

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 11-60247-CIV-LENARD/TURNOFF

ULTIMATE SOFTWARE GROUP, INC.,
a Florida corporation,

Plaintiff,

v.

Bryan Camp
an individual,

Defendant.

ANSWER

COME NOW, BRYAN S. CAMP ("Camp"), the Defendant, by and through the undersigned counsel hereby files this Answer responding to the allegations in the Plaintiff's Complaint regarding the above-styled cause, as follows:

PARTIES, JURISDICTION AND VENUE

1. Answering paragraph 1 of the Complaint, Camp admits that Plaintiff's corporate headquarters are located in Weston, Florida. Except as specifically admitted herein, although Plaintiff does allege in the caption of its Complaint that it is a Florida corporation but then states in paragraph 1 of the Complaint that it is a Delaware corporation, Camp is without sufficient information or knowledge of the remaining allegations in paragraph 1 of the Complaint and therefore denies same.

2. Camp admits the allegations in paragraph 2 of the Complaint.

3. Answering paragraph 3 of the Complaint, Camp admits that he occasionally did business in Florida and traveled to Defendant's corporate headquarters in Florida. Except as specifically admitted herein, Camp denies the allegations contained in paragraph 3 of the Complaint.

4. Camp denies the allegations in paragraph 4 of the Complaint.

5. Camp denies the allegations in paragraph 5 of the Complaint.

6. Camp denies the allegations in paragraph 6 of the Complaint.

FACTS

7. Camp admits the allegations in paragraph 7 of the Complaint.

8. Camp admits the allegations in paragraph 8 of the Complaint.

9. Answering paragraph 9 of the Complaint, Camp admits that he worked with customers in diverse industries while employed with Plaintiff and that many of his customers were long-term customers. Except as specifically admitted herein, Camp is without sufficient information or knowledge of the remaining allegations in paragraph 9 and therefore denies same.

10. Camp admits the allegations in paragraph 10 of the Complaint.

11. Answering paragraph 11 of the Complaint, Camp admits that Plaintiff employs a marketing team that develops a marketing strategy for Plaintiff, and that the marketing team works with Plaintiff's sales force to assist in sales. Except as specifically admitted herein, Camp is without sufficient information or knowledge of the remaining allegations in paragraph 11 and therefore denies same.

12. Answering paragraph 12 of the Complaint, Camp admits technology, functionality, price, performance and service are some of the areas that Camp focused on when he tried to sell Plaintiff's products. Answering further, Camp admits that Workday, Automatic Data Processing Inc., Ceridian Corporation, PeopleSoft/Oracle, Lawson, and Kronos all produce human resource management or payroll products that may be marketed to some of Plaintiff's customers or

potential customers. Except as specifically admitted herein, Camp denies the remaining allegations contained in paragraph 12 of the Complaint.

13. Answering paragraph 13 of the Complaint, Camp admits that he is aware that Plaintiff has copyrights and trademarks, and further admits that he is aware that Plaintiff used confidentiality agreements and sales and licensing agreements while he was employed with Plaintiff. Except as specifically admitted herein, Camp is without sufficient information or knowledge of the remaining allegations in paragraph 13 of the Complaint and therefore denies same.

14. Answering paragraph 14 of the Complaint, Camp admits that he signed a confidentiality agreement with Plaintiff and further admits that he received an employee handbook that discussed confidential information. Answering further, Camp admits that he had a user password to gain network access, that there were sometimes on-screen confidentiality warnings, and that some documents had “confidential” stamped on them. Answering further, Camp denies the confidentiality agreement and the handbook are enforceable agreements. Except as specifically admitted herein, Camp either denies or has insufficient knowledge of the remaining allegations in paragraph 14 of the Complaint and therefore denies same.

15. Camp admits the allegations in paragraph 15, but specifically denies the validity and enforceability of the confidentiality agreement referred to therein.

16. Camp admits the allegations in paragraph 16, but specifically denies the validity and enforceability of the confidentiality agreement referred to therein.

17. Camp admits the allegations in paragraph 17, but specifically denies the validity and enforceability of the confidentiality agreement referred to therein.

