

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2016-002318

Millennium Health, LLC, Appellant,

v.

Kyle B. Crawford and Unidentified John Does, Respondents.

RECORD ON APPEAL

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**RECORD ON APPEAL
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Certificate of Counsel

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Millennium Health, LLC,)
Plaintiff,)
v.)
Kyle B. Crawford, and Unidentified)
John Does,)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
Civil Action No.: 2016-CP-23-04218

ORDER

This matter comes before the Court upon pleading entitled "Plaintiff Millennium Health, LLC's Verified Complaint and Motion for Temporary Restraining Order and Preliminary Injunction." The matter was heard on August 3, 2016, with Notice to counsel for Defendant, Andrew Arnold. Due to proper notice to Defendant and his attorney, the Court has treated this as a Motion for Preliminary Injunction.

The Plaintiff sought to enforce the terms of its "Agreement regarding Confidentiality, Non-Disclosure and Non-Competition" dated October 6, 2011. The primary provision which Plaintiff sought to enforce is found at paragraph 3.b.(i) and states as follows:

IN ALL OTHER STATES: Employee agrees that Employee will not, directly or indirectly, solicit, accept, or service the business of any customers or potential customers with whom Employee worked or directly contacted during the eighteen (18) months preceding Employee's termination of employment with respect to products or services competitive with those offered by Company at the close of Employee's Employment from the effective date of Employee's termination from Company. Employee agrees that this restriction will last for one (1) year Employee agrees that application of this covenant to certain of Company's business relationships instead of a geographical area is the most reasonable, and the narrowest, method of protecting the Company's legitimate business interests, Confidential Information, and good will.

The general rule is that "an injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the Plaintiff." Scratch Golf co. v. Dune W. Residential Golf Props., Inc., 603 S.E.2d 905 (S.C. 2004). To prevail on a Motion for an Injunction, the Plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation." Levine v. Spartanburg Regional Services Dist., Inc., 626 S.E.2d 38 (S.C. Ct. App 2005)(citations omitted). In considering a covenant not to compete, the S.C. Court of Appeals in Baugh v. Columbia Heart Clinic, P.A., 738 S.E.2d 480 (S.C. Ct. App. 2013), stated that restrictions on competition are generally disfavored and will be strictly construed against the employer and must be narrowly drawn to protect the "legitimate interest of the employer." In addressing this issue, the South Carolina appellate courts have determined that certain contracts are enforceable because the company is protecting "legitimate interests":

- a. Restricting solicitation of former clients covered by limited territory was reasonable. Baugh v. Columbia Heart, 738 S.E.2d 480 (S.C. App 2012).
- b. Limitation on contacting previous customers assigned to employee to protect loss of customers was reasonable. Standard Register v. Kerrigan, 119 S.E.2d 533 (S.C. 1961).
- c. Prohibition against contacting existing customers can be substitute for geographic limitation for nationwide business. Wolf v. Colonial Life and Accident Ins. Co., 420 S.E.2d 217 (S.C. Ct. App. 1992).
- d. Geographic restriction covering area where employee was able to establish contact with his customers. Rental Uniform Service of Florence, Inc. v. Dudley, 301 S.E.2d 142 (S.C. 1983).

- e. Restriction from employee getting customers to terminate insurance policy issued by employer determined to be reasonable. Oxman v. Proffitt, 126 S.E.2d 852 (S.C. 1962).
- f. Restriction against competing with former employer was determined to be too broad was not protecting employer's legitimate interest and thus unenforceable. Faces Boutique, Ltd. v. Gibbs, 455 S.E.2d 707 (S.C. Ct. App. 2013).

Except for specific circumstances, the South Carolina Appellate Courts have not determined that "potential customers" or "prospective customers" are legitimate interests of former employers.

The Court finds that the prohibition against contacting "potential customers" is too broad, difficult to determine and could encompass all customers in the market even if these customers have never been customers of the Plaintiff. Therefore, the Court finds that the protection of "potential customers" is not a legitimate business interest and this provision is unenforceable.

The courts have generally held that if it is determined that a clause is overly broad, then it cannot re-write the provision or "blue-pencil" the agreement. See Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 694 S.E.2d 15 (S.C. 2010); Faces Boutique, Ltd. v. Gibbs, 455 S.E.2d 707 (S.C. Ct. App. 1995).

Therefore, the Court finds that the non-compete provision of the referenced agreement is not enforceable and the Plaintiff's Motion for Preliminary Injunction is denied.

[Signature Page to Follow]



Greenville Common Pleas

Case Caption: Millennium Health LLC vs. Kyle B Crawford , defendant, et al
Case Number: 2016CP2304218
Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Millennium Health, LLC,)
Plaintiff,)
v.)
Kyle B. Crawford, and Unidentified)
John Does,)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-23-04218

**AMENDED
ORDER**

Upon issuing an Order on September 1, 2016, the Plaintiff filed Plaintiff's Motion to Reconsider, Alter and Amend Order on Preliminary Injunction, Rules 52, 59, S.C. R. Civ. P. After further consideration, the Court would submit this amended Order which removes the finding that the agreement is "not enforceable" since such a finding would be premature at this juncture. All other matters raised in the Motion to Reconsider are denied.

This matter initially came before the Court upon pleading entitled "Plaintiff Millennium Health, LLC's Verified Complaint and Motion for Temporary Restraining Order and Preliminary Injunction." The matter was heard on August 3, 2016, with notice to counsel for Defendant, Andrew Arnold. Due to proper notice to Defendant and his attorney, the Court has treated this as a Motion for Preliminary Injunction.

The Plaintiff sought to enforce the terms of its "Agreement regarding Confidentiality, Non-Disclosure and Non-Competition" dated October 6, 2011. The primary provision which Plaintiff sought to enforce is found at paragraph 3.b.(i) and states as follows:

IN ALL OTHER STATES: Employee agrees that Employee will not, directly or indirectly, solicit, accept, or service the business of any customers or

potential customers with whom Employee worked or directly contacted during the eighteen (18) months preceding Employee's termination of employment with respect to products or services competitive with those offered by Company at the close of Employee's Employment from the effective date of Employee's termination from Company. Employee agrees that this restriction will last for one (1) year Employee agrees that application of this covenant to certain of Company's business relationships instead of a geographical area is the most reasonable, and the narrowest, method of protecting the Company's legitimate business interests, Confidential Information, and good will.

The general rule is that "an injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the Plaintiff." Scratch Golf Co. v. Dune W. Residential Golf Props., Inc., 603 S.E.2d 905 (S.C. 2004). To prevail on a Motion for an Injunction, the Plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation." Levine v. Spartanburg Regional Services Dist., Inc., 626 S.E.2d 38 (S.C. Ct. App 2005) (*citations omitted*). In considering a covenant not to compete, the S.C. Court of Appeals in Baugh v. Columbia Heart Clinic, P.A., 738 S.E.2d 480 (S.C. Ct. App. 2013), stated that restrictions on competition are generally disfavored and will be strictly construed against the employer and must be narrowly drawn to protect the "legitimate interest of the employer." In addressing this issue, the South Carolina appellate courts have determined that certain contracts are enforceable because the company is protecting "legitimate interests":

- a. Restricting solicitation of former clients covered by limited territory was reasonable. Baugh v. Columbia Heart, 738 S.E.2d 480 (S.C. App 2012).
- b. Limitation on contacting previous customers assigned to employee to protect loss of customers was reasonable. Standard Register v. Kerrigan, 119 S.E.2d 533 (S.C. 1961).

