

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

THE ULTIMATE SOFTWARE
GROUP, INC.,
a Florida corporation,

Plaintiff,

v.

BRYAN S. CAMP,
an individual,

Defendant.

COMPLAINT

Plaintiff, The Ultimate Software Group, Inc. ("USG"), hereby files this Complaint against Defendant Bryan S. Camp ("Camp"), and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. USG is a Delaware corporation having its principal place of business located at 2000 Ultimate Way, Weston, FL 33326.
2. Camp is a citizen of the State of New York.
3. Camp has breached a contract in Florida that is the subject matter of this action and has committed tortious acts which have caused harm within Florida. Further, during his employment with USG, Camp regularly engaged in business within Florida, and traveled on numerous occasions to USG's corporate headquarters in Weston, FL pursuant to his employment. In personam jurisdiction is, therefore, appropriate pursuant to Fla. Stat § 48.193 in

that, inter alia, Camp entered into a contract to be performed in Florida, committed a tortious act in Florida, engaged in substantial and not isolated activity in Florida, and is otherwise engaged in conduct that allows the exercise of jurisdiction over him consistent with due process under the Florida Constitution and the U.S. Constitution.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different States.

5. Venue properly lies in this District pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District.

6. All conditions precedent to the initiation and maintenance of this action have been performed, waived or have occurred.

FACTS

A. USG and its Business

7. Together with its subsidiary, USG designs, markets, implements and supports human resources, payroll and talent management solutions principally in the United States and Canada.

8. USG's UltiPro software is a comprehensive Internet-based solution delivered primarily as an online service and designed to deliver the functionality businesses need to manage the complete employment life cycle from recruitment to retirement. The solution includes feature sets for talent acquisition and onboarding, HR management and compliance, benefits management and online enrollment, payroll, performance management, learning management, salary planning and budgeting for compensation management, reporting and

analytical decision-making tools, time and attendance, and a self service Web portal for executives, managers, administrators, and employees.

9. USG's focus on excellence has earned the company a solid reputation and a history of long-term relationships. The company's employees work closely with its many customers representing diverse industries.

10. USG markets and sells its products and services primarily through its direct sales force. USG's direct sales force includes business development vice presidents, directors and managers who have defined territories, typically geographic. The sales cycle begins with a sales lead generated through a national, corporate marketing campaign or a territory-based activity. In one or more on-site visits, phone-based sales calls, or Web demonstrations, sales managers work with application and technical sales consultants to analyze prospective client needs, demonstrate USG's UltiPro solutions and, when required, respond to requests for proposals. The sale is finalized after customers complete their internal sign-off procedures and the terms of the contract are negotiated and signed.

11. USG supports its sales force with a comprehensive marketing program that includes public relations, advertising, direct mail, trade shows, seminars and workshops, email marketing, and Web marketing. Working closely with the direct sales force, customers and strategic partners, the marketing team defines positioning strategies and develops a plan for implementing these strategies.

12. The market for USG's products is highly competitive. USG's products compete primarily on the basis of technology, delivered functionality, price/performance and service. USG's competitors include companies such as Workday, Automatic Data Processing Inc.,

Ceridian Corp., PeopleSoft/Oracle, Lawson, and Kronos, Inc., each of which offer human resource management and payroll software products similar to UltiPro.

13. USG's success is dependent, in part, on its ability to protect its proprietary technology, customer information (both current and prospective), and business forecast information. USG relies on a combination of copyright, trademark and trade secret laws, as well as confidentiality agreements and sales and licensing arrangements, to establish and protect its proprietary rights.

