

I. NATURE OF THE CASE

1. This case involves Defendants' breach of an agreement to exclusively market WMI's financial education and consulting products; breach of consulting contracts with WMI concerning conflicts of interest and solicitation of other consultants; breach of and/or participating in the breach of fiduciary duties to WMI; misappropriation of WMI's trade secrets; breach of employment agreements not to disclose confidential information, not to solicit employees, and not to compete with WMI while employed and/or contracted by WMI (and thereafter); wrongful interference with WMI's employment agreements with its employees and consulting agreements with its consultants; slander, libel, and business disparagement; unjust enrichment; and conspiracy. Specifically, Defendants Kubassek, Parkinson, and Cass, who each signed an employment contract and/or consulting contract with WMI and served on WMI's Executive Committee, and their company, CCP, provided online marketing services for WMI, a network marketing company that sells financial education and consulting products around the world. After WMI paid Kubassek, Parkinson, Cass, and CCP millions of dollars based on their agreement that they would develop WMI's business exclusively, and further based on their consulting and/or employment agreements not to solicit WMI's consultants and/or compete with WMI, Kubassek, Parkinson, Cass, Lerner, and CCP began to secretly recruit WMI's employees and consultants to sell a competing product based on David Bach's "Automatic Millionaire" concept, using a network marketing program that CCP/Pro U had been developing for a year. Kubassek, Parkinson, Cass, and CCP required these recruits to sign nondisclosure agreements, and

specifically told these recruits not to tell WMI's management about the competing product or that they had been recruited to develop and sell it instead of WMI's product. Eventually, Defendants Jeff Lerner, Aaron and Sophia Rashkin, and Michael Force, members of WMI's Executive Committee who had also signed consulting agreements with WMI, abruptly left WMI and, along with the other Defendants, violated their agreements and convinced other WMI consultants to violate their consulting agreements and sell CCP's competing product. WMI has had its multi-million dollar business gutted, lost substantial profits, lost good and highly profitable sales consultants, and has suffered damage to its goodwill and reputation from a competing product which was developed using WMI's products and WMI's confidential business plans, strategies, and customer information that is strikingly similar in look and feel and that is marketed by the same WMI consultants, and is therefore confusing in the marketplace.

2. WMI seeks damages for Defendants' wrongful conduct, including their violation of the terms of the Individual Defendants' employment and/or consulting agreements with WMI, by soliciting WMI's employees and consultants; disclosing and using WMI's confidential information and trade secrets; and, with regard to Kubassek and Cass who signed non-compete agreements to be effective for one year following termination, from competing with WMI. Plaintiff seeks damages for each Defendant's wrongful conduct and recovery of WMI's attorney's fees and costs. Defendants' conduct has caused damages of approximately \$10,000,000, and these damages will likely increase.

II. JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(a) because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and there is diversity of citizenship. This Court has jurisdiction over the Texas state law claims under principles of pendent and ancillary jurisdiction. Finally, all of the Individual Defendants signed agreements mandating jurisdiction in Fort Bend County, Texas, which is encompassed in the United States District Court for the Southern District of Texas, Houston Division.

4. The United States District Court for the Southern District of Texas, Houston Division is the appropriate venue for this case because it encompasses Fort Bend County, the county in which all or substantially all of the events giving rise to this cause occurred. Moreover, all of the Individual Defendants signed agreements mandating venue in Fort Bend County, Texas.

III. PARTIES

5. Plaintiff is a Texas limited partnership doing business in Sugar Land, Fort Bend County, Texas.

6. Defendant Jason “Jay” Kubassek (a/k/a/ Jay Kubassek, Inc.) (“Kubassek”) is an individual residing in New Jersey and/or New York, and doing business in Texas. Kubassek signed a Consulting Agreement with WMI, agreeing to jurisdiction and venue in Fort Bend County, Texas. Kubassek also signed an Employment Agreement with WMI and served on WMI’s Executive Committee. Kubassek was also WMI’s Senior Vice President of Business Development. At all relevant times Kubassek conducted

business in the State of Texas pursuant to his contract with WMI, a Texas resident, and he performed the contract in whole or in part in this State. Further, Kubassek committed a tort in whole or in part in this State, as more fully specified herein. Kubassek has answered in this case and is being served with a copy of this Amended Complaint through his attorneys.

7. Defendant Jay Kubassek, Inc. individually and d/b/a CarbonCopyPro a/k/a Carbon Copy Pro, is a Kansas corporation. It holds the U.S. trademark for CarbonCopyPro. Jay Kubassek, Inc. individually and d/b/a CarbonCopyPro a/k/a Carbon Copy Pro does business in the State of Texas, has answered in this case, and is being served with a copy of this Amended Complaint through its attorneys.

8. Defendant Aaron Parkinson is an individual believed to be residing in Victoria, BC, Canada. Parkinson signed a Consulting Agreement with WMI agreeing to exclusive jurisdiction and venue in Fort Bend County, Texas. Parkinson also served on WMI's Executive Committee. At all relevant times Parkinson conducted business in the State of Texas pursuant to his contract with WMI, a Texas resident, and he performed the contract in whole or in part in this State. Parkinson has previously been served. To the extent necessary, he can be served with a copy of this Amended Complaint pursuant to §17.044 of the Texas Civil Practice & Remedies Code, by serving the Secretary of State of Texas. The Secretary of State may forward the process to Parkinson at 8501 E. Princess Rd., Ste. 102, Scottsdale, Arizona 85255; 2141 Stone Gate, Langford (Victoria), BC V9B 6R5, Canada; or at Box 31249, 26B Villa Royale WB, Seven Mile Beach, Grand Cayman, Cayman Islands, CYM, KY1-1205. Alternatively, Parkinson may be

served with process wherever he may be found.