- c. Prohibition against contacting existing customers can be substitute for geographic limitation for nationwide business. Wolf v. Colonial Life and Accident Ins. Co., 420 S.E.2d 217 (S.C. Ct. App. 1992).
- d. Geographic restriction covering area where employee was able to establish contact with his customers. Rental Uniform Service of Florence, Inc. v. Dudley, 301 S.E.2d 142 (S.C. 1983).
- e. Restriction from employee getting customers to terminate insurance policy issued by employer determined to be reasonable. Oxman v. Proffitt, 126 S.E.2d 852 (S.C. 1962).
- f. Restriction against competing with former employer was determined to be too broad was not protecting employer's legitimate interest and thus unenforceable. Faces Boutique, Ltd. v. Gibbs, 455 S.E.2d 707 (S.C. Ct. App. 2013).

Except for specific circumstances, the South Carolina Appellate Courts have not determined that "potential customers" or "prospective customers" are legitimate interests of former employers.

The Court finds that the prohibition against contacting "potential customers" is too broad, difficult to determine and could encompass all customers in the market even if these customers have never been customers of the Plaintiff. *Therefore, the Court finds that the Plaintiff has not met its burden to establish the enforceability of these provisions in connection with a Motion for Temporary Restraining Order/Preliminary Injunction.*

As a further point, the Court would note that the appellate courts have generally held that if it is determined that a clause is overly broad, then it cannot re-write the provision or "blue-pencil" the agreement. See Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 694 S.E.2d 15 (S.C. 2010); Faces Boutique, Ltd. v. Gibbs, 455 S.E.2d 707 (S.C. Ct. App. 1995).

Therefore, based on the analysis set forth above, the Court denies the Plaintiff's Motion for Temporary Restraining Order/Preliminary Injunction and denies Plaintiff's Motion for Reconsideration except as stated.

[Signature Page to Follow]



Greenville Common Pleas

Case Caption: Millennium Health LLC vs. Kyle B Crawford , defendant, et al
Case Number: 2016CP2304218
Type: Order/Other

Motion/Order Granted

s/ Honorable Perry H. Gravely, #2755

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
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Millennium Health, LLC,)
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Plaintiff,)
)
vs.)
)
Kyle B. Crawford, and)
)
Unidentified John Does,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION No.: 2016-CP-23-_____

SUMMONS

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the *VERIFIED COMPLAINT AND MOTION FOR TEMPORARY RESTRAINING ORDER & PRELIMINARY INJUNCTION* in this action (the original which has been filed with the Clerk of Court for Greenville County) and to serve a copy of your answer or other responsive pleading to the said *VERIFIED COMPLAINT AND MOTION FOR TEMPORARY RESTRAINING ORDER & PRELIMINARY INJUNCTION* on the subscriber, Allen Keith McAlister, Jr., at his office at 1441 Main Street, Suite 1250, Columbia, South Carolina 29201, within thirty (30) days after service thereof, exclusive of the date of such service. If you fail to appear, answer or defend within the time aforesaid, judgment by default will be rendered against you for the relief demanded.

Dated this 12th day of July, 2016.

[Signature Page to Follow]

Respectfully Submitted,

WILLIAMS MULLEN

s/ Allen Keith McAlister, Jr.

A. Keith McAlister, Jr.

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Attorneys for Plaintiff Millennium Health, LLC

STATE OF SOUTH CAROLINA)
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COUNTY OF GREENVILLE)
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Millennium Health, LLC,)
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IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION No.: 2016-CP-23-____

**PLAINTIFF MILLENNIUM HEALTH,
LLC'S VERIFIED COMPLAINT AND
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

COMES NOW Plaintiff Millennium Health, LLC ("Millennium") by and through its undersigned counsel, and brings this Verified Complaint and Motion for Temporary Restraining Order and Preliminary Injunction to, among other things, enforce by specific performance the promises made by Defendant Kyle Crawford ("Defendant Crawford") in a binding contract to not solicit or accept the business of any customers of Millennium after he left the company's employment. Millennium seeks injunctive relief and money damages resulting from Defendant Crawford's broken promises and from breaches of other duties he owes to Millennium under the applicable State law.

PARTIES

1. Millennium is a limited liability company organized under the laws of the State of California and authorized to conduct business across the United States, including in the States of South Carolina, North Carolina and Tennessee.
2. Defendant Kyle Crawford is a citizen and resident of Greenville County, South Carolina.

3. The Unidentified John Does are, upon information and belief, other individuals or entities who may be facilitating, encouraging, conspiring with or otherwise acting in concert with Defendant Crawford in furtherance of the wrongful acts which are the subject of this action and who may be jointly and severally liable for such acts or otherwise liable through common law principles of agency and vicarious liability. Millennium reserves the right to amend this Verified Complaint, pursuant to applicable rules of court, and to identify and substitute the legally responsible individuals or entities that are presently captioned as the Unidentified John Does.

4. This Court has jurisdiction over this matter, the Defendant, and the subject matter of this action, and venue is proper by law. Alternatively, Defendant Crawford has contractually consented to the jurisdiction of this Court and to this action being filed in the County of Greenville within the State of South Carolina.

5. All conditions precedent necessary for the commencement of this action have been satisfied or perfected.

FACTUAL BACKGROUND
(Millennium's Business)

6. Millennium is one of the nation's leading health solutions companies and is the nation's leading urine drug testing ("UDT") laboratory. Millennium also offers best-in-class oral fluid testing ("OFT") and pharmacogenetic testing ("PGT") services. Millennium provides these services to health care providers of all sizes located throughout the United States.

7. Millennium has developed unique and expensively acquired proprietary laboratory technology and methods to help clinicians optimize the use of medications by delivering timely, accurate and clinically actionable information to inform treatment decisions for patients under the care of its health care customers.

8. Millennium relies on a network of well-trained sales professionals to prospect and originate new business, manage and grow valuable customer relationships, increase sales volumes and supervise sales territories.

9. Territory Managers, a classification last held by Defendant Crawford, play an integral role in business development by originating and building strong and sustainable relationships with Millennium's customer base.

10. As a sales and service-driven business, Millennium's business success and competitive position in the industry depend, in part, on the strength of the relationships it develops with its customers, in addition to the unique and proprietary methods and techniques it creates for its business model.

11. Millennium has spent, and continues to spend, considerable time, effort and resources developing its business practices, a stable and consistent customer base and goodwill in the communities served. Millennium has been successful in satisfying its customers' medical laboratory needs since 2008. Millennium has developed specific information about its operations and customer base that is confidential and not otherwise generally known to the public.

12. The customers served by Territory Managers and others on Millennium's behalf were developed at great expense over a number of years. Customers are the lifeblood of Millennium's business.

13. All of the markets that Millennium serves are highly competitive.

14. Confidential information regarding customer and prospective customer lists, contacts, preferences and requirements; methods of operation; methods of determining efficiencies; marketing investigations and strategies; pricing strategies, formulas, discounts and

modifications (collectively, the “Confidential Information”), along with a stable and consistent customer base and goodwill, are among the principal assets of Millennium’s business.

15. The aforementioned assets are of significant economic and commercial value to Millennium.

16. Millennium takes a number of reasonable measures to protect its business assets, including its customer base, from unfair pirating. For example, Millennium requires employees to execute an agreement that restricts them from misappropriating Millennium’s confidential and proprietary information and otherwise restricts their post-employment activities, including a prohibition against the solicitation of its customers following employment separation and, where available and appropriate, noncompetition agreements.