14. The value of this proprietary information to USG cannot be overstated. USG has spent many years and incurred substantial expense to both develop this proprietary information and safeguard it from competitors. In a highly competitive market, USG's trade secret information such as the names, contact information, and needs of current and prospective customers gives USG a continuing competitive advantage. This information is not generally known and would be extremely difficult, if not impossible, to duplicate. In addition to the protective measures described above, USG follows effective measures to safeguard its proprietary information internally. These steps include use of individual user passwords to gain network access, on-screen confidentiality warnings, and auto-stamping of certain generated reports as "Confidential." Further, to the extent USG's sales force is allowed access to this proprietary information, they are required to execute confidentiality agreements by which they agree to protect USG's proprietary information, acknowledge that the information is the sole property of USG, and agree to return any such information upon termination of their employment with USG. Moreover, even if such agreements are not executed, USG's Employee Handbook also provides that every employee is obligated to protect USG's confidential and proprietary information both during and post-termination of employment.

B. Camp's Employment by USG

15. In November 2005, USG hired Camp as a member of its sales team, allowing Camp to market USG's products and services to the Northeast sales region (generally including New Hampshire, Vermont, Connecticut, and portions of upstate New York). As a condition of his employment, Camp executed an "Employee Proprietary Information and Intellectual Property Agreement," dated November 7, 2005 (the "Confidentiality Agreement"), which, as described above, requires Camp to both protect USG's "proprietary information" while employed by USG and promptly return any such information to USG upon termination of employment. A true and correct copy of the Confidentiality Agreement is attached hereto as Exhibit "A."

16. The Confidentiality Agreement defines "Proprietary Information" as:

"Proprietary Information" is all information, whether or not in writing, that was or will be developed, created, or discovered by or on behalf of the Company or its clients, which has commercial value to the Company. "Proprietary Information" includes, but is not limited to, trade secrets, computer programs, computer codes, modules, features, designs, technology, data inventions (whether patentable or not), plans, *forecasts, customer and supplier lists* and other information concerning the Company or its clients which is received in confidence by or for the Company from any other person.¹

17. The Confidentiality Agreement sets forth a number of Camp's obligations with respect to the protection of Proprietary Information and Company Materials. Specifically, the Confidentiality Agreement provides, in pertinent part:

- All Proprietary Information... shall be the sole property of the Company.... At all times, both during my employment by the Company and after its termination, I will keep in confidence and trust and will not use or disclose any Proprietary Information or anything relating to it without the prior written consent of an officer of the Company. See Exhibit A, at ¶ 3(a).

¹ See Exhibit A, at ¶ 1 (emphasis added). The Confidentiality Agreement further defines "Company Materials" as documents or other tangible items that contain or embody Proprietary Information. Id. at ¶ 2.

- All Company Materials shall be the sole property of the Company.... I further agree that, immediately upon the termination of my employment by me or by the Company for any reason... I will return all Company Materials, apparatus, equipment and other physical property, or any reproduction of such property.... See Exhibit A, at ¶ 3(b).
- I understand that my employment creates a relationship of confidence and trust between me and the Company with respect to Proprietary Information. See Exhibit A, at ¶ 1.

18. USG employed Camp as a member of its sales team through September 2010. Throughout his employment, however, Camp's performance was consistently below USG's quota requirements and far below his peer salesmen. During this time period, O'Dowd frequently and directly informed Camp that his job was in jeopardy due to poor performance. In late July 2010, Camp asked O'Dowd if he should begin the process of looking for another job, to which O'Dowd replied that he should, since Camp's results were not improving.

19. On September 24, 2010, Kevin O'Dowd, USG's Vice President of Sales for the Northeast region, sent a letter to Camp (after a telephone discussion between the two) summarizing USG's and Camp's agreement to terminate Camp's employment (the "Termination Agreement") (together with the Confidentiality Agreement, the "Agreements"). A true and correct copy of the Termination Agreement is attached hereto as Exhibit 'B.' Rather than immediately terminate Camp's employment, the Termination Agreement provided that Camp's termination date would be October 29, 2010, providing Camp approximately one month to close any deals that Camp may have had in the 'pipeline,' thereby allowing him to maximize his financial benefit for the time he had invested in those deals. The Termination Agreement further provided that, if Camp fully complied with the Termination Agreement's terms, Camp would be paid severance through November 30, 2010.