9. Defendant Omni Industries, LLC d/b/a CarbonCopyPro a/k/a Carbon Copy Pro and Pro U (“CCP”) is purportedly a New York limited liability company which has its principal place of business in Fort Bend County, Texas, where it provided online marketing support as part of WMI’s business. CCP does business in the State of Texas. Upon information and belief it is operated by Kubassek, Cass, Parkinson, and/or the other Individual Defendants. CCP has answered in this case and is being served with a copy of this Amended Complaint through its attorneys.

10. Defendant Andrew Cass is an individual believed to be residing in Miami, Florida. Cass signed a Consulting Agreement with WMI, agreeing to jurisdiction and venue in Fort Bend County, Texas. Cass also signed an Employment Agreement with WMI and served on WMI’s Executive Committee. At all relevant times Cass conducted business in the State of Texas pursuant to his contract with WMI, a Texas resident, and he performed the contract in whole or in part in this State. Cass has entered an appearance, is representing himself in this lawsuit, and is being served with a copy of this Amended Complaint through the address he has provided to the Court.

11. Defendant Jeffrey Lerner is an individual believed to be residing in Washington, Utah. Lerner signed a Consulting Agreement with WMI agreeing to exclusive jurisdiction and venue in Fort Bend County, Texas. Lerner also served on WMI’s Executive Committee and signed a WMI “Executive Committee Agreement and Non Disclosure/Non-Compete.” At all relevant times Lerner conducted business in the State of Texas pursuant to his contract with WMI, a Texas resident, and he performed the

contract in whole or in part in this State. Lerner has entered an appearance, is representing himself in this lawsuit, and is being served with a copy of this Amended Complaint through the address he has provided to the Court.

12. Defendants Aaron Rashkin and Sophia Rashkin (the “Rashkins”) are individuals believed to be residing in Parker, Colorado. The Rashkins signed a Consulting Agreement with WMI agreeing to jurisdiction and venue in Fort Bend County, Texas. The Rashkins also served on WMI’s Executive Committee and signed a WMI “Executive Committee Agreement and Non Disclosure/Non-Compete.” At all relevant times the Rashkins conducted business in the State of Texas pursuant to their contract with WMI, a Texas resident, and they performed the contract in whole or in part in this State. The Rashkins have appeared in this case and are being served with a copy of this Amended Complaint through their attorneys.

13. Defendant Michael Force is an individual believed to be residing in Miami, Florida. Force signed a Consulting Agreement with WMI agreeing to jurisdiction and venue in Fort Bend County, Texas. Force also served on WMI’s Executive Committee and signed a WMI “Executive Committee Agreement and Non Disclosure/Non-Compete.” At all relevant times Force conducted business in the State of Texas pursuant to his contract with WMI, a Texas resident, and he performed the contract in whole or in part in this State. Force has entered an appearance, is representing himself in this lawsuit, and is being served with a copy of this Amended Complaint through the address he has provided to the Court.

14. Kubassek, Parkinson, Cass, Lerner, the Rashkins, and Force may be referred to herein collectively as the “Individual Defendants.”

IV. FACTS

15. The following facts support Plaintiff’s claims as alleged herein.

WMI’s Business

16. WMI began its business in 2005. WMI is a network marketing company that sells financial education and consulting products and access memberships around the world. WMI sells three basic products designed to educate people on financial planning and consulting: (1) self study courses; (2) face to face seminars; and (3) a top-level, exclusive international conference. While WMI has a number of key employees who, under employment agreements, manage business operations and develop marketing strategies for WMI, almost all of WMI’s sales force (approximately 99%) is made up of independent consultants who sign consulting agreements and sell WMI’s individual products (“consultants”). WMI uses a network and direct sales marketing program that rewards consultants who bring in other consultants and thus expand the sales network, and by paying commissions for sales made by each consultant and those consultants working as a team. Thus, the sales consultants and their individual networks are critical to the success of WMI’s business.

WMI and CCP

17. According to his website, Kubassek first launched CCP in 2004 as an online marketing business. CCP was an internet marketing company that was owned by Kubassek, Parkinson, and Alan Moore (“Moore”), but primarily controlled by Kubassek.

In 2006, Kubassek and Parkinson became consultants in the WMI network, and in 2007 they began earning substantial commissions from WMI. In 2008, Kubassek, Parkinson, and CCP approached WMI and offered to create, as part of WMI, an internet marketing program which would allow Internet users to access WMI through CCP for the purpose of allowing them to become customers of WMI. This “funnel” created by CCP was to attract Internet users and direct those users to WMI’s products. WMI would pay CCP based on each customer referred through this Internet “funnel” or “pipeline” that CCP created for WMI. WMI ultimately paid substantial sums to CCP through this referral program.

18. WMI’s products were considered to be the top tier products in this “funnel” system and thus were the primary products that CCP was to market. Accordingly, while users signed up through CCP, almost all of them joined CCP for the purpose of allowing them to purchase WMI’s products and become customers of WMI. WMI also consented to CCP keeping the profits it made from the WMI “funnel,” which resulted in an enormous amount of revenue being generated for CCP. WMI’s consent to allow CCP to market WMI’s products, which also served as a draw for CCP’s products, was based on the agreement that CCP would not offer a competing product. In exchange, WMI agreed not to compete with the CCP “funnel” by creating another online marketing program that would divert customers from the CCP-created funnel, thus further allowing CCP to profit substantially from the funnel it created for WMI. In addition, WMI agreed to pay and did pay CCP’s Kubassek bonus payments from this network that he otherwise would not have received. These bonus payments were also substantial. In total, WMI paid the CCP

parties approximately \$3.5 million in the last three years relating to the above. WMI felt this “WMI/CCP Marketing Program” agreement was a “win-win” for both WMI and CCP, and invested these sums because WMI could grow its sales force of consultants for its products and CCP could grow a network for its products, none of which competed with each other.

