Masterworks name was used for a specially branded division
13 intended to target consumers of high-end, custom-designed and manufactured products. Katherine
14 McCune thus oversaw the transition of the business from reliance on the film and television industry
15 to servicing customers who desired the creation of high-end, custom-designed models and gifts.
16 Over the years, McCune Masterworks and its predecessors (all owned by Grant McCune and
17 Katherine McCune) developed particular expertise in automata, which are mechanical figures
18 constructed to appear as if they operate under the own power. Specifically, McCune became known
19 for its automata music boxes. McCune invested substantial resources into the development and
20 creation of these automata music boxes as they formed the back-bone of McCune's business with
21 SBIZ/Equity Group, who hired McCune once a year to build approximately 500 custom designed
22 creations which would be distributed to SBIZ/Equity Group friends and business associates as
23 holiday gifts. McCune Design and McCune's relationship with SBIZ/Equity Group dated back to
24 approximately 1998. By 2012, nearly one hundred percent of McCune's revenue came from its
25 McCune Masterworks-branded division, and nearly one hundred percent of McCune Masterworks
26 revenue was derived from its annual contract with SBIZ/Equity Group. This pattern continued
27 through 2015.

1 15. In 2014, due to the loss of its traditional film and television visual effects business,
2 Katherine McCune closed down McCune Design and re-focused all of her efforts on McCune
3 Masterworks.

4 16. In her role as owner of McCune Design and founder of McCune, Katherine McCune
5 dedicated herself to continuing the work she had begun with her husband. She invested heavily in
6 both businesses at great personal risk, and worked hard to innovate and survive in a rapidly changing
7 industry. Despite challenging economic conditions, Katherine McCune kept the business afloat with
8 steady investments – even mortgaging her own home to fund the founding of McCune and the
9 continued operations of McCune Design. Since 2012, in addition to regular labor and overhead
10 costs, Katherine spent approximately \$100,000 in equipment and resources for McCune, including
11 \$5700 for a laptop that Edjourian had specifically requested for his work.

12 17. Despite Katherine's financial sacrifices and successful oversight of the business's
13 transition from motion picture special effects to custom design and manufacturing for high-end gifts,
14 Shook and Edjourian did not appreciate her vision, leadership or financial risk. In the years
15 following Grant McCune's passing, Shook and Edjourian grew increasingly resentful of Katherine's
16 ownership of McCune Design and McCune, and asked for more and more compensation for less and
17 less work. Shook and Edjourian believed that a model-maker should own McCune. However,
18 although Shook and Edjourian were happy to collect a hefty paycheck, they never once invested any
19 of their own money into McCune Masterworks or any of its predecessors – nor did they ever
20 approach McCune about the possibility of such an investment. In short, they desired the security of
21 a high paycheck without having to take on the entrepreneurial risk of operating a company with
22 significant labor costs and high overhead.

23 18. In 2012, Bill Bartolotta, the Creative Director for SBIZ/Equity Group, surreptitiously
24 hired Edjourian to create an elaborate model for a holiday party. Rather than present this
25 opportunity to Katherine McCune and McCune Masterworks, Edjourian hid this work from his
26 employer and directly received payment from SBIZ/Equity Group. The work for this holiday party
27 was of the same type of work for which McCune Design and McCune Masterworks became known
28 and this work could and should have been performed through McCune Design and/or McCune

1 Masterworks. When confronted, Edjourian admitted that he intentionally went around Katherine
2 McCune and her company to accept and perform the work.

3 19. In November of 2015, tensions between Katherine McCune on the one hand, and
4 Shook and Edjourian, on the other hand, came to a boiling point. This was a sensitive time because
5 generally, this was around the time when McCune Masterworks would begin discussions with Bill
6 Bartolotta regarding SBIZ/Equity Group's annual gift order. Taking blatant advantage of this timing
7 and McCune's compromised position, Edjourian demanded a significant pay increase. At that time,
8 he was on salary making more than \$100,000.00 annually, despite working for only about six
9 months a year. Seeing a shrinking profit margin in McCune's core business, Katherine initially
10 refused.