17. While employed with Millennium, Defendant Crawford had access to, used and derived benefit from Millennium’s Confidential Information and was given intimate access to and contact with Millennium’s customer base. Specifically, Defendant Crawford had access to and learned the following:

- a. The identity of Millennium’s customers;
- b. The identity of the contact persons at Millennium’s customers who decide or have significant influence over the procurement of UDT, OFT and PGT services;
- c. The profitability of Millennium’s customers;
- d. The UDT, OFT and PGT history of Millennium with customers;
- e. The particular idiosyncrasies of each customer and customer contact person, including their likes and dislikes regarding UDT, OFT and PGT; and
- f. Regular reports showing customer specific revenue, volume, payor mix and ordering practices.

18. The aforementioned information contained in the preceding paragraph is not otherwise readily obtainable from public sources, was not known to Defendant Crawford prior to his employment with Millennium and constitutes Confidential Information and, in many cases, includes legally protected trade secrets.

19. Defendant Crawford's Possession and use of Millennium's Confidential Information, and the customer relationships he formed solely by virtue of the resources and opportunities provided to him by Millennium, were critical to the successful performance of Defendant Crawford's duties as an employee and contributed to his own professional success.

Millennium's Employment of Defendant Crawford

20. Defendant Crawford's employment with Millennium began in 2011, when he was hired as a Customer Support Specialist to work in the State of Tennessee.

21. From the outset of his employment, Defendant Crawford was provided by Millennium with the valuable information, training, resources, opportunities and access to customers he needed to successfully perform his job and develop as a high-level sales professional.

22. Defendant Crawford received numerous promotions, thousands of dollars in raises to his annual base compensation, performance-based bonus opportunities, vehicle allowances and other fringe benefits during his employment.

23. Defendant Crawford eventually accepted a promotion opportunity with Millennium that transferred him to the State of South Carolina.

24. By October, 2013, Defendant Crawford was working as a Senior Sales Specialist¹ for the Millennium territory denoted as “Upstate South Carolina.” At that time, he reported to another former Millennium employee, Anthony Calobrisi.

25. Defendant Crawford last worked for Millennium as a Territory Manager II. A true and accurate copy of the written Job Description for the Position of Territory Manager II is attached hereto and incorporated by reference herein as Exhibit A.

26. For the period of time from January 1, 2014 through his resignation effective April 8, 2016, Defendant Crawford was responsible for managing no less than two hundred twenty-six (226) Millennium customer accounts that were within the Upstate South Carolina Territory (which included North Carolina), plus additional satellite accounts in Alabama, Georgia and Tennessee that fell under his supervision, irrespective of territory boundary lines.

27. Millennium fulfilled its contractual obligations to Defendant Crawford. Millennium provided him with an extensive customer base and the support necessary to successfully sell Millennium’s services, in addition to Millennium’s reputation, name recognition and goodwill in the communities served.

28. A relationship of trust and confidence existed between Millennium and Defendant Crawford. As Territory Manager II, Defendant Crawford was responsible for developing close working relationships with Millennium’s customers, effecting strategic planning, cultivating savvy customer prospecting, growing territory volume and closely tracking customer sales, volume and decline. Defendant Crawford was charged with the responsibility of closely partnering with the Account Managers under his supervision who regularly serviced the

¹ Since 2013, Millennium has rebranded and retitled certain positions. Some of those changes are relevant to this action. For example, the former position of “Customer Support Specialist” is now referred to as “Account Manager.” “Sales Representative” and “Senior Sales Representative” are now known as “Territory Manager I” and “Territory Manager II,” respectively.

customers within his territory. Defendant Crawford was expected to attend regional and national industry conferences as an ambassador of Millennium Exhibit A.

29. Because of Millennium's investment in Defendant Crawford, his close professional contact with its customers and his role as a company ambassador, Defendant Crawford has become associated with Millennium's goodwill.

30. For nearly three (3) years before Defendant Crawford resigned from Millennium, he worked in cooperation with, and as a direct supervisor to, a Millennium Account Manager named Natalie Brown ("Ms. Brown"). Ms. Brown has executed a sworn Affidavit, which is attached hereto as Exhibit B ("Exhibit B" or the "Brown Affidavit"). The Brown Affidavit, including paragraphs 1 through 43, is fully incorporated by reference as if fully set forth herein. The Brown Affidavit provides, by reference and incorporation, additional factual allegations to support the legal causes of action asserted in this Verified Complaint.

The Promises Made by Defendant Crawford to Millennium

31. As an express condition of his employment, and at the outset of his employment with Millennium, Defendant Crawford signed a contract entitled "*Agreement Regarding Confidentiality, Non-Disclosure and Non-Competition*" ("the Agreement"). A true and accurate copy of the Agreement is attached hereto as Exhibit C.

32. The Agreement is the only contractual agreement that Defendant Crawford ever executed while employed by Millennium addressing his promises of non-solicitation, noncompetition and non-disclosure that are, in part, the subject of this action.

33. Recital B of the Agreement provides that Defendant Crawford agreed that his "employment by Company creates in Employee a duty of trust and confidentiality to Company

with respect to information that is confidential, proprietary and/or not generally available”

Exhibit C, p.1.

34. Section 2 of the Agreement, entitled “*Confidential Information*,” contains a reasonable non-disclosure promise designed to protect the legitimate business interests of Millennium in safeguarding its goodwill, relationship with customers and confidential and proprietary information. In Section 2, Defendant Crawford promised to Millennium that he would not directly or indirectly reveal, report, publish, transfer, disclose, use, access or sell any of Millennium’s Confidential Information. Section 2 also required Defendant Crawford to acknowledge that a violation of Section 2 would constitute unfair competition Exhibit C. p.2.

35. Section 3(b)(i) of the Agreement, entitled “*Non-Solicitation; Non-Competition*,” contains a reasonable non-solicitation; noncompetition covenant designed to protect the legitimate business interests of Millennium in safeguarding its goodwill, its relationships with customers, and its confidential and proprietary information. The covenant lasts for a one (1) year period following Defendant Crawford’s effective date of termination from Millennium. The covenant reads in relevant part:

Employee agrees that Employee will not directly or indirectly, solicit, accept, or service the business of any customers or potential customers with whom Employee worked or directly contacted during the eighteen (18) months preceding Employee’s termination of employment with respect to products or services competitive with those offered by Company at the close of Employee’s employment. Employee agrees that application of this covenant to certain of Company’s business relationships instead of a geographical area is the most reasonable, and the narrowest, method of protecting the Company’s legitimate business interests, Confidential Information, and goodwill.

Should Employee breach or violate this paragraph 3(b)(i) of the Agreement, the one (1) year period of Employee’s obligations specified in this paragraph of the Agreement will be extended by the period of time for which Employee was in breach or violation

so that Company is provided with the benefit of the full one (1) year period Exhibit C, pp. 4-5.

36. Section 2(h)(i) of the Agreement, entitled "*Future Employment*," provides in relevant part:

If Employee, in the future, seeks or is offered employment by any other company, firm, or person, Employee agrees to provide a copy of this Agreement to the prospective employer before accepting employment with that prospective employer Exhibit C, p.3.