20. Similar to the Confidentiality Agreement signed by Camp in November 2005, the Termination Agreement again obligated Camp to protect USG's confidential and proprietary information following his termination from USG:

You are obliged to turn in any equipment, keys, diskettes, manuals or any other company property on the last day of employment. As stated in the Employee Handbook section 2-2, all employees are obligated to protect and not disclose any confidential and propriety information, regardless of whether a Confidential Non-Disclosure has been signed.

21. Thereafter, USG allowed Camp continued access to his e-mail and USG's network until October 28, 2010, the date Camp officially left USG and sent via UPS his laptop, Blackberry, and other items to USG. In particular, Camp was allowed access to USG's Salesforce.com tracking system, an internal website used by USG to track sales opportunities, including summaries of conversations with potential clients, contact information, and other information used by USG to effectively sell its products and services. Although Camp was given access to the network until October 28, 2010, his access to Salesforce was removed on October 19, 2010. O'Dowd informed Camp of this on or about October 17, 2010 so that Camp would not be surprised that his access was removed.

22. Camp's laptop and other equipment was received and logged by USG's IT department on November 15, 2010.

C. Camp's Breach of the Confidentiality and Termination Agreements and Tortious Conduct

23. Contemporaneously with Camp's termination of employment, USG hired Mike Ouellette as a salesperson to take over sales to Camp's assigned region. Ouellette started work at USG on October 18, 2010, ten days prior to Camp returning his laptop and other equipment to USG.

24. Upon beginning his employment with USG, Ouellette immediately began the process of familiarizing himself with prospective clients in his assigned region, including any efforts made by Camp to market USG's products to these clients. Ouellette reviewed Camp's logged data in SalesForce in addition to Camp's archived e-mails in an effort to determine what correspondence Camp had sent to prospective clients in addition to any notes Camp may have saved.

25. In mid-December 2010, Ouellette asked O'Dowd for access to documents that might be located on Camp's returned laptop. In particular, Ouellette sought to review the "My Documents" folder on the laptop's hard drive, which typically contained PowerPoint presentations, agendas, and other documents used in marketing efforts to prospective clients.

26. On December 15, 2010, O'Dowd sent an e-mail to USG's IT department requesting that Camp's hard drive be sent to his attention. After receiving the hard drive, O'Dowd subsequently mailed it to Ouellette, who in turn received the hard drive on or about January 7, 2011.

27. On January 21, 2011, while reviewing Camp's hard drive, Ouellette noticed a folder on the hard drive called "Territory." Upon opening the folder, he discovered eighteen Excel spreadsheets, each of which were reports generated in SalesForce and exported to Excel by Camp. Notably, these reports indicate that they were generated by Camp on dates beginning on September 5, 2011 and ending on October 19, 2011. Each of the reports downloaded by Camp included an auto-stamped warning stating: "Confidential Information – Do Not Distribute," along with information indicating that Camp ran the reports using his SalesForce.com User ID and the exact date/time each report was run. For example, the file "860 all prospects 10-10.xls" contained the following auto-stamped message at the bottom of the spreadsheet:

Copyright (c) 2000-2010 salesforce.com, inc. All rights reserved.
Confidential Information - Do Not Distribute
Generated By: Bryan Camp 10/19/2010 11:58 AM
Ultimate Software

28. The information Camp downloaded contains extremely confidential data to USG. It contains all of USG's prospective accounts, contacts (numbering in the thousands), and leads in Camp's territory, as well as the accounts, contacts, and leads in an adjoining territory. Camp also downloaded hundreds of forecasted accounts to be sold in the neighboring territory, in addition to downloading USG's entire customer list for the Northeast and Mid-Atlantic regions – ***approximately 8,800 individual contacts.***

29. One especially sensitive report Camp downloaded was USG's 'watch list,' a document containing those clients in the Northeast region that USG deemed vulnerable to switch to a competitor's products or that had expressed satisfaction concerns with USG's products.