18. Answering paragraph 18 of the Complaint, Camp admits that he was employed by Plaintiff as part of its sales force, and that in July 2010 Kevin O'Dowd told him that Camp should begin looking for another job and that Plaintiff was not happy with Camp's performance. Answering further, Camp admits that July 2010 was not the first time O'Dowd had told him that Plaintiff was unhappy with his sales performance. Except as specifically admitted herein, Camp denies the remaining allegations in paragraph 18 of the Complaint. Camp specifically denies that his performance was below average throughout his employment with Plaintiff.

19. Camp admits the allegations in paragraph 19 of the Complaint.

20. Answering paragraph 20 of the Complaint, Camp admits that the September 24, 2010 letter from O'Dowd contained the quoted language set forth in paragraph 20 of the Complaint. Answering further, Camp admits that he had signed a confidentiality agreement with Plaintiff in 2005. Except as specifically admitted herein, Camp denies the remaining allegations contained in paragraph 20 of the Complaint, and specifically denies that the confidentiality language in either document is enforceable.

21. Camp admits the allegations contained in paragraph 21 of the Complaint.

22. Answering paragraph 22 of the Complaint, Camp admits that he returned Plaintiff's company laptop and other equipment to Plaintiff in October 2010. Except as specifically admitted herein, Camp is without sufficient knowledge or information regarding the remaining allegations contained in paragraph 22 of the Complaint and therefore denies same.

23. Camp is without sufficient information or knowledge of the allegations in paragraph 23 of the Complaint and therefore denies same.

24. Camp is without sufficient information or knowledge of the allegations in paragraph 24 of the Complaint and therefore denies same.

25. Camp is without sufficient information or knowledge of the allegations in paragraph 25 of the Complaint and therefore denies same.

26. Camp is without sufficient information or knowledge of the allegations in paragraph 26 of the Complaint and therefore denies same.

27. Answering paragraph 27 of the Complaint, Camp admits that in his capacity as an authorized user of Plaintiff's network he downloaded various documents to his laptop while he was employed by Plaintiff, and further admits that he downloaded Salesforce reports and exported them to Excel while employed by Plaintiff and that many reports were marked with the term confidential. Except as specifically admitted herein, Camp is without sufficient information or knowledge of the remaining allegations in paragraph 27 of the Complaint and therefore denies same. Camp specifically denies that he ever provided any such documents to any third party outside of Plaintiff.

28. Answering paragraph 28 of the Complaint, Camp admits that in his capacity as an authorized user of Plaintiff's network he downloaded various documents to his laptop while he was employed by Plaintiff, and further admits that he downloaded reports that included customer contacts and prospective customer information. Except as specifically admitted herein, Camp is without sufficient information or knowledge of the remaining allegations in paragraph 28 of the Complaint and therefore denies same. Camp specifically denies that he ever provided any such documents to any third party outside of Plaintiff.

29. Answering paragraph 29 of the Complaint, Camp admits that in his capacity as an authorized user of Plaintiff's network he downloaded a document that was Plaintiff's "watch list." Camp specifically denies that he ever provided any such document to any third party outside of Plaintiff.

30. Answering paragraph 30 of the Complaint, Camp restates his Answers to paragraphs 27 through 29 of the Complaint. Except as specifically admitted herein, Camp is without sufficient information or knowledge of the remaining allegations in paragraph 30 of the Complaint and therefore denies same.

31. Answering paragraph 31 of the Complaint, Camp admits that he did keep a backup of his files on a personal external drive, at the suggestion of the Company IT department, and further admits that he did retain the external hard drive after his employment with Plaintiff ended but that the files on the backup were also on the laptop that Camp returned to Plaintiff. Answering further, Plaintiff admits that he did interview with Workday in September 2010. Except as specifically admitted herein, Camp is without sufficient information or knowledge of the remaining allegations in paragraph 31 of the Complaint and therefore denies same.