37. Section 5(a) of the Agreement, entitled "*Acknowledgments of Employee*," provides in relevant part:

Employee acknowledge[s] and agree[s that] [e]ach and all of the covenants and restrictions contained in this Agreement are reasonable and valid and necessary for the protection of the legitimate business interests of Company, and any and all defenses to strict enforcement thereof by Company are irrevocably and unconditionally waived by Employee Exhibit C, p.6.

38. Section 6 of the Agreement, entitled "*Remedies*," provides in relevant part:

Without limiting the remedies available to Company, Employee acknowledges that monetary damages at law will be an insufficient remedy in view of the irreparable harm which will be suffered by Company if Employee should breach or violate, or threaten to breach or violate, any of the terms of this Agreement and, without limiting the relief available to Company, Employee hereby irrevocably agrees that Company may apply for and have temporary injunctive relief in any court of competent jurisdiction specifically to enforce any such terms upon breach or violation or threatened breach or violation thereof Exhibit C, p.6.

39. Section 17. of the Agreement, entitled "*Attorneys' Fees*," provides in relevant part:

In any legal proceeding brought by either party to enforce this Agreement, the prevailing party shall be entitled to be reimbursed for reasonable legal fees by the other party Exhibit C, p.9.

40. Millennium has incurred and will continue to incur significant legal fees and costs in order to pursue enforcement of the Agreement against Defendant Crawford and remedy the damages caused by his broken promises.

Defendant Crawford Abruptly Resigns from Millennium and Breaks His Promises By Soliciting Or Accepting The Business of Millennium Customers

41. Defendant Crawford voluntarily resigned his employment from Millennium abruptly, effective April 8, 2016.

42. When he resigned, Defendant Crawford indicated that he “was taking some time off” or words to that effect. He indicated that he was “getting out of the lab business.” He also said he was “probably going to work in cancer genetics” Exhibit B, ¶ 21.

43. Those representations to Millennium were false.

44. To the contrary, Defendant Crawford remained in the UDT industry. Defendant Crawford either independently, or in collaboration with John Does, began working as a direct competitor to Millennium in the Upstate South Carolina Territory. Since he has resigned from Millennium he has either actively solicited or accepted the business of Millennium’s customers, including customers that he specifically serviced as a representative of Millennium during the eighteen (18) months preceding his resignation. *See, e.g.,* Exhibit B, ¶ 28.

45. In the weeks that followed Defendant Crawford’s resignation from Millennium, Millennium learned that some of its customers had transferred their business entirely to Defendant Crawford and/or the entity currently employing him as an employee or contractor’s new employer Exhibit B, ¶ 28.

46. Millennium has formed a reasonably held, legitimate belief that other customer defections were attributable to him and, still others, are imminently likely since Crawford’s resignation Exhibit B, ¶ 36, 39, 40.

Millennium’s Attempts to Prevent Further Harm

47. In an effort to prevent further harm to its valuable customer base, Millennium sent Defendant Crawford a Cease and Desist Letter dated June 27, 2016, reminding Defendant

Crawford of his obligations under the Agreement and demanding that he stop breaching the Agreement. A true and accurate copy of the June 27, 2016 Cease and Desist Letter is attached as Exhibit D.

Irreparable Harm and Other Damage

48. In the eighteen (18) months prior to his resignation of employment, Defendant Crawford was responsible for managing more than two hundred (200) Millennium customers. As alleged herein, and as outlined in Exhibit B, Millennium has likely lost valuable customers, and the financial revenue associated with those lost customers, to Defendant Crawford because of his breach of the Agreement. Other Millennium customers are likely dangerously close to succumbing to the persuasive solicitation techniques of Defendant Crawford and, if not unchecked, will leave Millennium as a result of Defendant Crawford's wrongful solicitations Exhibit B, ¶40. If Defendant Crawford is not enjoined from soliciting or accepting the business of Millennium's customers and if he is not judicially compelled to abide by all of the post-employment obligations contained in the Agreement, Millennium will be exposed to immediate, irreparable harm.

49. Defendant Crawford has acknowledged that if he breached the Agreement, "monetary damages at law will be an insufficient remedy in view of the irreparable harm which will be suffered by Company" Exhibit B, Section 6 p. 6. Defendant Crawford also agreed that due to his breach of the Agreement, Millennium is entitled to the issuance of an injunction restraining and enjoining him from committing or continuing any such breach Id.

FIRST CLAIM **(Breach of Contract)**

50. Millennium re-alleges the allegations of the foregoing paragraphs to this Verified Complaint and Motion for Temporary Restraining Order and Preliminary Injunction.

51. The Agreement is a valid and binding contract, supported by sufficient consideration, as it was entered into as part of an initial offer of employment by and between Millennium and Defendant Crawford.

52. There was an offer, acceptance and meeting of the minds on all essential terms of the Agreement.

53. The Agreement is clear and unambiguous. The Agreement is fair and reasonable and Defendant Crawford acknowledged as much when he signed it.

54. The Agreement does not violate any public policy recognized by the State of South Carolina.

55. The Agreement has not been superseded by any subsequent contract or otherwise negatively impacted by novation.

56. Defendant Crawford breached the Agreement including, but not limited to, his Non-Solicitation, Non-Competition, and his Future Employment promises made to Millennium and possibly other provisions of the Agreement that may be further shown through discovery.

57. As a direct and proximate result of the breach of contract by Defendant Crawford, as well as broken promises, Millennium has been financially damaged and otherwise harmed.

SECOND CLAIM
(Breach of Duty of Loyalty)

58. Millennium re-alleges the allegations of the foregoing paragraphs to this Verified Complaint.

59. Defendant Crawford was placed in a supervisory and management position of trust, high responsibility and confidence while employed with Millennium.

60. Defendant Crawford owed Millennium a duty of loyalty and fiduciary responsibility under the laws of the State of South Carolina.

61. Upon information and belief, Defendant Crawford breached his duty of loyalty and fiduciary responsibility to Millennium in, among other ways:

- a. Actively planning for his defection, post-defection competitive employment, and solicitation of Millennium's customers while he was an employee of Millennium;
- b. Spreading and disseminating misinformation about Millennium and/or its customers to discourage other Millennium employees (like Ms. Brown) from pursuing viable economic opportunities for the company;
- c. Solicitation of Millennium customers; and
- d. Working in concert with other individuals or entities to accomplish or facilitate all of the foregoing.

62. As a direct and proximate result of Defendant Crawford's breach of the duty of loyalty, Millennium has been financially and economically damaged and is entitled to recover compensatory damages.

THIRD CLAIM

(Motion for Temporary Restraining Order and Preliminary Injunction)

63. Millennium re-alleges the allegations of the foregoing paragraphs to this Verified Complaint.

64. Millennium is being and will continue to be irreparably harmed unless and until Defendant Crawford is enjoined from violating the Agreement as described above.

65. This irreparable harm includes, but is not limited to, the disclosure and use of Millennium's Confidential and Proprietary Information; disruption and disturbance of Millennium's relationships with its customers; loss of customers; loss of confidence and trust of customers; loss of business reputation; loss of goodwill; damage to corporate stability and the

enforcement of reasonable contracts; economic loss, including from loss of customers, which is unascertainable at the present time; and future economic loss, which is presently incalculable.

66. Millennium has no adequate remedy at law. If left unchecked, Millennium has lost and will continue to lose valuable customers, business opportunities, goodwill and confidential and proprietary information as a result of Defendant Crawford's conduct. It will be difficult to determine or calculate with exact certainty the full monetary value of the damage caused by his actions.

67. Granting injunctive relief and restraining Defendant Crawford from further breach of the material terms of the Agreement would in no way damage the public.