WMI’s Proprietary Strategies, Consultant and Customer Information and Sales Consultant Network

19. WMI has spent years and invested substantial amounts of money into developing proprietary strategies and consultant networks to allow it to compete as a network marketing company selling financial education and consulting products, attract new consultants and customers to its business, and make profits. The strategies and networks were developed by WMI’s founders and other key personnel, at significant expense to the company.

20. WMI goes to great lengths to protect itself from solicitation of its consultants and to protect its marketing strategies and consultant information as confidential trade secrets. At the basic level, all WMI consultants, including Defendants Kubassek, Parkinson, Cass, Lerner, the Rashkins, and Force, are required, when they sign up, to execute independent consultant agreements and agree to WMI’s Statement of Policies and Procedures.² Those procedures provide in relevant part:

² The WMI consultants sign up online and are required to accept the WMI Independent Consultant and Business Center Agreement that expressly incorporates the WMI Statement of Policies and Procedures (“Policies”), as may be amended from time to time. The relevant portions of the Policies quoted herein have remained the same from 2006 through the present date.

4.8 – Conflicts of Interest

4.8.1– Non-solicitation

WMI Consultants are free to participate in other multi-level or network marketing business ventures or marketing opportunities (collectively “network marketing”). *However, during the term of this Agreement, Consultants may not recruit other WMI Consultants for any other network marketing business. Following the cancellation of this Agreement, and for a period of six months thereafter, a former Consultant may not recruit any WMI Consultant for another network marketing business.* The term “recruit” means actual or attempted solicitation, enrollment, encouragement, or effort to influence in any other way, either directly or through a third party, another WMI Consultant or customer to enroll or participate in another multi-level marketing, network marketing or direct sales opportunity. This conduct constitutes recruiting even if the Consultant’s actions are in response to an inquiry made by another Consultant.

Consultants must not sell, or attempt to sell, any competing non-WMI products or services to WMI customers or Consultants. Any product or service in the same generic category as a WMI product or service is deemed to be competing.

Consultants may not display WMI products or services with any other products or services in a fashion that might in any way confuse or mislead a prospective customer or Consultant into believing there is a relationship between the WMI and non-WMI products or services. Consultants may not offer the WMI opportunity, products or services to prospective or existing customers or Consultants in conjunction with any non-WMI program, opportunity, product or service. Consultants may not offer any non-WMI opportunity, products or services at any WMI-related meeting, seminar or convention, or immediately following such event....

(Exhibit A) (emphasis added).

21. WMI’s employees, including Defendants Kubassek and Cass, are required to sign employment agreements wherein the employee expressly acknowledges his fiduciary relationship with WMI. While common law requires employees not to disclose their employers’ confidential information, WMI goes further and requires its employees

to sign agreements to maintain WMI's confidential information and not to disclose such information outside the company. For example, Kubassek, who was WMI's Senior Vice President of Business Development, and Cass, who was WMI's Vice President of Business Development, signed employment contracts which provided:

5. Confidential Information/Non-Disclosure.

(a) Disclosure of Information. During the Employment Term, and continuing in perpetuity, Employee shall not, except as permitted by the Board of Directors of WMI in writing, in any manner, at any time, directly or indirectly, disclose to any persons other than authorized employees of WMI any Confidential Information, as hereinafter defined, of either WMI or WMI's current or prospective clients. As used in this Agreement, the term "Confidential Information" means, in addition covered by any definition of "trade secrets" or any equivalent term under state, local or federal law, all information regarding WMI or WMI's activities, business or clients that is not generally known to persons not employed by WMI, and that is not generally disclosed by WMI to persons not employed by WMI. "Confidential Information" shall include, but is not limited to, sales and marketing techniques and plans, market studies and business plans, distribution techniques, purchase and supply information, pricing information, customer billing information, financial plans and data concerning WMI, management planning and financial information, client and customer lists, database of client information, know-how, information about client and customer requirements, terms of license agreements, product development techniques or plans, computer software programs (including object code and source code), data base systems and information, terms of contracts with customers and suppliers, and any and all information concerning the financial educational seminars or services business or other business operations of WMI, the disclosure of which could reasonably be anticipated to harm WMI's competitive advantage or give WMI's competitors an advantage, which Employee learns or obtains as a consequence of or through his performance of services for WMI, that is not generally known to the business community in the financial educational seminars or services business or to the general public and which would reasonably be expected by WMI to be held in confidence. During the course of conducting business for WMI, and in furtherance of WMI's business interests, it is anticipated that certain information concerning the financial educational seminars and services business or other business operations which is not generally known to the business community or to

the general public will be communicated to potential suppliers, customers and/or other persons in order to enhance a business transaction for the benefit of WMI, and such communications are not violations of this Agreement when reasonably communicated for the purpose of furthering WMI's interests. "Confidential Information" also includes, but is not limited to, all files, reports and documents pertaining to the financial educational seminars and services business and other business operations and suppliers and customers of WMI, and the services rendered to them or products purchased from or sold to them by WMI, and these items and matters shall belong exclusively to and shall remain the exclusive property of WMI. Employee shall, at the termination of this Agreement, promptly return or deliver to WMI all property in the Employee's possession or under the Employee's control belonging to WMI, including all tangible forms of Confidential Information in his possession or under his control, including, but not limited to, any list of WMI's suppliers, customers, clients or business partners. The prohibition on the use of Confidential Information as provided herein shall exist for the term of this Agreement, and in perpetuity following the termination of this Agreement.