11 20. At this point, while still employees of McCune, Shook and Edjourian began making
12 secret preparations to leave the company. They contacted Ferrari – whom they had worked with at
13 McCune – and Bartolotta and told them of their plan to leave McCune and to take the SBIZ/Equity
14 Group business with them. Ferrari and Bartolotta encouraged Shook and Edjourian in this
15 undertaking and made preparations to create a new company through which Shook, Edjourian and
16 Ferrari would perform the work for SBIZ/Equity Group's annual custom-designed and manufactured
17 gift order. Securing the contract for SBIZ/Equity Group would guarantee the profitability of this
18 new venture, which would immediately begin directly competing with McCune and using McCune's
19 resources, but without having to pay for McCune's substantial overhead costs.

20 21. Before they officially left McCune, Shook and Edjourian began their unlawful
21 preparations for their new venture. They gathered valuable proprietary information, including but
22 not limited to confidential client project information, employee lists, and vendor lists, containing
23 names, addresses, phone numbers, and past purchase information, without authorization or
24 permission of McCune. Shook and Edjourian took these actions in secret, transferring the files from
25 McCune's computers with an external hard drive while they were still McCune employees, with the
26 clear intent to use this valuable information to further their own business interests and those of (what
27 would become) Synergy. Forensic analysis shows that after Shook and Edjourian copied the
28 pertinent information, they tried to cover their tracks by wiping a hard drive clean, thus attempting to

1 destroy the evidence of their wrongful and intentional conduct. In addition, Shook and Edjourian
2 purposefully erased the emails on their McCune email accounts without authorization or permission.

3 22. On November 23, 2015, Edjourian resigned from McCune and took his tools and
4 Shook's tools with him.

5 23. On November 24, 2015, Shook resigned from McCune through a resignation letter
6 left at his workspace. That same day, Bartolotta emailed Shook a jubilant "happy birthday"
7 message. Shook responded, "Makes me all warm and fuzzy. You da Man (sic) Thanks B."

8 24. On or about November 24, 2015, Edjourian and Shook delivered all of their tools and
9 McCune company property, including but not limited to confidential information as well as a
10 Toshiba Canvio HD, and a LEXAR drive, to Ferrari's shop in Gardena- which would later become
11 the official location of Synergy.

12 25. Katherine McCune continued to reach out to Edjourian and Shook during the week of
13 November 23 - but to no avail. Her telephone calls and emails acceding to increased salary
14 demands went unanswered.

15 26. On or about November 29, 2015, Edjourian bought the domain name
16 synergydesignconcepts.com (the "Synergy Website").

17 27. On or about December 22, 2015, Edjourian, Shook and Ferrari officially created
18 Synergy by filing articles of organization with the state. On or about that same date, they sent out an
19 email blast to McCune's vendors and clients announcing their new business. The email blast utilized
20 contact information that Edjourian and Shook had wrongfully acquired from McCune. The Synergy
21 Website, Facebook page, and email blast were a sham attempt to provide a justification for
22 Bartolotta to contact Synergy regarding the solicitation of a bid for the annual SBIZ/Equity Group
23 multimillion-dollar contract. In fact, this was all a pretense, as the Defendants and Bartolotta had
24 already agreed that Synergy would be awarded the SBIZ/Equity Group business.

25 28. The guarantee of SBIZ/Equity Group's business was crucial to Shook and
26 Edjourian's decision to leave McCune - indeed, they would not have resigned without such security.
27 Shook and Edjourian already knew that they would be awarded the SBIZ/Equity Group contract long
28 before they left McCune because they had been in constant communication with Bartolotta regarding

1 the same. In fact, Shook and Edjourian began taking steps to illegally compete with McCune –
2 including through their communications with Bartolotta – at least as early as the end of October and
3 beginning of November of 2015, at which time they were both still employed by McCune.