68. Granting injunctive relief would further the public policy of South Carolina by respecting reasonable post-employment contractual obligations.

69. Millennium is likely to prevail on the merits of its causes of action as set forth herein.

70. A temporary restraining order and preliminary injunction are reasonably necessary to protect the legal rights of Millennium pending in this action. Millennium seeks a court order in the form of a temporary restraining order and preliminary injunction compelling Defendant Crawford to adhere to his post-employment contractual obligations, enjoining Defendant Crawford from interfering in Millennium's rights as stated herein and maintaining the *status quo* to prevent possible irreparable harm during the pendency of this action.

PRAYER FOR RELIEF

WHEREFORE, Millennium Health, LLC prays that the Court:

A. Treat this Verified Complaint as an application for a Temporary Restraining Order and a Preliminary Injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and enjoin Defendant Crawford from further violation of the material terms of his contract with Millennium Health, LLC;

B. Preliminarily and permanently restrain and enjoin Defendant Crawford from further violations of the material terms of his contract with Millennium Health, LLC, including prohibiting and restraining Defendant Crawford from further concerted activity with unidentified John Does to do indirectly that which he is prohibited from doing directly;

C. Enter judgment against Defendant Crawford for compensatory damages;

D. Award Millennium Health, LLC pre and post-judgment interest as allowed by law;

F. Award Millennium Health, LLC its costs and reasonable attorney's fees as allowed by law and contract; and

G. Grant Millennium Health, LLC such further relief as the Court deems just and proper.

Dated this 12th day of July, 2016.

Respectfully Submitted,

WILLIAMS MULLEN

s/ Allen Keith McAlister, Jr.

A. Keith McAlister, Jr.

S.C. Bar No. 78213

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Attorneys for Plaintiff Millennium Health, LLC

STATE OF Texas
COUNTY OF Tarrant

VERIFICATION

COMES NOW **Brian Fowler** being first duly sworn, deposes and says that he is the **Assistant General Counsel** of Millennium Health LLC and that he has read the foregoing Verified Complaint, and knows the contents thereof; that the same are true of his knowledge as a representative of the corporation based on his understanding and review of corporate books and records; that as to those matters and things therein alleged to be true "upon information and belief," if any, he believes them to be true.

This, the 11th day of July, 2016.

Brian D. Fowler
[Name] Brian D. Fowler

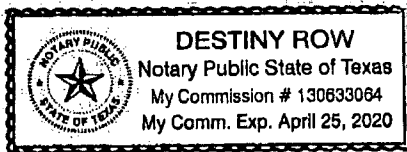
Sworn to and subscribed before me this, the 11 day of July, 2016.

Destiny Row
Notary Public
Printed Name: Destiny Row

My Commission expires:

4/25/2020

(Notarial stamp or seal)



W. Andrew Arnold, Esquire
Horton Law Firm, P.A.
307 Pettigru Street
Greenville, South Carolina 29601
Attorney for Defendant Kyle B. Crawford

Dated this 13th day of September, 2016.

Respectfully submitted,
WILLIAMS MULLEN

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*Attorneys for Plaintiff Millennium Health,
LLC*

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Millennium Health, LLC,)
)
)
Plaintiff,)
)
vs.)
)
Kyle B. Crawford, and)
)
)
Paradigm Labs, LLC,)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION No.: 2016-CP-23-04218

**PLAINTIFF MILLENNIUM HEALTH,
LLC'S AMENDED VERIFIED
COMPLAINT AND MOTION FOR
PRELIMINARY INJUNCTION**

COMES NOW Plaintiff Millennium Health, LLC ("Millennium") by and through its undersigned counsel, pursuant to, *inter alia*, S.C.R.C.P 15(a), and brings this Amended Verified Complaint and Motion for Preliminary Injunction to, among other things, obtain injunctive relief and money damages resulting from Kyle Crawford's ("Defendant Crawford") breaches of his contractual and other duties owed to Millennium under the applicable State law, from Defendant Paradigm Labs, LLC's ("Paradigm" and collectively with Defendant Crawford, the "Defendants") tortious interference with Millennium's contractual relations and prospective contractual relations, and from Defendants' civil conspiracy and other violations of common and statutory law.

PARTIES

1. Millennium is a limited liability company organized under the laws of the State of California and authorized to conduct business across the United States, including in the States of South Carolina, North Carolina and Tennessee.
2. Defendant Crawford is a citizen of South Carolina and resident of Greenville County, South Carolina.

3. Upon information and belief, Paradigm is a Georgia limited liability company with its principal place of business in St. Simon's Island, Georgia. Paradigm regularly conducts business in and employs employees in South Carolina.

4. This Court has jurisdiction over this matter, the Defendants, and the subject matter of this action, and venue is proper by law. Alternatively, Defendant Crawford has contractually consented to the jurisdiction of this Court and to this action being filed in the County of Greenville within the State of South Carolina.

5. All conditions precedent necessary for the commencement of this action have been satisfied or perfected.

FACTUAL BACKGROUND

Millennium's Business

6. Millennium is one of the nation's leading health solutions companies and is the nation's leading specialty laboratory for urine drug testing ("UDT"). Millennium also offers best-in-class oral fluid testing ("OFT") and pharmacogenetic testing ("PGT") services. Millennium provides these services to health care providers of all sizes located throughout the United States.

7. Millennium has developed unique and expensively acquired proprietary laboratory technology and methods to help clinicians optimize the use of medications by delivering timely, accurate and clinically actionable information to inform treatment decisions for patients under the care of its health care customers.

8. Millennium relies on a network of well-trained sales professionals to prospect and originate new business, manage and grow valuable customer relationships, increase sales volumes, and supervise sales territories.

9. Territory Managers, a classification last held by Defendant Crawford, play an integral role in business development by originating and building strong and sustainable relationships with Millennium's customer and prospective customer bases.

10. As a sales and service-driven business, Millennium's business success and competitive position in the industry depend, in part, on the strength of the relationships it develops with its customers, in addition to the unique and proprietary methods and techniques it creates for its business model.

11. Millennium has spent, and continues to spend, considerable time, effort and resources developing its business practices, a stable and consistent customer base, and goodwill in the communities served. Millennium has been successful in satisfying its customers' medical laboratory needs since 2008. Millennium has developed specific information about its operations and customer base that is confidential and not otherwise generally known to the public.

12. The customers served by Territory Managers and others on Millennium's behalf were developed at great expense to Millennium over a number of years. Millennium highly compensates its Territory Managers, like Crawford, to prospect and develop its customer base. In addition to a base salary, Territory Managers receive commissions, a generous benefit package, reimbursement for car, gas, and certain meal expenses, and other things necessary to enable them to perform their job for Millennium.

13. Millennium also invests heavily in resources in order to identify viable potential customers in its relevant markets. Millennium provides Territory Managers with uniquely-acquired confidential information and resources to enable them, in turn, to recruit, enroll and develop potential customers into actual revenue generating customers.

The process of identifying, recruiting and transitioning potential customers into actual revenue-producing customers and, thereafter, retaining those customers is the lifeblood of Millennium's business.

14. All of the markets that Millennium serves are highly competitive.

15. Confidential information regarding customer and prospective customer lists, contacts, preferences and requirements; methods of operation; methods of determining efficiencies; marketing investigations and strategies; pricing strategies, formulas, discounts and modifications (collectively, the "Confidential Information"), along with a stable and consistent customer base and goodwill, are among the principal assets of Millennium's business.