Defendants Kubassek and Cass's employment agreements also made it clear that WMI was relying on them as fiduciaries and entrusting WMI's confidential trade secrets to them as part of their employment:

(b) Fiduciary Relationship. The relationship between WMI and Employee shall be one in which WMI reposes special trust and confidence in Employee, and one in which Employee shall have a fiduciary relationship with WMI. As a result, WMI shall, in the course of Employee's employment, entrust Employee with Confidential Information. Employee recognizes that Confidential Information has been developed by WMI at great expense, is proprietary to WMI, and is and shall remain the exclusive property of WMI. Employee acknowledges the confidentiality of Confidential Information and acknowledges that Employee could not competently perform Employee's job duties without access to such information. Employee acknowledges that any use of such Confidential Information by persons not in the employ of WMI would provide persons an unfair competitive advantage that they would not have without the use of such Confidential information.

Finally, Defendants Kubassek and Cass specifically agreed that WMI could enforce these confidentiality provisions through injunctive relief:

(a) Wealth Masters' Remedies. In addition to any and all other remedies allowed in law or equity, in the event of the Employee's breach or threatened breach of this Section 5, WMI *shall be entitled to a preliminary restraining order and an injunction restraining and enjoining the Employee from disclosing all or any part of the Confidential Information*.

(emphasis added).

22. WMI also limits access to business and marketing strategies to members of the Executive Committee ("EC"), WMI's functional equivalent to a board of directors and its business advisory council. Members of the EC sign additional agreements acknowledging the confidential nature of the information to which they have access, affirming their loyalty to WMI, and agreeing not to compete with or own a company that competes with WMI. All of the Individual Defendants have served as members of the EC.³

WMI's Investment In Training Consultants and Employees

23. WMI invests considerable time in training its consultants via Internet programs, one-on-one seminars, and conventions. In fact, many of the WMI consultants do not have any background or experience in financial education and consulting, or in direct sales. WMI pays considerable commissions to these consultants to encourage them to take advantage of the training WMI offers, and to grow their networks and sell WMI's products.

24. As discussed above, WMI includes non-solicitation agreements in its consulting agreements with each consultant. WMI also uses its employment agreements

³ Parkinson and Cass joined the EC several years ago, before the EC Agreement was created, and thus did not sign an EC Agreement at the time they joined the EC. However they were aware of the confidential nature of the discussions of the EC and their fiduciary duty to WMI as a member of its board of advisors.

to protect the investment it makes in its human capital. The employment agreements executed by Defendants Kubassek and Cass provide:

8. Non-Solicitation.

(a) General Terms. Employee agrees and covenants that for a period of three (3) years following the termination of his or her employment with WMI for any reason, he or she shall not solicit or call upon any employee of WMI for the purpose or with the intent of enticing them away from or out of the employ of WMI for any reason whatsoever. Employee further agrees and covenants that for *a period of three (3) years following the termination of his or her employment with WMI for any reason, he or she shall not solicit or call upon any party which is then, or has been within the two (2) year period immediately preceding the date Employee's employment is terminated, a customer or client of WMI for the purpose or with the intent to enticing them away from WMI for any reason whatsoever.*

(b) Injunctive Relief. Because of the difficulty of measuring economic losses to WMI as a result of the breach of the foregoing covenants, and because of the immediate and irreparable damage that would be caused to WMI for which it would have no adequate remedy, Employee agrees that, in the event of a breach by him or her of the foregoing covenants, the covenants may be enforced by WMI by injunctions and restraining orders.

(emphasis added).

25. WMI also uses its EC Agreement, which was signed and/or agreed to by all of the Individual Defendants, to protect its investment in its consultants, by providing the following averment: "I will have no ill-will to do damage, compete, or do harm to either WMI, an EC member, or Consultant of WMI."

WMI Ensures that Its Key Employees and Executive Committee Members Will Not Become Competitors

26. WMI protects itself from having its key employees compete against WMI. The employment agreements executed by Kubassek and Cass further provide:

7. Noncompetition.

(a) Noncompetition During Employment. During the Employment Term, and continuing while Employee is employed by WMI, Employee shall not at any time or place or to any extent whatsoever, either directly or indirectly, without the express written consent of the Board of Directors of WMI (i) engage in the financial educational seminars and services business, except under and pursuant to the terms of this Agreement, or (ii) engage in any activity competitive with or adverse to WMI, whether on his own behalf, as a partner, or as an owner, officer, director, employee, agent, consultant, advisor, promoter, independent contractor, partner or equity security holder of any person, corporation, partnership, joint venture, agency, company or any other form of business enterprise or as a trustee, fiduciary or other representative. Employee further agrees that while employed Employee will not influence or attempt to influence any other employee of WMI to terminate his or her employment for any reason or to work for any actual or potential competitor of WMI

(b) The preceding paragraph shall not be construed to prohibit the ownership by the Employee of not more than five percent (5%) of any class of securities of any corporation which is engaged in the foregoing businesses having a class of securities registered pursuant to the Securities Exchange Act of 1934, as amended, provided that such ownership represents a passive investment and that neither the Employee nor any group of persons including the Employee in any way, either directly or indirectly, manages or exercises control of any such corporation, guarantees any of its financial obligations, otherwise takes any part in its business, other than exercising Employee's rights as a shareholder, or seeks to do any of the foregoing.

* * *

(c) Noncompetition After Termination. Except for the limited exceptions set forth in Section 7(b) of this Agreement, upon termination of Employee's employment in accordance with Section 9(b) or 9(c) or 9(e) of this Agreement (the "Termination Date"), then in consideration of the promises and for the protection of WMI's established businesses, and the further knowledge and good will and expanded business opportunities provided to Employee, Employee hereby agrees and covenants that Employee will not, at any time during and for a period of ***one (1) year beginning on the Termination Date, directly or indirectly, for his own behalf or for any other person(s), firm(s), company(ies), partnership(s), joint ventures(s), agency(ies), corporations(s) or any other form of business enterprise(s), buy, sell, engage in, carry on, deliver, distribute, advertise, solicit or aid or participate in the financial educational***

seminars and services business within the United States and Canada, if such solicitation is made subsequent to the date of this Agreement. In making this Non-competition Agreement, Employee acknowledges that the same is reasonable in view of the compensation granted Employee under this Agreement and that the covenants made by Employee under this Section 7 are necessary to protect WMI in the businesses which it has established in the areas served by it and the goodwill attaching thereto. The limitation is on the area of employment in which Employee is engaged, the geographic area is the same geographical area in which Employee operates in his capacity as an Employee, and the term is reasonable (with regard to) compensation to be paid to Employee. Employee further agrees during such term not to influence or attempt to influence any other employee of WMI to terminate his or her employment for any reason or to work for any actual or potential competitor of WMI.