4 29. Defendants have wrongfully and without permission or authorization utilized
5 McCune property in furtherance of the Synergy business, including without limitation utilizing
6 McCune's customer lists, vendor lists, client lists, hard drives, and trade secret protected CAD
7 design and manufacturing files. In particular, the Defendants utilized the CAD files to help create,
8 design and manufacture the 2016 edition of the SBIZ/Equity Group annual corporate gifts.
9 Moreover, the Defendants knew their actions were wrong, willful and malicious, and engaged in a
10 conspiracy to cover up their wrongful conduct by destroying evidence of their wrongful, willful, and
11 malicious conduct, including but not limited to the deletion of incriminating computer files and
12 emails.

13 30. McCune was harmed as a result of Defendants' actions.

14 31. As a direct, proximate, and foreseeable result of the conduct and omissions alleged
15 above, McCune has suffered damages in an amount to be determined at trial, including without
16 limitation the loss of approximately \$3,000,000.00 in revenue solely on the 2016 contract with
17 SBIZ/Equity Group, and many millions of dollars more with respect to the ongoing value of such
18 annual contract, which McCune had performed without fail for more than a dozen years.

19 32. Without Defendants' wrongful conduct, McCune would have retained the annual
20 SBIZ/Equity Group contact for at least a dozen more years.

21 33. Defendants' actions were willful and malicious.

22 34. Because the acts and omissions of Defendants complained of herein were undertaken
23 with fraud, oppression and/or malice, McCune is entitled to exemplary and punitive damages in an
24 amount to be determined at trial.

25 **FIRST CLAIM FOR RELIEF**

26 **MISAPPROPRIATION OF TRADE SECRETS**

27 **(violation of Cal. Civ. Code § 3426.1)**

28 **(Against All Defendants and Does 1 through 10)**

1 35. Plaintiff repeats and realleges the allegations made in paragraphs 1 through 34 as if
2 fully set forth herein.

3 36. Defendants, and Does 1 through 10, inclusive, have acted in concert, conspired
4 together, and engaged in conduct constituting misappropriation of trade secrets pursuant to
5 California's Uniform Trade Secrets Act, Cal. Civ. Code § 3426, *et seq.*

6 37. Defendants wrongfully accessed, copied, and utilized Plaintiff's client contact
7 information, vendor contact information, client project prices, client project delivery specifications,
8 client project CAD design files, client project manufacturing information and other confidential and
9 proprietary information (collectively, "Trade Secrets").

10 38. Plaintiff's Trade Secrets constitute valuable information from which Plaintiff derives
11 independent economic value because such Trade Secrets are not generally known to the public, and
12 are not readily ascertainable through proper means by the public. The Trade Secrets were stored on
13 Plaintiff's password protected company computers. Such computers were located on Plaintiff's
14 secure premises, which was only accessible by employees during regular business hours and was
15 kept locked outside of business hours.

16 39. Defendants Shook and Edjourian wrongfully obtained Plaintiff's Trade Secrets
17 through improper means. Defendants Ferrari and Synergy knew of and gave support to Shook and
18 Edjourian's unauthorized misappropriation of Plaintiff's Trade Secrets. Defendants exploited
19 Plaintiff's Trade Secrets by using them to solicit Plaintiff's clients and vendors through an email
20 blast, and by utilizing the client specification, design and manufacturing information in connection
21 with the negotiation, execution, delivery and performance of Synergy's 2016 contract with
22 SBIZ/Equity Group.

23 40. Defendants Ferrari and Synergy acquired Plaintiff's Trade Secrets through Defendants
24 Shook and/or Edjourian. Synergy had actual or constructive knowledge of the wrongful acquisition
25 of the Trade Secrets from the time of its inception given Defendants Shook and Edjourian's status as
26 members and officers of Synergy. Defendant Ferrari had actual or constructive knowledge no later
27 than early January 2016 that Shook and Edjourian had acquired the Trade Secrets through improper
28 means and without Plaintiff's authorization. The Defendants used the Trade Secrets through the

1 design and manufacture of the custom-built gifts for SBIZ/Equity Group. At the time that
2 Defendants began to create the 2015/2016 SBIZ/Equity Group custom gifts, they knew or had reason
3 to know that the Trade Secrets were obtained through the unauthorized means.