30. The importance and proprietary nature of the information downloaded by Camp cannot be overstated. In a matter of days, Camp downloaded USG's customer list, its prospective customer list, contacts that USG had gathered over 20 years, projected accounts to be sold, and a 'watch list' of potentially vulnerable clients. USG fiercely protects this data because, in the hands of a competitor, USG's success rate is likely to be dramatically altered. The improper use of this data would likely cost USG millions of dollars a year and would cause irreparable harm for the foreseeable future.

31. Upon discovering the severity of this breach, USG immediately analyzed Camp's hard drive and confirmed that Camp copied each of the downloaded files to an external storage device that, upon information and belief, Camp retained after his termination from USG. In addition, USG performed a keyword search of the hard drive for any documents containing the word "Workday" and discovered a file on the hard drive that appears to be a Workday expense

report form that was filled out by Camp. This report indicates that Camp traveled for an interview at Workday on September 9, 2010 – four days after Camp downloaded a substantial number of the eighteen spreadsheets from USG’s Salesforce.com website.

D. Camp’s Employment by Workday and Contact with USG Clients

32. After termination of his employment by USG, Camp accepted a position as a salesman with Workday, a direct competitor of USG. Much like USG, Workday sells human resources, payroll, and benefits software through a team of salesmen. Workday markets to the same demographic segment of prospective clients as USG, and competes directly with USG on many accounts. If Workday were to obtain the data misappropriated by Camp, it would gain an immediate competitive advantage over USG, and would allow Workday unfettered access to proprietary data that USG has fought to protect from its competitors.

33. Upon information and belief, Camp is responsible for the same geographic territory at Workday as he was at USG.

34. On January 24, 2011 (prior to USG’s discovery of the full extent of material downloaded by Camp), USG’s Greg Swick, Chief Sales Officer, called Camp to alert him that USG had discovered that Camp downloaded certain files and that USG had hired legal counsel to further investigate. Camp informed Swick that he was at a Workday kickoff event, and admitted that he had downloaded certain reports prior to his termination from USG. Camp maintained, however, that he respected Swick and O’Dowd too much to ever use the data he took.

35. Later that night, Camp called O’Dowd and asked for help to defuse the situation. During that call, Camp admitted to O’Dowd that he had contacted several USG customers since joining Workday.

36. USG has retained the undersigned counsel and agreed to pay it a reasonable attorneys fee in connection with this matter for which Camp is liable.

CAUSES OF ACTION

COUNT ONE – BREACH OF CONTRACT

37. USG re-alleges and incorporates by reference paragraphs 1 through 36 as if fully alleged herein.

38. The Agreements are binding, enforceable contracts containing certain restrictive covenants that survive the termination of Camp’s employment with USG.

39. The restrictive covenants contained in the Agreements are reasonable in all respects.

40. The Agreements’ restrictions against misappropriation of USG’s trade secret, confidential, and proprietary information support legitimate business interests that justify the restrictions, including but not limited to protection of trade secrets, confidential business information, and substantial relations with specific existing and prospective customers.

41. The Agreements required Camp to protect USG’s trade secret, confidential and proprietary information (including, inter alia, client lists and forecast data) and return any material containing such information to USG upon Camp’s termination of employment.

42. Camp breached the Agreements by the conduct alleged herein. Specifically, prior to his last day at USG, Camp downloaded eighteen spreadsheet reports containing highly sensitive and confidential information regarding USG’s customers and contacts. Each of these reports was stamped as containing confidential information that should not be distributed, yet Camp ignored this warning and his contractual obligations by copying the files to an external storage device.

43. Upon information and belief, Camp is still in possession of USG's trade secret, confidential and proprietary data, is now employed by a direct competitor of USG, and is using USG's data to gain a competitive advantage in his business.

44. Camp's breaches of the Agreements are ongoing, and have already caused and will continue to cause irreparable harm to USG if not preliminarily and permanently enjoined. In addition, these breaches have caused and are likely to continue to result in damages to USG in excess of \$75,000.

45. USG has no adequate remedy at law.

COUNT TWO – MISAPPROPRIATION OF TRADE SECRETS

46. USG re-alleges and incorporates by reference paragraphs 1 through 36 as if fully alleged herein.

47. While employed by USG, Camp obtained access to USG's confidential trade secret information, including customer information, watch lists, and forecast information.