16. The aforementioned assets are of significant economic and commercial value to Millennium.

17. Millennium takes a number of reasonable measures to protect its business assets, including its customer base, from unfair pirating. For example, Millennium requires employees to execute an agreement that restricts them from misappropriating Millennium's confidential and proprietary information and otherwise restricts their post-employment activities, including a prohibition against the solicitation of its customers following employment separation and, where available and appropriate, noncompetition agreements.

Millennium's Employment of Defendant Crawford

18. Defendant Crawford's employment with Millennium began in 2011, when he was hired as a Customer Support Specialist to work in the State of Tennessee.

19. Prior to joining Millennium, Defendant Crawford had no experience in

medical sales of any kind, and specifically no experience in the UDT, OFT, and PGT industries. Indeed, before becoming employed by Millennium, Crawford worked for Ricoh Business Solutions and Gander Mountain. All of Defendant Crawford's professional contacts and customer targets in the UDT, OFT, and PGT industry were developed while he was employed by Millennium and at Millennium's expense.

20. From the outset of his employment, Defendant Crawford was provided by Millennium with the valuable information, training, resources, opportunities and access to potential customers and existing customers he needed to successfully perform his job and develop as high-level sales professional.

21. Defendant Crawford received numerous promotions, thousands of dollars in raises to his annual base compensation, performance-based bonus opportunities, vehicle allowances and other fringe benefits during his employment.

22. Defendant Crawford eventually accepted a promotion opportunity with Millennium that transferred him to the State of South Carolina.

23. By October 2013, Defendant Crawford was working as a Senior Sales Specialist¹ for the Millennium territory denoted as "Upstate South Carolina." At that time, he reported to another former Millennium employee, Anthony Calobrisi ("Calobrisi").

24. Defendant Crawford last worked for Millennium as a Territory Manager II. A true and accurate copy of the written Job Description for the Position of Territory Manager II is attached hereto and incorporated by reference herein as **Exhibit A**.

¹ Since 2013, Millennium has retitled certain positions. Some of those changes are relevant to this action. For example, the former position of "Customer Support Specialist" is now referred to as "Account Manager." "Sales Representative" and "Senior Sales Representative" are now known as "Territory Manager I" and "Territory Manager II," respectively.

25. On April 8, 2016, Defendant Crawford abruptly resigned his position with Millennium, effective the same day as his notice.

26. During the 18 month period preceding his resignation, Defendant Crawford was responsible for managing (and was paid commission on) no less than one hundred eighty nine Millennium customer accounts that were within the Upstate South Carolina Territory (which included North Carolina), plus additional satellite accounts in Alabama, Georgia and Tennessee that fell under his supervision, irrespective of territory boundary lines.²

27. Millennium fulfilled its contractual obligations to Defendant Crawford. Millennium provided him with an extensive customer base and the support necessary to successfully sell Millennium's services, in addition to Millennium's reputation, name recognition and goodwill in the communities served.

28. A relationship of trust and confidence existed between Millennium and Defendant Crawford. As Territory Manager II, Defendant Crawford was responsible for developing close working relationships with Millennium's potential and existing customers, effecting strategic planning, cultivating savvy customer prospecting, growing territory volume and closely tracking customer sales, volume and decline. Defendant Crawford was charged with the responsibility of closely partnering with the Account Managers under his supervision who regularly serviced the customers within his territory. Defendant Crawford was expected to attend regional and national industry conferences as an ambassador of Millennium. **Exhibit A.**

² The identity of these customers is within the definition of Millennium's "Confidential Information" as more fully described below. A confidential customer list has been tendered to the court previously pursuant to a Consent Protective Order. That confidential customer list has been properly authenticated as a business record of Millennium. See B. Fowler Aff., ¶ 26, Ex. D, "Confidential Customer List."

29. Because of Millennium's investment in Defendant Crawford, his close professional contact with Millennium's customers and potential customers, and his role as a company ambassador, Defendant Crawford has become associated with Millennium's goodwill.

30. While employed with Millennium, Defendant Crawford had access to, used and derived benefit from Millennium's Confidential Information and was given intimate access to and contact with Millennium's customer base. Specifically, among other things, Defendant Crawford had access to and learned the following:

- a. The identity of Millennium's customers and viable potential customers;
- b. The identity of the contact persons at Millennium's potential and existing customers who decide or have significant influence over the procurement of UDT, OFT and PGT services;
- c. The profitability of Millennium's customers;
- d. The UDT, OFT and PGT history of Millennium with customers;
- e. The particular idiosyncrasies of each customer and customer contact person, including their likes and dislikes regarding UDT, OFT and PGT;
- f. Regular reports showing customer specific revenue, volume, payor mix and ordering practices; and
- g. Millennium's strategies and methods for identifying, targeting and enrolling potential customers.

31. The aforementioned information contained in the preceding paragraph is

not otherwise readily obtainable from public sources, was not known to Defendant Crawford prior to his employment with Millennium, constitutes Confidential Information and, in many cases, includes legally protected trade secrets.

32. Defendant Crawford's possession and use of Millennium's Confidential Information, the potential customers he accessed, and the customer relationships he formed solely by virtue of the resources and opportunities provided to him by Millennium were critical to the successful performance of Defendant Crawford's duties as an employee and contributed to his own professional success.

33. For nearly three (3) years before Defendant Crawford resigned from Millennium, he worked in cooperation with, and as a direct supervisor to, a Millennium Account Manager named Natalie Brown ("Ms. Brown"). Ms. Brown has executed a sworn Affidavit, which is attached hereto as **Exhibit B** ("Exhibit B" or the "First Brown Affidavit"), as well as a second sworn Affidavit, attached hereto as **Exhibit C** (or the "Second Brown Affidavit") (collectively, the "Brown Affidavits"). The First Brown Affidavit, including paragraphs 1 through 43, and the Second Brown Affidavit, including paragraphs 1 through 19, are fully incorporated by reference as if fully set forth herein. The Brown Affidavits provide, by reference and incorporation, additional factual allegations to support the legal causes of action asserted in this Amended Verified Complaint.

Defendant Crawford's Obligations to Millennium

34. As an express condition of his employment, and at the outset of his employment with Millennium, Defendant Crawford signed a contract titled "**Agreement Regarding Confidentiality, Non-Disclosure and Non-Competition**" ("the Agreement").

A true and accurate copy of the Agreement is attached hereto as **Exhibit D**.

35. The Agreement is the only contractual agreement that Defendant Crawford ever executed while employed by Millennium addressing his promises of non-solicitation, noncompetition and non-disclosure that are, in part, the subject of this action.

36. Recital B of the Agreement provides that Defendant Crawford agreed that his “employment by Company creates in Employee a duty of trust and confidentiality to Company with respect to information that is confidential, proprietary and/or not generally available” **Exhibit D, p.1**.

37. Section 2 of the Agreement, entitled “*Confidential Information*,” contains a reasonable non-disclosure promise designed to protect the legitimate business interests of Millennium in safeguarding its goodwill, relationship with customers and confidential and proprietary information. In Section 2, Defendant Crawford promised to Millennium that he would not directly or indirectly reveal, report, publish, transfer, disclose, use, access or sell any of Millennium’s Confidential Information. Section 2 also required Defendant Crawford to acknowledge that a violation of Section 2 would constitute unfair competition **Exhibit D, p.2**.