4 41. As a direct and proximate result of Defendants' unlawful misappropriation of
5 Plaintiff's Trade Secrets, Plaintiff has been deprived of money, such as licensing fees for the use of
6 Plaintiff's Trade Secrets that would otherwise have been due to Plaintiff, and Defendants have been
7 unjustly enriched by their misappropriation of Plaintiff's Trade Secrets. Plaintiff is thus entitled to
8 damages for its losses and restitution of Defendants' profits attributable to the misappropriation of
9 Plaintiff's Trade Secrets, in amounts to be proven at trial which are not currently ascertainable. Cal.
10 Civ. Code. § 3426.3(a). In the alternative, Plaintiff is entitled to a "reasonable royalty" for
11 Defendants' use of Plaintiff's Trade Secrets, in an amount to be proven at trial which is not currently
12 ascertainable. *Id.* If necessary, Plaintiff will seek leave to amend this complaint to state the full
13 amount of such sums when such amounts have been ascertained.

14 42. As a direct and proximate result of the foregoing acts and conduct, Plaintiff has
15 sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there
16 is no adequate remedy at law. Plaintiff is informed and believes and on that basis avers that unless
17 enjoined and restrained by this Court, the Synergy Defendants will continue to engage in conduct
18 that violates of the Uniform Trade Secrets Act. Plaintiff is entitled to preliminary and permanent
19 injunctive relief.

20 **SECOND CLAIM FOR RELIEF**

21 **CONVERSION**

22 **(Against All Defendants and Does 1-10)**

23 43. Plaintiff repeats and realleges the allegations made in paragraphs 1 through 42 as if
24 fully set forth herein.

25 44. Plaintiff owns the Toshiba Canvio HD and LEXAR used by Defendants (the "Stolen
26 Property") and has the right to possess the Stolen Property.

27 45. Defendants are currently in possession of the Stolen Property without Plaintiff's
28 permission.

1 46. The Defendants intentionally and substantially interfered with the Stolen Property by
2 wrongfully taking possession of the Stolen Property at the time that Edjourian and Shook resigned
3 from Plaintiff, and subsequently preventing Plaintiff from having access to the Stolen Property.

4 47. Plaintiff never consented to Defendants' possession of the Stolen Property. To the
5 extent Defendants Edjourian and Shook ever had permission to possess the Stolen Property, that
6 permission ended the day they resigned from Plaintiff and was re-affirmed when they received
7 Plaintiff's letter demanding the immediate return of the Stolen Property. Defendants refused to
8 unconditionally return the Stolen Property.

9 48. Plaintiff has been harmed by Defendants' possession of the Stolen Property.

10 49. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

11 **THIRD CLAIM FOR RELIEF**

12 **TRESPASS TO CHATTELS**

13 **(Against All Defendants and Does 1-10)**

14 50. Plaintiff repeats and realleges the allegations made in paragraphs 1 through 49 as if
15 fully set forth herein.

16 51. Plaintiff owns and has the right to possess Stolen Property.

17 52. Defendants are currently in possession of the Stolen Property without Plaintiff's
18 permission or consent. To the extent that Defendants Edjourian and Shook ever had permission to
19 possess the Stolen Property, that permission ended the day they resigned from Plaintiff and was re-
20 affirmed when they received Plaintiff's letter demanding the immediate return of the Stolen
21 Property.

22 53. Defendant's possession of the Stolen Property interferes with Plaintiff's use and
23 possession of the Stolen Property.

24 54. Plaintiff has been harmed by Defendants' possession of the Stolen Property.