32. Answering paragraph 32 of the Complaint, Camp admits that he began work as a salesperson for Workday after his employment with Plaintiff ended. Answering further, Camp admits that Workday sells human resources, payroll and benefits software through a salesforce. Answering further, Camp admits that Workday sells to and competes with Plaintiff for some customers, but denies that the demographics are all the same. Except as specifically admitted or denied herein, Camp is without sufficient information or knowledge of the remaining allegations contained in paragraph 32 of the Complaint and therefore denies same.

33. Camp denies the allegations in paragraph 33 of the Complaint.

34. Answering paragraph 34 of the Complaint, Camp admits that Greg Swick is Plaintiff's chief sales officer and that he called Camp on or about January 24, 2011 and told him that Plaintiff knew he had downloaded certain files and that Plaintiff had hired legal counsel to investigate. Answering further, Camp further admits that he told Swick he was at a Workday

event, that he told Swick he had downloaded certain files but that he had not used them, and that he told Swick he respected Swick and O'Dowd. Except as specifically admitted herein, Camp is without sufficient knowledge or information as to the remaining allegations in paragraph 34 of the Complaint and therefore denies same.

35. Answering paragraph 35 of the Complaint, Camp admits that he called O'Dowd on or about January 24, 2011 to discuss the issues discussed with Swick earlier that day. Answering further, Camp admits that he told O'Dowd that he had contacted some of his customers that he had with Plaintiff, but specifically denies that he was prohibited from doing so under any restrictive covenant agreement.

36. Answering paragraph 36, Camp admits that Becker & Poliakoff, P.A. is the named counsel for Plaintiff in this lawsuit, but denies that he is liable. Except as specifically admitted or denied herein, Camp is without sufficient knowledge and information regarding the remaining allegations in paragraph 36 of the Complaint and therefore denies same.

CAUSES OF ACTION

COUNT ONE – BREACH OF CONTRACT

37. Camp re-affirms and incorporates by reference his admissions, denials and lack of sufficient knowledge to answer contained in paragraphs 1 through 36.

38. Camp denies the allegations in paragraph 38 of the Complaint.

39. Camp denies the allegations in paragraph 39 of the Complaint.

40. Camp denies the allegations in paragraph 40 of the Complaint.

41. Answering paragraph 41 of the Complaint, Camp admits that the agreements referenced in the Complaint contain certain restrictions on the dissemination of information and that one or more requires a return of such information upon termination of employment. Camp specifically

denies said agreements contained enforceable restrictive covenants, other than those relating to trade secrets, which are established pursuant to state law.

42. Camp denies the allegations contained in paragraph 42 of the Complaint.

43. Answering paragraph 43 of the Complaint, Camp has returned all documents to Plaintiff in accordance with a consent injunction that was entered into by Camp because of Camp's financial limitations. Answering further, Camp denies the remaining allegations contained in paragraph 43 of the Complaint.

44. Camp denies the allegations in paragraph 44 of the Complaint.

45. Camp denies the allegations in paragraph 45 of the Complaint.

COUNT TWO

MISAPPROPRIATION OF TRADE SECRETS

46. Camp re-affirms and incorporates by reference his admissions, denials and lack of sufficient knowledge to answer contained in paragraphs 1 through 36.

47. Answering paragraph 47 of the Complaint, Camp admits that while he was employed by Plaintiff he had authorized access to information about Plaintiff's sales efforts and further admits that some of that information may qualify as trade secrets under the law. Except as specifically admitted herein, Camp denies the remaining allegations contained in paragraph 47 of the Complaint.

48. Answering paragraph 48 of the Complaint, Camp admits that the agreements discussed herein reference that Plaintiff considers certain information protectable. Except as specifically admitted herein, Camp denies the remaining allegations contained in paragraph 48 of the Complaint.

49. Camp denies the allegations contained in paragraph 49 of the Complaint.

50. Camp denies the allegations in paragraph 50 of the Complaint.

51. Camp denies the allegations in paragraph 51 of the Complaint.

52. Camp denies the allegations in paragraph 52 of the Complaint.

53. Answering paragraph 53 of the Complaint, Camp admits that financial considerations forced him to consent to the preliminary injunction, but Camp denies the allegations in paragraph 53 of the Complaint.