(emphasis added).

27. The EC Agreements, which were signed and/or agreed to by all of the Individual Defendants, provide that: "I agree that I do not have currently, nor shall I have in the future, any financial interest in any Alliance, Product, Service or Financial Opportunity without full-disclosure."

Discovery of Defendants' Disclosure of Confidential Information, Theft of Plaintiff's Trade Secrets, Solicitation of Plaintiff's Employees and Consultants, Illegal Competition, and Breach of Fiduciary Duty

28. WMI sponsors seminars called m2 Wealth Conferences, in which it gathers consultants together and provides them with information concerning market trends and wealth creation opportunities. At these conferences, consultants have personal access to some of the world's most successful wealth and development experts. Beginning in 2008, WMI provided for CCP to have a marketing day at the end of each m2 conference, for which WMI paid a substantial amount of the expense because CCP promoted WMI at these conferences. WMI's eleventh m2 Wealth Conference was scheduled for November

14-17, 2010 in Las Vegas. WMI understood that, as had occurred during the previous m2 conferences, CCP would conduct its marketing day on November 18, the day after the conference, at the same hotel used for WMI's m2 Wealth Conference. However, Kubassek, Parkinson, and Cass, on behalf of CCP, informed WMI in late summer 2010 that CCP would not have its marketing day in conjunction with the WMI conference, but instead would do its own marketing day. Upon information and belief, Kubassek, Parkinson, and Cass, on behalf of CCP, then booked their marketing day event on November 20, 2010 at a different hotel in Las Vegas, with the intent to launch CCP's competing product directly to WMI's consultants who had participated in the WMI m2 conference.

29. What was unknown at the time but has now become apparent, upon information and belief, is that the decision of CCP, Kubassek, Parkinson, and Cass to distance themselves from WMI at the November 2010 m2 Wealth Conference was just part of a larger conspiracy among all of the Defendants. The Individual Defendants were apparently working with CCP on its competing product and planning their departure months before they left the employ of and/or affiliation with WMI.

30. In the summer and fall of 2010, while planning their separate conference and product launch, Kubassek, Parkinson and/or Cass contacted key consultants of WMI and requested they sign non-disclosure agreements ("NDAs") in order to look at a new product Kubassek, Parkinson, Cass, Force, Lerner, and/or CCP were developing. Cass and Force were also WMI consultants at the time. Cass was also serving on the EC at WMI. Kubassek, Parkinson and/or Cass specifically told these consultants not to tell

WMI's management about the competing product or that they had been recruited to sell it instead of WMI's product. As described at the time, the new product used a network marketing/affiliate program to sell a financial education product based on financial analyst David Bach's *Automatic Millionaire* concept. Like the WMI product, the new CCP/Pro U product had three levels, which included a base program, a set of seminars/meetings, and an exclusive top-level meeting/conference. The pricing strategy was the same, and even the prices were similar. The look and feel of the new CCP/Pro U product, including its packaging, was similar to that of WMI. WMI was later provided copies of presentations on the new CCP/ Pro U product that were extremely similar to the ones WMI had done for its products.⁴

31. WMI's management, Kip Herriage and Karl Bessey, initiated a call with Kubassek, Parkinson, and Lerner to discuss whether CCP was launching a competing financial education product. Herriage asked Kubassek point blank if CCP was launching a competing product at WMI's m2 conference in Las Vegas. Kubassek said "no." Kubassek did not tell WMI's management that the product CCP was preparing was similar in many ways to WMI's product, that the CCP product would be marketed to WMI's consultants using WMI's network, and that CCP was replacing WMI's product in

⁴ The new CCP/Pro U product included a number of items that were substantially the same or similar to WMI's program, including an online wealth management tool that calculated debts and how to pay them down faster, financial education books and DVDs, and a fee structure that copied WMI's one-time membership fee and monthly recurring fee. In addition, CCP/Pro U's product uses "Silver, Gold, Platinum, and Black" products (WMI uses "Silver," "Gold," and "Platinum" products); CCP/Pro U uses "Elite Marketers" (WMI uses "Elite Consultants"); CCP/Pro U calls its training a "University" (WMI uses the term "Academy"); and CCP/Pro U utilizes "Creative Finance Calls" (WMI uses "Creative Finance Calls"). CCP (CarbonCopyPro) has "carbon copied" WMI's program.

the top tier of the CCP marketing funnel. Kubassek said he would allow the CCP marketing system to market both products, but did not disclose to WMI's management that CCP was setting the system up to sell the Bach product. The CCP funnel was being set up to point purchasers toward the CCP Bach product, and make it difficult for those purchasers to find the WMI product. The way CCP set up the online store was equivalent to putting the Bach product on a store shelf at eye level or on an end cap, and putting WMI's product in the store room. Kubassek was clearly taking advantage of his superior knowledge about the online marketing funnel that CCP had developed for WMI, and which it would now be using for the benefit of the new CCP Bach product.

32. Following the telephone conference between WMI's management and Kubassek, Parkinson, and Lerner on behalf of CCP, and without knowing the true nature of the CCP Bach product and plan, WMI allowed Cass to serve as the emcee at WMI's m2 conference in Las Vegas. At this time WMI had not been made aware that Cass was working on the new Bach financial education product at CCP. Further, and based on Kubassek's assurances during the call, WMI agreed to allow CCP to give a 15-20 minute presentation on its marketing system, including its funnel to WMI, at the m2 conference, which Lerner was to present. At the last minute Kubassek showed up at the November 2010 WMI m2 conference and gave a presentation on Pro U and its products. Basically, Kubassek presented CCP's product to WMI's consultants at a WMI sponsored event, at WMI's cost.