48. As expressly acknowledged in the Agreements, USG considers these items to be confidential and proprietary trade secrets, and it has taken reasonable steps as part of its ongoing standard operating procedures to maintain the confidential nature of this information.

49. Camp has utilized and is continuing to utilize USG's confidential, proprietary and trade secret information to solicit USG's existing customers. In doing so, Camp is maliciously and willfully using misappropriated confidential, proprietary, and trade secret information to his own advantage and to the advantage of his current employer, which is a direct competitor of USG.

50. As a result of Camp's misappropriation and use of the confidential, proprietary and trade secret information, Camp has violated Fla. Stat. § 688.001 *et seq.*, Florida's Uniform Trade Secrets Act.

51. As a direct and proximate result of Camp's violation of Florida's Uniform Trade Secrets Act, USG has sustained substantial damages in a sum not less than \$75,000.

52. Camp's actions in converting and misappropriating USG's confidential, proprietary and trade secret information for his own gain were willful, wanton, and malicious, and were taken with reckless disregard for the rights of USG for which he is liable for punitive damages and attorneys' fees pursuant to Fla. Stat. §§ 688.004(2) and 688.005.

53. Camp's actions have caused and will continue to cause USG irreparable harm if not preliminarily and permanently enjoined.

54. USG has no adequate remedy at law.

COUNT THREE – CONVERSION

55. USG re-alleges and incorporates by reference paragraphs 1 through 36 as if fully alleged herein.

56. Camp is in wrongful possession of USG's confidential and proprietary information.

57. Camp has wrongfully asserted dominion or control over USG's confidential and proprietary information in a manner inconsistent with USG's ownership and entitlement to such information.

58. As a direct and proximate result of Camp's conversion of USG's confidential and proprietary information, USG has sustained substantial damages in a sum not less than \$75,000. The value of USG's confidential and proprietary information is in its exclusive use by USG

employees. By wrongfully asserting dominion or control over this information, Camp has greatly diminished the monetary value of the information that USG has sought to protect.

COUNT FOUR – BREACH OF FIDUCIARY DUTY

59. USG re-alleges and incorporates by reference paragraphs 1 through 36 as if fully alleged herein.

60. During his employment by USG, Camp owed a fiduciary duty of loyalty to USG.

61. In signing the Confidentiality Agreement, Camp specifically acknowledged his fiduciary duty to protect USG's confidential and proprietary information:

I understand that my employment creates a relationship of confidence and trust between me and the Company with respect to Proprietary Information. See Exhibit A, at ¶ 1.

62. Prior to his last day at USG, Camp breached his fiduciary duty to USG by downloading eighteen spreadsheet reports containing highly sensitive and confidential information regarding USG's customers and contacts.

63. As a direct and proximate result of Camp's breach of fiduciary duty, USG has sustained substantial damages in a sum not less than \$75,000.

WHEREFORE, USG demands judgment against Camp for:

- (i) Compensatory damages, in an amount to be determined at trial, but in no event less than \$75,000 exclusive of interest and costs;
- (ii) Punitive damages pursuant to Fla. Stat. § 688.004(2);
- (iii) A temporary restraining order, preliminary, and permanent injunctive relief;
- (iv) Interest, costs, and attorneys' fees pursuant to Fla. Stat. §§ 688.005 and 542.335(1)(k); and
- (v) Such other and further relief as the Court may deem just and equitable.

Dated: February 3, 2011

BECKER & POLIAKOFF, P.A.
Emerald Lake Corporate Park
3111 Stirling Road
Fort Lauderdale, FL 33312-6525
Telephone: (954) 987-7550
Facsimile: (954) 985-4176
GRosen@becker-poliakoff.com

By: /s/ Gary C. Rosen
Gary C. Rosen, Esq.
Florida Bar No.: 310107
Daniel DeSouza (*pro hac vice* admission
pending)
Florida Bar No.: 19291

Attorneys for Plaintiff

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