25 55. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

26 **FOURTH CLAIM FOR RELIEF**

27 **UNFAIR COMPETITION**

28 **(In Violation of California Business and Professions Code §§ 17200 et seq.)**

(Against All Defendants and Does 1 through 10)

56. Plaintiff repeats and realleges the allegations made in paragraphs 1 through 55 as if fully set forth herein.

57. Each and every Defendant and Does 1 through 10, inclusive, have acted in concert, conspired together, and engaged in conduct constituting an illegal business practice prohibited by the California Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* (the "UCL"), by and through their violations of Section 1832 of the federal Economic Espionage Act, entitled "Theft of Trade Secrets" (18 U.S.C. § 1832), California Labor Code Section 2863, and California Penal Code Sections 484 and 487. Section 1832 of the Act makes certain types of trade secret theft a federal crime; California Labor Code Section 2863 requires employees to obey a duty of loyalty while employed by their employer; and California Penal Code Sections 484 and 487 make grand theft a crime. While the above-mentioned laws may not, by themselves, create private causes of action, violations of the Economic Espionage Act, California Labor Code Section 2863, and California Penal Code Sections 484 and 487 may serve as predicate acts giving rise to a private right of action for unlawful business practices under the UCL. *See* Cal. Bus. & Prof. Code §§ 17200, *et seq.*

58. Plaintiff's Trade Secrets constitute valuable information from which Plaintiff derives independent economic value because such Trade Secrets are not generally known to the public, and are not readily ascertainable through proper means by the public.

59. Defendants Edjourian and Shook obtained Plaintiff's Trade Secrets through wrongful means without Plaintiff's authorization. Defendants knew or became aware that the Trade Secrets were obtained through wrongful means without Plaintiff's authorization, and that the use of the Trade Secrets by Defendants was without Plaintiff's authorization.

60. Defendants knew that the Trade Secrets were proprietary and belonged to Plaintiff. Defendants nevertheless intended to convert the Trade Secrets for their own economic benefit. Defendants knew that such conversion of Plaintiff's Trade Secrets would injure Plaintiff. Defendants nevertheless used and exploited Plaintiff's Trade Secrets for their own economic benefit. Defendants knew that their unauthorized possession, exploitation, copying and dissemination of

1 Plaintiff's Trade Secrets was gained through the unauthorized access of Plaintiff's computers and
2 property.

3 61. The Trade Secrets relate to products – *i.e.*, the annual corporate gifts created for
4 SBIZ/Equity Group – that travel in interstate commerce from California to Illinois.

5 62. Defendants Edjourian and Shook owed Plaintiff a duty of loyalty while they were
6 employed by Plaintiff. Defendants Edjourian and Shook violated that duty of loyalty by taking acts
7 to compete with Plaintiff while they were employees, including but not limited to gathering
8 proprietary records of Plaintiff, gathering Trade Secrets, deleting files on Plaintiff's computers, and
9 communicating with Bill Bartolotta, a representative of Plaintiff's client, to conspire to wrongfully
10 redirect SBIZ/Equity Group's (Plaintiff's client) business to themselves. Defendants Ferrari and
11 Synergy knew of or became aware of Edjourian and Shook's actions and ratified, aided and abetted
12 those actions by utilizing the wrongfully obtained proprietary information and Trade Secrets, and
13 benefitting from the wrongful deletion of Plaintiff's computer files and Defendants Edjourian's and
14 Shook's wrongful communications with Plaintiff's client SBIZ/Equity Group.

15 63. Defendants knew that their possession and exploitation of the Stolen Property was
16 wrongful and unauthorized by Plaintiff.

17 64. Defendants' unlawful, unfair, and/or deceptive acts were willful, in disregard of and
18 with indifference to Plaintiff's rights.