33. During November and December 2010, the Individual Defendants' WMI sales production fell off dramatically as they prepared to leave WMI and/or began selling

CCP/Pro U competing products that had been developed using the Bach plan. In December 2010 Cass ultimately elected to disclose his secret relationship with CCP and advised WMI that he did not feel like he could be part of two competing teams, and he terminated his relationship with WMI on December 1, 2010, having already solicited the consultants that he had recruited for WMI to leave WMI and join CCP, and after having produced a sales video with Force to sell the new Pro U product line before his departure on December 1, 2010. The other Individual Defendants, who were actively marketing as WMI consultants, continued their charade, confusing WMI's customers by selling/promoting or soliciting them for competing products along with WMI products.⁵ In addition, when consultants attempted to get clarification of the products and their sponsorship from Kubassek, Parkinson, Cass, and CCP, Cass sent an email to a substantial number of WMI's consultants stating that the online marketing system being employed by WMI was not tested and did not work and that WMI lacked integrity in the business. Eventually, Defendants Lerner, the Rashkins, and Force left WMI and solicited their WMI consultants to go with them to CCP to sell the CCP financial education product.

34. WMI was forced to do damage control with a number of consultants, advising them that under their agreements with WMI they could not sell the CCP/Pro U product which competed with WMI. When these consultants refused to cease selling the CCP/Pro U product, WMI had to terminate their consulting agreements to try to prevent

⁵ In fact, Defendants went as far as to tell the WMI consultants that if they purchased the CCP/Pro U products Defendants would give credit for the WMI products previously purchased, and that the products would complement each other. A number of consultants contacted WMI and expressed confusion as to whether these new CCP/Pro U products were sponsored by WMI.

further confusion and injury to its reputation.

Damages

35. WMI has lost its confidential information, its trade secrets, and its key employees and consultants to Defendants because of the conspiracy of the Defendants. Moreover, it appears, upon information and belief, that CCP used the Individual Defendants to orchestrate all of the departures of WMI's employees, consultants, and EC members and to assist CCP in the creation and marketing of its competing product. WMI has suffered the loss of its confidential information and the loss of its key employees and consultants, as well as losses resulting from the sales of a similar product by these same consultants. Moreover, the Defendants are competing with WMI for consultants, and the Defendants have an unfair, unlawfully gained advantage over WMI because the Individual Defendants have taken with them marketing strategies and consultant networks developed and paid for by WMI.⁶

36. Furthermore, WMI has suffered damage to its consultant-lead network marketing program. The Defendants have been directly competing against WMI in financial education and consulting products. In fact, the Individual Defendants, whose confidential networks of sales consultants were developed at WMI's great expense and

⁶ Some of these consultants had signed up directly with WMI and some had signed up under WMI's agreement with CCP. WMI's agreement with CCP had been for CCP to create a marketing internet "funnel" where a potential customer/consultant would sign up with CCP and then be provided access to WMI's financial-education products and sign up with WMI as a consultant. WMI paid CCP millions of dollars for these referrals through CCP's internet "funnel." Because CCP did not compete and by agreement was not to compete with WMI, WMI originally did not mind that CCP/Pro U had its own products which would also be sold to these same customers. However, once CCP/Pro U decided to sell a competing product with WMI, CCP/Pro U began to interfere directly with WMI's consultant base, in which WMI had invested millions of dollars with CCP and millions of dollars in commissions to the consultant teams to develop. Moreover, CCP/Pro U changed the "funnel" to allow internet consumers to choose between the CCP/Pro U product and the WMI product.

investment, would necessarily have to disclose and use WMI's confidential information in those sales consultants' financial education and consulting and training, as well as marketing strategies, for the benefit of CCP/Pro U. Moreover, because their knowledge was based upon using WMI's business strategies, programs, and consultant networks, the Defendants would be competing against WMI in this complex market for financial planning and consulting products. Thus, by having access to WMI's marketing strategies, consultant networks, and products, the Defendants could not only develop the competing product, but they could also identify more profitable consultants, undercut WMI's product prices, and offer increased compensation to WMI's consultants if they switch from the WMI product to the CCP/Pro U product, which has affected WMI's success in continuing to market its product to current and prospective consultants. In essence, WMI's ability to compete was compromised by the Defendants, and there is no way to determine how WMI would have fared without the Defendants' wrongful actions.

37. Defendants' conduct has caused and will continue to cause WMI damages. At this point, the damages are approximately \$10,000,000.

V. CLAIMS

Count 1 – Breach of Contract

38. Plaintiff incorporates all of the preceding paragraphs in their entirety for all purposes.

39. Plaintiff entered into the "WMI/CCP Marketing Program" agreement with CCP/Pro U, Kubassek, and Parkinson. Plaintiff also had employment agreements and consulting agreements with Defendants Kubassek and Cass, as well as consulting

agreements and EC Agreements with the Individual Defendants. CCP/Pro U breached its “WMI/CCP Marketing Program” agreement by developing and selling a competing program using the WMI/CCP funnel in which WMI had invested substantial sums to create. In addition, the Individual Defendants breached those contracts by disclosing and using confidential information of Plaintiff, soliciting Plaintiff’s employees and consultants, and/or competing with Plaintiff while employed with Plaintiff and while they were members of the EC (and thereafter). Defendants’ breach of their contracts has caused Plaintiff’s damages.