38. Section 3(a) of the Agreement, entitled “*Non-Solicitation; Non-Competition*,” contains a reasonable restriction on competitive activities during Defendant Crawford’s employment with Millennium. The covenant reads in relevant part:

During Employee’s employment with Company, Employee will not directly or indirectly: (a) engage in a business that competes, directly or indirectly, with any of Company’s products or services; (b) be or become a stockholder, partner, owner, officer, director, employee or agent of, or a consultant to, or give financial or other assistance to, any

person or entity engaged in or considering engaging in any such business; (c) seek in competition with Company's business to procure orders from or do business with any Company customer; ... or (f) engage in or participate in any effort or act to induce any of Company's customers or employees to take any action which might be disadvantageous to the Company; provided, however, that nothing herein shall prohibit Employee from owning, as a passive investor, in the aggregate not more than 5% of the outstanding publicly traded stock of any corporation so engaged. Exhibit D, p. 4.

39. Section 3(b)(i) of the Agreement contains a reasonable non-solicitation covenant governing Defendant Crawford's activities following the cessation of his employment with Millennium, and is designed to protect the legitimate business interests of Millennium in safeguarding its goodwill, its relationships with customers, its strategies and methods of identifying and enrolling potential customers and its other confidential and proprietary information. The covenant lasts for a one (1) year period following Defendant Crawford's effective date of termination from Millennium. The covenant reads in relevant part:

Employee agrees that Employee will not directly or indirectly, solicit, accept, or service the business of any customers or potential customers with whom Employee worked or directly contacted during the eighteen (18) months preceding Employee's termination of employment with respect to products or services competitive with those offered by Company at the close of Employee's employment. Employee agrees that application of this covenant to certain of Company's business relationships instead of a geographical area is the most reasonable, and the narrowest, method of protecting the Company's legitimate business interests, Confidential Information, and goodwill.

Should Employee breach or violate this paragraph 3(b)(i) of the Agreement, the one (1) year period of Employee's obligations specified in this paragraph of the Agreement will be extended by the period of time for which Employee

was in breach or violation so that Company is provided with the benefit of the full one (1) year period. **Exhibit D, pp. 4-5** (emphasis added).

40. Section 2(h)(i) of the Agreement, entitled "*Future Employment*," provides in relevant part:

If Employee, in the future, seeks or is offered employment by any other company, firm, or person, Employee agrees to provide a copy of this Agreement to the prospective employer before accepting employment with that prospective employer **Exhibit D, p.3**.

41. Section 5(a) of the Agreement, entitled "*Acknowledgments of Employee*," provides in relevant part:

Employee acknowledge[s] and agree[s that] [e]ach and all of the covenants and restrictions contained in this Agreement are reasonable and valid and necessary for the protection of the legitimate business interests of Company, and any and all defenses to strict enforcement thereof by Company are irrevocably and unconditionally waived by Employee **Exhibit D, p.6**.

42. Section 6 of the Agreement, entitled "*Remedies*," provides in relevant part:

Without limiting the remedies available to Company, Employee acknowledges that monetary damages at law will be an insufficient remedy in view of the irreparable harm which will be suffered by Company if Employee should breach or violate, or threaten to breach or violate, any of the terms of this Agreement and, without limiting the relief available to Company, Employee hereby irrevocably agrees that Company may apply for and have temporary injunctive relief in any court of competent jurisdiction specifically to enforce any such terms upon breach or violation or threatened breach or violation thereof **Exhibit D, p.6**.

43. Section 17 of the Agreement, entitled "*Attorneys' Fees*," provides in relevant part:

In any legal proceeding brought by either party to enforce this Agreement, the prevailing party shall be entitled to be reimbursed for reasonable legal fees by the other party **Exhibit D, p.9.**

44. Millennium has incurred and will continue to incur significant legal fees and costs in order to pursue enforcement of the Agreement against Defendant Crawford and remedy the damages caused by his breach of his obligations.

Defendant Crawford Abruptly Resigned from Millennium and Breached His Agreement by Soliciting or Accepting the Business from Millennium Customers on Behalf of Paradigm Both While Employed By Millennium and After

45. Defendant Crawford voluntarily resigned his employment from Millennium abruptly on April 8, 2016, effective the same day.

46. When he resigned, Defendant Crawford indicated that he “was taking some time off” or words to that effect. He indicated that he was “getting out of the lab business.” He also said he was “probably going to work in cancer genetics” **Exhibit B, ¶ 21.**

47. Those representations to Millennium were false.

48. To the contrary, Defendant Crawford remained in the UDT industry, accepted competitive employment with Paradigm, and in fact, began performing services for and on behalf of Paradigm even while he was still employed and being compensated by Millennium.

49. Since he has resigned from Millennium, Defendant Crawford has either actively solicited or accepted the business of Millennium’s customers and potential customers, including customers and potential that he specifically serviced or called-upon as a representative of Millennium during the eighteen (18) months preceding his resignation. *See, e.g.,* **Exhibit B, ¶ 28.**

50. In the weeks that followed Defendant Crawford's resignation from Millennium, Millennium learned that some of its customers had transferred their business entirely to Defendant Crawford and/or Paradigm Exhibit B, ¶ 28.

51. Defendant Crawford has executed a sworn Affidavit, which was filed as an attachment to his Memorandum in Opposition to Plaintiff's Motion for Injunctive Relief and a copy of which is attached hereto as Exhibit E ("Exhibit E" or "Crawford Affidavit").

52. By his own admission, while he was still working for Millennium, Defendant Crawford told Millennium's customers that he intended to begin working for Paradigm, and he accepted their business on behalf of Paradigm. Exhibit E, ¶ 10. The Millennium customers whose business he accepted on behalf of Paradigm include at minimum Orthopaedic Associates in Spartanburg, SC, Pavilion International in Mill Spring, NC, and A New Crossroad: Addictionology Associates in Piedmont, SC. Exhibit E, ¶ 10. Those customer relationships have been irreparably damaged based on the conduct of Defendant Crawford and Paradigm.

53. Defendant Crawford discussed his departure from Millennium with Millennium's customers, and discussed accepting their business on behalf of Paradigm, prior to leaving employment with Millennium. In fact, while he was still employed and being compensated by Millennium, Defendant Crawford contacted Millennium's customers and had them sign a form acknowledging that they were voluntarily transferring their business from Millennium to Paradigm.

54. For example, Orthopaedic Associates, a former customer of Millennium serviced by Defendant Crawford on behalf of Millennium, executed a "Non-Solicitation

Acknowledgment” expressing that it “voluntarily chose to do business with Kyle Crawford and Paradigm, LLC” on April 8, 2016. Exhibit E, Ex. 1.

55. Upon information and belief, the “Non-Solicitation Acknowledgement” form signed by Orthopaedic Associates and other former Millennium customers is a form acknowledgment designed and developed by Defendant Crawford and other co-conspirators in concert with Paradigm while Crawford was still employed by Millennium. The form contains a blank space in which Defendant Crawford’s name is written by hand, whereas “Paradigm, LLC” appears as part of the typed text throughout the document. Exhibit E, Ex. 1.

56. Upon information and belief, the “Non-Solicitation Acknowledgement” form was prepared by Crawford and Paradigm and presented to certain Millennium customers while Defendant Crawford was still employed by Millennium. Defendant Crawford was still employed by Millennium on April 8, 2016, when Orthopaedic Associates executed the “Non-Solicitation Acknowledgement,” and in fact Defendant Crawford did not give his notice of resignation until that date.

