

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

GENE CODES CORPORATION,

Plaintiff,

Case No. 2:09-cv-14687

v.

Hon. Robert H. Cleland

NAOMI THOMSON,

Mag. Donald A. Scheer

Defendant.

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REGAN K. DAHLE (P53975)  
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**DEFENDANT NAOMI THOMSON'S ANSWER TO PLAINTIFF'S VERIFIED  
COMPLAINT, AFFIRMATIVE DEFENSES AND RELIANCE ON JURY DEMAND**

**INTRODUCTION**

1. Answering Paragraph 1 of the Plaintiff's Verified Complaint, the Defendant admits the existence of the agreement but denies the validity of the agreement or its application to the facts.

**THE PARTIES AND JURISDICTION**

2. Defendant admits the allegation contained in Paragraph 2.

3. Defendant admits the allegation contained in Paragraph 3.

4. Answering Paragraph 4 of the Plaintiff's Verified Complaint, Defendant neither admits nor denies but leaves Plaintiff to his proofs.

5. Answering Paragraph 5 of the Plaintiff's Verified Complaint, Defendant neither admits nor denies but leaves Plaintiff to his proofs.

6. Answering Paragraph 6 of the Plaintiff's Verified Complaint, Defendant does not contest jurisdiction or venue.

### **GENERAL ALLEGATIONS**

7. Defendant denies that the description in Paragraph 7 is appropriately narrowly tailored.

8. Answering Paragraph 8 of the Plaintiff's Verified Complaint, Defendant admits that she is a former employee of Gene Codes. Defendant denies developing a marketing plan or having responsibilities for developing sales strategies during her employment with Gene Codes. Also, Defendant ceased to perform the following in the fall of 2007: forecasting future technology trends, working with engineering staff to prioritize feature development, developing competitive sales strategies, and proposing new application areas for Gene Codes products.

9. Answering Paragraph 9 of the Plaintiff's Verified Complaint, Defendant denies she received extensive training and knowledge of Gene Codes' business processes. Unlike other employees within Gene Codes, Defendant never received training in biotechnology, engineering, sales techniques, management, presentation skills, quality assurance protocols, and other career development and skill honing opportunities. Defendant completed an MBA program during her tenure on Gene Codes independent of her employment.

10. Defendant denies that the description in Paragraph 10 appropriately describes her access and utilization of Gene Codes' confidential and proprietary information.

11. Defendant denies that the description in Paragraph 11 appropriately describes the confidential and proprietary information Defendant had access to and utilized.

12. Defendant admits the allegations contained in Paragraph 12.

13. Defendant denies the allegation contained in Paragraph 13 in part. Customer pricing is not intimate knowledge and is generally available to anyone who asks. Defendant was never made privy to “contractual details.”

14. Defendant admits the allegation contained in Paragraph 14.

15. Defendant denies the allegation in Paragraph 15. Defendant’s knowledge is similar to that of a sophisticated customer of Plaintiff. Furthermore, Gene Codes has not enforced its non-compete with regard to at least one other employee with similar knowledge.

16. Defendant admits the allegation contained in Paragraph 16 with the exception that during the past year she did not regularly travel to Michigan.

17. Defendant admits the allegation contained in Paragraph 17.

18. Defendant admits the allegation contained in Paragraph 18 with the exception that Defendant’s job includes sales at CLC bio, not marketing.

19. Answering Paragraph 19 of the Plaintiff’s Verified Complaint, Defendant denies CLC bio is a direct competitor of Gene Codes. Defendant neither admits nor denies the remaining allegations contained in Paragraph 19.

20. Defendant denies the allegations contained in Paragraph 20.

21. Defendant admits the allegation contained in Paragraph 21.

22. Defendant admits the allegation contained in Paragraph 22.

23. Defendant admits the allegation contained in Paragraph 23.

24. Defendant admits the allegation contained in Paragraph 24.

25. Defendant denies the allegation contained in Paragraph 25.

26. Defendant denies the allegation contained in Paragraph 26. Plaintiff received the letter from Gene Codes on November 17, 2009.

27. Defendant admits the allegation contained in Paragraph 27.

28. Defendant denies the allegation contained in Paragraph 28.

29. Defendant denies the allegation contained in Paragraph 29.

30. Defendant denies the allegation contained in Paragraph 30.

31. Defendant denies the allegation contained in Paragraph 31.

32. Defendant denies the allegation contained in Paragraph 32.

33. Defendant denies the allegation contained in Paragraph 33.

**COUNT I**  
**BREACH OF CONTRACT**

34. Paragraph 34 does not require a response.

35. Defendant denies the allegation contained in Paragraph 35.

36. Defendant denies the allegation contained in Paragraph 36.

37. Defendant denies the allegation contained in Paragraph 36.

**COUNT II**  
**MISAPPROPRIATION OF TRADE SECRETS UNDER MUTSA**

38. Paragraph 38 does not require a response.

39. Answering Paragraph 39 of the Plaintiff's Verified Complaint, Defendant admits as to some information and denies as to other information. Defendant specifically denies that she has any information which has commercial value and constitutes a trade secret.

40. Answering Paragraph 40 of the Plaintiff's Verified Complaint, Defendant denies the allegation as to information in defendant's possession.

41. Answering Paragraph 41 of the Plaintiff's Verified Complaint, Defendant denies the allegation as to information in defendant's possession, but admits that several years ago this statement was accurate.

42. Defendant denies the allegation contained in Paragraph 42.

43. Defendant denies the allegation contained in Paragraph 43.

44. Defendant denies the allegation contained in Paragraph 44.

45. Defendant denies the allegation contained in Paragraph 45.

**COUNT III**  
**ATTORNEYS' FEES AS AUTHORIZED UNDER MUTSA**

46. Paragraph 46 does not require a response.

47. Defendant denies the allegation contained in Paragraph 47.

48. Defendant denies the allegation contained in Paragraph 48.

49. Defendant denies the allegation contained in Paragraph 49.

50. Defendant denies the allegation contained in Paragraph 50.

**WHEREFORE**, Naomi Thomson requests that the Court dismisses Plaintiff's Verified Complaint in its entirety and award Defendant attorneys' fees and costs for the necessity of defending this matter.

Respectfully submitted,  
NACHT & ASSOCIATES, P.C.

s/David A. Nacht  
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Dated: January 7, 2010

**AFFIRMATIVE DEFENSES**

1. Plaintiff breached the contract first by reducing Defendant's pay and level of responsibility.
2. Defendant has substantially performed any and all obligations under the contract.
3. Dirty hands bars equitable relief.
4. Under Michigan law, the contract is unreasonable as drafted and Defendant has substantially performed under any reasonable reformation of it.
5. Estoppel: Plaintiff has allowed other employee(s) with comparable to work for competitors without enforcing the non-compete agreement.

Respectfully submitted,  
NACHT & ASSOCIATES, P.C.

s/David A. Nacht  
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**RELIANCE ON JURY DEMAND**

Defendant Naomi Thomson hereby relies on the demand for trial by jury in this action.

Respectfully submitted,  
NACHT & ASSOCIATES, P.C.

s/David A. Nacht  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 7, 2010, my paralegal, Natalie M. Walter, electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: J. Michael Huget and Regan K. Dahle.

Respectfully submitted,  
NACHT & ASSOCIATES, P.C.

s/David A. Nacht  
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