Count 2 – Misappropriation of Trade Secrets

40. Plaintiff incorporates all of the preceding paragraphs in their entirety for all purposes.

41. Plaintiff is in the business of selling financial education and consulting products and memberships to consultants via a network marketing program. Plaintiff has a competitive advantage over others in the same business because Plaintiff has a unique marketing strategy, internally-developed programs, and a consultant network not generally known or readily available to the general public. Plaintiff has protected its trade secrets with limited access and employment agreements, consulting agreements, and EC Agreements expressly providing for the non-disclosure of such information.

42. The Individual Defendants acquired knowledge of Plaintiff’s trade secrets through a contractual relationship with Plaintiff that prohibited the Individual Defendants from using or disclosing Plaintiff’s trade secrets and through a relationship of trust with Plaintiff that gave rise to a duty of confidentiality because of WMI’s relationship with the

Individual Defendants. The Individual Defendants were employees and/or consultants of Plaintiff and members of Plaintiff's EC, who were given access to the trade secrets only after signing confidentiality agreements and agreeing that they were fiduciaries of Plaintiff. The Individual Defendants violated their employment and/or consulting agreements, their EC Agreements, and the common law duty to maintain an employer's confidential information by disclosing Plaintiff's trade secrets to CCP and using the trade secrets to further CCP's business.

43. Defendants' disclosure and use of Plaintiff's trade secrets caused injury to Plaintiff, which has resulted in damages to Plaintiff's goodwill and ability to maintain and attract consultants. Plaintiff has suffered damages as a result of Defendants' conduct.

44. Plaintiff's injury resulted from Defendants' gross negligence, malice or actual fraud, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code Section 41.003(a). Plaintiff's injury also resulted from Defendants' misapplication of fiduciary property and/or a felony theft in the third degree or higher under the Texas Penal Code, which exempts this claim from the cap on exemplary damages under Texas Civil Practice & Remedies Code Section 41.008(c).

Count 3 – Tortious Interference with a Contract

45. Plaintiff incorporates all of the preceding paragraphs in their entirety for all purposes.

46. Plaintiff had valid contracts with the Individual Defendants. CCP knew or had reason to know of Plaintiff's contracts with the Individual Defendants and Plaintiff's interest in these contracts. Defendants willfully and intentionally interfered with

Plaintiff's contracts with the Individual Defendants and other employees and consultants. Defendants' interference proximately caused injury to Plaintiff, which resulted in the actual damages to Plaintiff. Plaintiff has suffered damages as a result of Defendants' conduct.

47. Plaintiff's injury resulted from Defendants' malice or actual fraud, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code Section 41.003(a).

Count 4 – Breach of Fiduciary Duty

48. Plaintiff incorporates all of the preceding paragraphs in their entirety for all purposes.

49. The Individual Defendants are liable to Plaintiff for their breach of fiduciary duty to Plaintiff. Plaintiff had a fiduciary relationship with the Individual Defendants. The Individual Defendants breached their fiduciary duty to Plaintiff by disclosing Plaintiff's confidential information, soliciting Plaintiff's employees and consultants, and/or competing with Plaintiff while employed by Plaintiff. The Individual Defendants' breach of fiduciary duty has injured Plaintiff. The Individual Defendants' breach of fiduciary duty has benefited Defendants by allowing CCP to make substantial profits using Plaintiff's product, marketing strategies, and consultant networks, as well as employees and consultants in whom Plaintiff invested considerable resources to train in financial planning, consulting, and marketing strategies. Plaintiff has suffered damages as a result of Defendants' conduct.

50. Plaintiff's injury resulted from Defendants' intentional act, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code Section 41.003(a).

Count 5 – Participation in Breach of Fiduciary Duty

51. Plaintiff incorporates all of the preceding paragraphs in their entirety for all purposes.

52. CCP is liable to Plaintiff for participating in the Individual Defendants' breach of fiduciary duty to Plaintiff. The Individual Defendants owed Plaintiff a fiduciary duty. The Individual Defendants breached those fiduciary duties. CCP induced and participated in the Individual Defendants' breach of their fiduciary duties. The Individual Defendants' breach of fiduciary duties benefited Defendants by allowing CCP to make substantial profits using Plaintiff's product, marketing strategies, and consultant networks, as well as employees and consultants in whom Plaintiff invested considerable resources to train in financial planning, consulting, and marketing strategies. Plaintiff has suffered damages as a result of Defendants' conduct.

53. Plaintiff's injury resulted from Defendants' intentional act, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code Section 41.003(a).

Count 6 – Conversion

54. Plaintiff incorporates all of the preceding paragraphs in their entirety for all purposes.

55. Plaintiff owned the personal property at issue, namely the proprietary marketing strategies and consultant networks, as well as Plaintiff's financial education and consulting product. The Individual Defendants, who legally acquired possession of Plaintiff's personal property through their employment with and/or consulting for Plaintiff, and through their service on Plaintiff's Executive Committee, wrongfully exercised dominion and control over the property by using it in a way that departed from the conditions under which it was received. CCP wrongfully acquired and exercised dominion and control over Plaintiff's personal property that was provided to CCP by the Individual Defendants. Defendants' acts amounted to a clear repudiation of Plaintiff's rights. A demand for the return of the personal property would have been useless. Defendants' wrongful acts proximately caused injury to Plaintiff. Plaintiff seeks return of the converted property and unliquidated damages within the jurisdictional limits of this court.

56. Plaintiff's injury resulted from Defendants' malice, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code Section 41.003(a).

Count 7 – Unjust Enrichment

57. Plaintiff incorporates all of the preceding paragraphs in their entirety for all purposes.

58. Defendants have been unjustly enriched because they have obtained a benefit from Plaintiff by fraud, duress or the taking of an undue advantage, and have wrongfully secured a benefit or passively received one which would be unconscionable for them to retain. Defendants should be required to pay restitution and/or be enjoined

from continuing to disclose and use Plaintiff's confidential information and from soliciting Plaintiff's employees and consultants. Plaintiff has suffered damages as a result of Defendants' conduct.