19 65. As a direct and proximate result of Defendants' unlawful acts and practices Plaintiff
20 has been deprived of money, such as licensing fees for the use of Plaintiff's Trade Secrets that would
21 otherwise have been due to Plaintiff. Plaintiff is thus entitled to restitution of such sums as would
22 otherwise have been owed or paid to Plaintiff, in amounts to be proven at trial which are not
23 currently ascertainable. If necessary, Plaintiff will seek leave to amend this complaint to state the
24 full amount of such sums when such amounts have been ascertained.

25 66. As a direct and proximate result of the foregoing acts and conduct, Plaintiff has
26 sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there
27 is no adequate remedy at law. Plaintiff is informed and believes and on that basis avers that unless
28 enjoined and restrained by this Court, Defendants will continue to engage in conduct violative of

1 California Business and Professions Code, Section 17200. Plaintiff is entitled to preliminary and
2 permanent injunctive relief.

3 **FIFTH CLAIM FOR RELIEF**

4 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS**

5 **(Against All Defendants and Does 1-10)**

6 67. Plaintiff repeats and realleges the allegations made in paragraphs 1 through 66 as if
7 fully set forth herein.

8 68. Plaintiff and SBIZ/Equity Group were in a long-term economic relationship that
9 benefitted Plaintiff. Every year for seventeen years, SBIZ/Equity Group had contracted with
10 Plaintiff or its predecessors to design and manufacture one-of-a-kind custom gifts to be distributed to
11 SBIZ/Equity Group's friends and business associates over the winter holiday season. In 2015, the
12 contract was valued at \$3,000,000.00. Plaintiff had every reason to believe that Plaintiff would be
13 hired again for 2016, and for every subsequent year thereafter, on the same job.

14 69. Defendants knew of this relationship. Every year, Defendants Shook and Edjourian
15 signed non-disclosure agreements regarding the confidential nature of the job and the design process.
16 Indeed, Shook and Edjourian were Plaintiff's key employees with respect to this annual job and
17 Defendant Ferrari was Plaintiff's key outside vendor.

18 70. Defendants intended to disrupt this relationship by conspiring to create a new
19 company (viz., Synergy) to which all future work with SBIZ/Equity Group would be directed.
20 Defendants believed they would make more money out of this arrangement than they did as
21 employees and vendors for Plaintiff.

22 71. Defendants conspired together to engage in and did engage in wrongful conduct by
23 using Plaintiff's assets against Plaintiff through the misappropriation of trade secrets, conversion,
24 and trespass to chattels, including without limitation the theft of customer and vendor lists, auto-cad
25 software, work-product, a flash drive and a hard drive containing Plaintiff's proprietary information
26 and software. Shook and Edjourian were the main players in this conspiracy. Ferrari joined the
27 conspiracy after he acquired knowledge of what Shook and Edjourian had done.

72. Plaintiff's relationship with SBIZ/Equity Group ended as a direct result of the Defendants' wrongful conduct. Plaintiff lost its \$3,000,000.00 annual contract with SBIZ/Equity Group, while Synergy gained it. The Defendants' conduct was a substantial factor in causing Plaintiff's harm.

SIXTH CLAIM FOR RELIEF

CIVIL CONSPIRACY

(Against All Defendants and Does 1-10)

73. Plaintiff repeats and realleges the allegations made in paragraphs 1 through 72 as if fully set forth herein.

74. Defendants and Does 1 through 10, inclusive, conspired, colluded, agreed with, and aided and abetted with each other at all relevant times. Through his actions and participation in furtherance of Defendants Shook and Edjourian's intentional interference of prospective economic advantage of Plaintiff's relationship with SBIZ/Equity Group, Ferrari implicitly and/or explicitly agreed to participate and did participate in an unlawful plan which included misappropriation and theft of trade secrets, and violation of unfair competition laws.