54. Camp denies the allegations in paragraph 54 of the Complaint.

COUNT THREE

CONVERSION

55. Camp re-affirms and incorporates by reference his admissions, denials and lack of sufficient knowledge to answer contained in paragraphs 1 through 36.

56. Answering paragraph 56 of the Complaint, Camp admits that he retained copies of documents that he was authorized to have during his employment with Plaintiff after he terminated his employment with Plaintiff ended, and further states that he has returned such documents. Except as specifically admitted herein, Camp denies the remaining allegations contained in paragraph 56 of the Complaint.

57. Answering paragraph 57 of the Complaint, Camp admits that he retained copies of documents that he was authorized to have during his employment with Plaintiff after he terminated his employment with Plaintiff ended, and further states that he has returned such documents. Except as specifically admitted herein, Camp denies the remaining allegations contained in paragraph 56 of the Complaint.

58. Camp denies the allegations in paragraph 58 of the Complaint.

COUNT FOUR

BREACH OF FIDUCIARY DUTY

59. Camp re-affirms and incorporates by reference his admissions, denials and lack of sufficient knowledge to answer contained in paragraphs 1 through 36.

60. Camp denies the allegations in paragraph 60 of the Complaint.

61. Answering paragraph 61 of the Complaint, Camp admits that the agreement he signed in 2005 contained the text quoted in paragraph 61 of the Complaint. Except as specifically admitted herein, Camp denies the remaining allegations in paragraph 61 of the Complaint.

62. Camp denies the allegations in paragraph 62 of the Complaint.

63. Camp denies the allegations in paragraph 63 of the Complaint

64. Answering the unnumbered Wherefore clause, Camp acknowledges that Plaintiff seeks the remedies enumerated therein, and further acknowledges that he consented to the preliminary injunction due to financial restraints, but denies that Plaintiff is entitled to any of the relief requested.

65. Camp denies generally any allegations contained in the Complaint not specifically admitted previously in this Answer.

FIRST AFFIRMATIVE DEFENSE

Some or all of the Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant was authorized to use, access and save all of the information he downloaded from Plaintiff at the time that he downloaded the information. Defendant did not thereafter use any of Plaintiff's trade secrets for an improper use or provide any trade secrets to any third party.

THIRD AFFIRMATIVE DEFENSE

Plaintiff did not take reasonable care to protect all of its proprietary information, and much of said information was readily available to the public.

FOURTH AFFIRMATIVE DEFENSE

The restrictive covenant agreements relating to confidentiality are unenforceable because they are overbroad and overlong in that they fail to contain a reasonable time limitation on the restriction on using any alleged confidential information and fail to limit the use of any such information. Further, the conflicts of law provision is unenforceable as against public policy because the proper choice of law should be New York.

FIFTH AFFIRMATIVE DEFENSE

This Court lacks personal and diversity jurisdiction against this Defendant, and venue is improper. The alleged improper acts did not occur in Florida inasmuch as Defendant's office is in New York state, and any alleged damages in this case are highly speculative and would not exceed \$75,000.00. Venue is appropriate in New York because Defendant resides there and traveling to this district is a significant hardship, the alleged improper acts occurred in New York, and the appropriate choice of law in this matter is that of New York since the only basis of subject matter jurisdiction for the Court is diversity.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to the relief requested.

WHEREFORE, Camp respectfully requests that this Honorable Court deny the Plaintiff's claims in their entirety and award the Defendant his costs and attorney's fees and such further relief as is just, proper, and equitable. Defendant Camp further demands a jury trial on all matters not dismissed by the Court.

This the 25th day of February, 2011.

/ Scott E. Atwood
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Certificate of Service

I HEREBY CERTIFY that the foregoing has been served through the Court's CM/ECF system or by electronic mail this 25th day of February, 2011. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List via transmissions of Notice of Electronic Filing generated by CM/ECF.

s/ Scott E. Atwood
Scott E. Atwood

SERVICE LIST

Ultimate Software Group, Inc. v. Camp
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United States District Court, Southern District of Florida

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