Count 8 – Conspiracy

59. Plaintiff incorporates all of the preceding paragraphs in their entirety for all purposes.

60. CCP, in combination with the Individual Defendants, agreed to steal Plaintiff's trade secrets, to solicit Plaintiff's employees and consultants and interfere with those employees' and consultants' contracts with Plaintiff, and to induce the Individual Defendants to breach their own contracts with Plaintiff and breach fiduciary duties they owed to Plaintiff. Defendants knew that the agreed acts would result in harm to Plaintiff. To accomplish the object of their agreement, Defendants disclosed and used Plaintiff's confidential information and trade secrets. The Individual Defendants worked with CCP to take Plaintiff's trade secrets and/or solicit Plaintiff's employees and consultants while they were still employed by and/or a consultant for Plaintiff, and while they served on Plaintiff's Executive Committee and, as such, were privy to confidential information. The agreement between CCP and the Individual Defendants proximately caused injury to Plaintiff. Plaintiff has suffered damages as a result of Defendants' conduct.

Count 9 – Defamation and Business Disparagement

61. Plaintiff incorporates all of the preceding paragraphs in their entirety for all purposes.

62. CCP and its agent Cass are liable to Plaintiff for slander, libel, and business disparagement. Plaintiff has obtained a copy of an email Cass sent to a number of third parties who have business relationships with Plaintiff in which Cass made false, derogatory, and disparaging statements concerning Plaintiff and its operations and product. Upon information and belief, Cass made similar statements orally. These statements were such that the law presumes damages, and Plaintiff was damaged. Plaintiff has suffered damages as a result of the conduct of Defendants CCP and Cass.

63. Plaintiff's injury resulted from Defendants CCP and Cass's intentional act and/or malice, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code Section 41.003(a).

Count 10 – Common Law Fraud

64. Plaintiff incorporates all of the preceding paragraphs in their entirety for all purposes.

65. Kubassek, individually and on behalf of Jay Kubassek, Inc. and Omni Industries, LLC d/b/a CarbonCopyPro a/k/a Carbon Copy Pro and Pro U, made fraudulent and material misrepresentations to Plaintiff as set forth above, including, but not limited to, misrepresentations about products he and CCP were developing (and that he and CCP were not developing a product that would compete with WMI's product) in order to continue to receive payments from WMI and/or to gain access to WMI's sales consultants, including at the conference described above. These representations were false. At the time Kubassek made the representations he knew that the representations were false, and he made the representations with the intent that the representations would

be acted upon. Moreover, Kubassek and CCP strung WMI along with misleading statements about their plans. Plaintiff acted upon those representations by continuing to pay Kubassek and CCP and allowing them access to the WMI consultants. WMI seeks unliquidated damages within the jurisdictional limits of this Court.

66. Plaintiff's injury resulted from Kubassek and CCP's fraud, malice or gross negligence, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code Section 41.003(a).

Count 11 – Fraud by Nondisclosure

67. Plaintiff incorporates all of the preceding paragraphs in their entirety for all purposes.

68. Kubassek, individually and on behalf of Jay Kubassek, Inc. and Omni Industries, LLC d/b/a CarbonCopyPro a/k/a Carbon Copy Pro and Pro U, had a duty to disclose information to WMI concerning the competing products Kubassek and CCP were developing because Kubassek had a fiduciary relationship with WMI, the information concerning the competing products and Kubassek and CCP's plans as set forth above was new, and it made their earlier representations to WMI misleading. Kubassek and CCP strung WMI along with misleading statements about their plans while they partially disclosed information to WMI and/or specifically denied that they were developing a competing product. The information that Kubassek and CCP withheld from WMI was material. Kubassek and CCP knew WMI was ignorant of the information and did not have an equal opportunity to discover the truth. Kubassek and CCP deliberately remained silent about the competing product that they were developing and their plans to

lure away WMI's consultants and did not disclose the information to WMI. By deliberately remaining silent, Kubassek and CCP intended for WMI to act without the information, including by continuing to pay Kubassek and CCP and allowing them access to WMI's consultants. By deliberately remaining silent, Kubassek and CCP directly and proximately caused damages to WMI which resulted in damages. WMI seeks unliquidated damages within the jurisdictional limits of this Court.

69. Plaintiff's injury resulted from Kubassek and CCP's fraud, malice or gross negligence, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code Section 41.003(a).

VI. ATTORNEYS' FEES AND INTEREST

70. Plaintiff incorporates all of the preceding paragraphs in their entirety for all purposes.

71. Pursuant to Section 38.001 of the Texas Civil Practice & Remedies Code, Plaintiff is entitled to its attorneys' fees and hereby requests that it be compensated for its reasonable and necessary attorneys' fees incurred as a result of bringing this action against Defendants.

72. Furthermore, Plaintiff is entitled to prejudgment and post-judgment interest under Texas Finance Code § 302.002.

VII. PRAYER

WHEREFORE, Plaintiff respectfully requests that upon final trial of this cause, the Court award judgment as follows:

- a. award Plaintiff damages from Defendants, jointly and severally;

- b. order Defendants, jointly and severally, to disgorge all profits earned by them based on the sales of competing products using Plaintiff's strategy, trade secrets or confidential information;
- c. award Plaintiff its attorneys' fees in this cause from Defendants, jointly and severally;
- d. award costs of suit, jointly and severally, against Defendants;
- e. award prejudgment and post-judgment interest as allowed by law; and
- f. grant Plaintiff all relief in law and in equity to which it is entitled.

Respectfully submitted,

/s/ Kenneth M. Krock

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of July, 2013, a true and correct copy of the foregoing was served on all counsel of record and pro se parties via ECF and regular mail to their addresses of record.

/s/ Kenneth M. Krock
Kenneth M. Krock