75. Defendants' common scheme – *i.e.*, the fulfillment of the SBIZ/Equity Group 2015/2016 corporate gift order – involved two overlapping components which eventually became indistinguishable from each other: (i) participation in a seemingly legal (albeit surreptitious) plan to compete against Plaintiff; and (ii) the illegal infringement, theft and distribution of Plaintiff's intellectual property and trade secrets, as well as conversion and trespass of Plaintiff's property, unfair competition and intentional interference with Plaintiff's prospective economic advantage. The Defendants all willingly participated in this common scheme both before and after the illegal aspects of the scheme became apparent. The illegal aspects of the scheme were apparent at least as early as late January 2016, when Plaintiff sent a cease and desist letter to Defendants regarding their wrongful possession and use of Plaintiff's intellectual property and personal property. At that point, the legal and illegal aspects of the common scheme merged and became indistinguishable.

76. As a result of the foregoing, each of the Defendants is liable for the illegal acts (as alleged herein) of each of the other Defendants in furtherance of their common plan and scheme to

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1 illegally and wrongfully compete with Plaintiff by wrongfully exploiting the Trade Secrets and
2 Stolen Property, and violating unfair competition law as well as intentionally interfering with
3 Plaintiff's economic relationship with SBIZ/Equity Group.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against all Defendants, and each of them, as
6 follows:

- 7 A. For an award of actual damages and restitution for Defendants' misappropriation of
8 trade secrets in an amount to be ascertained at trial pursuant to Cal. Civ. Code Section
9 3426.3(a), or in the alternative for a reasonable royalty in an amount to be ascertained
10 at trial pursuant to Cal. Civ. Code Section 3426.3(b), but in no event less than
11 \$3,000,000.00;
- 12 B. For exemplary damages against Defendants and in favor of the Plaintiff in the sum of
13 twice the amount awarded for actual damages and unjust enrichment, or twice the
14 amount awarded for reasonable royalty pursuant to Cal. Civ. Code Section 3426.3(c)
15 in an amount to be ascertained at trial;
- 16 C. For reasonable attorneys' fees and costs under Cal. Civ. Code Section 3426.4, due to
17 the willful and malicious nature of the misappropriation;
- 18 D. For an award of compensatory damages, including without limitation, special
19 damages, direct damages, incidental damages and consequential damages in an
20 amount to be ascertained at trial;
- 21 E. For restitution of such sums as would otherwise have been owed or paid to Plaintiff
22 absent Defendants' violations of law and wrongful conduct in an amount to be
23 ascertained at trial;
- 24 F. For preliminary and permanent injunctive relief that:

- i. Defendants may not access, utilize or distribute Plaintiff's Trade Secrets;
- ii. Defendants must return the embodiment of any and all copies of any documents, electronic or otherwise, containing Plaintiff's Trade Secrets to Plaintiff;
- iii. Defendants must not delete any Trade Secrets or other information contained or embodied in the Stolen Property; and
- iv. Defendants must return all Stolen Property to Plaintiff.
- G. For prejudgment and postjudgment interest;
- H. For disgorgement of Defendants' wrongful profits;
- I. For a constructive trust regarding Defendants' wrongful profits;
- J. For all other equitable remedies as appropriate and as permitted by law;
- K. For an award of exemplary and punitive damages pursuant to Cal. Civ. Code Section 3294, and as otherwise permitted by law;
- L. For Plaintiffs' attorneys' fees and costs to the extent permitted by law; and
- M. For such other and further relief as the Court may deem just and proper.

DATED: June 8, 2016

FAYER GIPSON LLP
ELLIOT B. GIPSON
MICHELLE K. MILLARD

By: 

ELLIOT B. GIPSON
Attorneys for Plaintiff McCune & Company, LLC
d/b/a McCune Masterworks

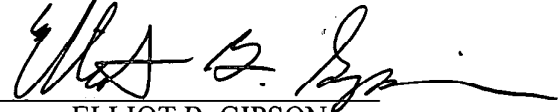
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DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury.

DATED: June 8, 2016

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ELLIOT B. GIPSON
MICHELLE K. MILLARD

By 

ELLIOT B. GIPSON

Attorneys for Plaintiff McCune & Company, LLC
d/b/a McCune Masterworks

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