57. Upon information and belief, Defendant Crawford discussed his anticipated departure from Millennium and his plans to join Paradigm and to transfer business from Millennium with Millennium customers in the days and weeks prior to his resignation from Millennium, while still a Millennium employee.

58. Defendant Crawford, by his own admission, took advantage of the fact that Millennium’s customers “knew [him] and were comfortable with [him]” as a result of his employment with Millennium when he solicited and/or accepted the business of Millennium customers on behalf of Paradigm. See Exhibit E, ¶ 10. In fact, the only

reason that those customers “knew” him and “were comfortable” with him was because of the resources that Millennium expended for Crawford to form those relationships. Crawford did not have any interaction with these customers prior to his employment with Millennium.

59. Millennium has formed a reasonably held, legitimate belief that other customer defections were attributable to him and, still others, are imminently likely since Defendant Crawford’s resignation Exhibit B, ¶ 36, 39, 40. Indeed, since this action was initially filed, Millennium has confirmed that a once profitable and well-regarded customer, Orthopaedic Associates has ceased doing business with Millennium and transferred its business to Defendant Crawford and Paradigm. See Exhibit E, ¶ 10.

Paradigm Tortiously Interfered with and Encouraged Defendant Crawford to Breach His Obligations, and Engaged in Other Unfair and Tortious Conduct

60. Paradigm is a relatively new, direct competitor to Millennium in the Upstate South Carolina Territory that reportedly offers UDT, OFT and PGT services to health care providers within some of the same geographic regions as Millennium, including areas of North Carolina, South Carolina, and Georgia.

61. Upon information and belief, Paradigm is owned and/or managed in part by Calobrisi.

62. While employed with Millennium, Calobrisi had contact and interactions with Crawford, who reported to Calobrisi during Calobrisi’s employment with Millennium. Calobrisi’s employment with Millennium ended in November 2015.

63. Paradigm and Calobrisi were aware of Defendant Crawford’s employment with Millennium. In addition, upon information and belief, Paradigm and Calobrisi were aware of the common law and contractual duties Defendant Crawford owed to

Millennium during and after his employment at Millennium.

64. Paradigm was aware of Defendant Crawford's legal duties and contractual obligations to Millennium at the time it developed the "Non-Solicitation Acknowledgement" form for Defendant Crawford to present to Millennium customers. Further, Paradigm and encouraged Defendant Crawford to solicit and/or accept the business of Millennium customers on behalf of Paradigm, some of them while he was still employed with Millennium.

65. Paradigm and Calobrisi's efforts with regard to Defendant Crawford are part of their unlawful scheme to poach Millennium's employees and build their new business improperly off of Millennium's efforts and expense. In addition to Defendant Crawford, Paradigm and/or Calobrisi have in recent months solicited and hired several other individuals who were formerly employed as sales employees with Millennium, including, at minimum, Chance Ingle ("Ingle"), Nick Wyatt, Jamie Hemingway ("Hemingway"), Land Ledbetter, Parker Kling, and Clinton Corder.

66. Upon information and belief, some of these individuals who were poached by Paradigm and/or Calobrisi have—with Paradigm's knowledge and assistance—conspired and assisted each other in subverting, and breaching, their post-employment obligations to Millennium and have attempted to personally capitalize on the customer and potential customer relationships they developed while employed with Millennium and at Millennium's expense.

67. Upon information and belief, to expedite their scheme of capitalizing on relationships developed by Millennium and at Millennium's expense, Paradigm and its agents/employees, including Defendant Crawford, have made intentionally false and

misleading statements to Millennium's customers and potential customers about Millennium's financial solvency, its stability in the market, and its involvement in a 2015 voluntary settlement of certain lawsuits, including upon information and belief, misrepresenting the legal ramifications of such voluntary settlement and falsely alleging that Millennium engaged in criminal activities.

68. Upon information and belief, in an effort to take business from Millennium, Paradigm and/or its agents have also falsely misrepresented to customers and potential customers that Paradigm is "in-network" with certain highly regarded and well-known insurance providers in the Carolinas when, in fact, this is not the case.

69. The aforementioned conduct has, and will continue to, negatively affect the public's interest as it prevents healthcare providers from making informed decisions about where to obtain critically important laboratory testing services.

Millennium's Attempts to Prevent Further Harm

70. In an effort to prevent further harm to its valuable customer base, Millennium sent Defendant Crawford a Cease and Desist Letter dated June 27, 2016, reminding Defendant Crawford of his obligations under the Agreement and demanding that he stop breaching the Agreement. A true and accurate copy of the June 27, 2016 Cease and Desist Letter is attached as Exhibit F.

Irreparable Harm and Other Damage

71. In the eighteen (18) months prior to his resignation of employment, Defendant Crawford was responsible for managing and was paid commissions on one hundred eighty-nine (189) Millennium customers. As alleged herein, and as outlined in Exhibits B and C, Millennium has likely lost valuable customers, and the financial revenue associated with those lost customers, to Defendants Crawford and Paradigm

because of their conduct. Other Millennium customers are likely dangerously close to succumbing to the unlawful solicitation techniques of Defendant Crawford and, if not unchecked, will leave Millennium as a result of this conduct. Exhibit B, ¶40. If Defendant Crawford is not enjoined from soliciting or accepting the business of Millennium's customers and if he is not judicially compelled to abide by all of the post-employment obligations contained in the Agreement, Millennium will be exposed to immediate, irreparable harm.

72. Defendant Crawford has acknowledged that if he breached the Agreement, "monetary damages at law will be an insufficient remedy in view of the irreparable harm which will be suffered by Company" Exhibit D, Section 6 p. 6. Defendant Crawford also agreed that due to his breach of the Agreement, Millennium is entitled to the issuance of an injunction restraining and enjoining him from committing or continuing any such breach. Id.

73. Additionally, false representations by Crawford and other agents of Paradigm who were former employees of Millennium have adversely impacted Millennium's relationships with its customers and caused it further irreparable harm.

FIRST CLAIM
(Breach of Contract – Defendant Crawford)

74. Millennium re-alleges the allegations of the foregoing paragraphs to this Verified Complaint and Motion for Preliminary Injunction.

75. The Agreement is a valid and binding contract, supported by sufficient consideration, as it was entered into as part of an initial offer of employment by and between Millennium and Defendant Crawford.

76. There was an offer, acceptance and meeting of the minds on all essential

terms of the Agreement.

77. The Agreement is clear and unambiguous. The Agreement is fair and reasonable and Defendant Crawford acknowledged as much when he signed it.

78. The Agreement does not violate any public policy recognized by the State of South Carolina.

79. The Agreement has not been superseded by any subsequent contract or otherwise negatively impacted by novation.

80. Defendant Crawford breached the Agreement including, but not limited to, the Non-Competition, Non-Solicitation, Non-Disclosure of Confidential Information and his Future Employment provisions and possibly other provisions of the Agreement that may be further shown through discovery.

81. Specifically, Defendant Crawford breached the Non-Competition covenant contained in Section 3(a) of the Agreement by engaging in and assisting an outside business, Paradigm, which directly competes with Millennium's urine testing services, and by seeking on behalf of Paradigm and in competition with Millennium's business to procure orders from or do business with certain Millennium customers, all while he was still employed with Millennium.

82. Defendant Crawford breached the Non-Solicitation covenant contained in Section 3(b) of the Agreement by soliciting, accepting, or servicing the business of Millennium customers Orthopaedic Associates in Spartanburg, SC, Pavilion International in Mill Spring, NC, and A New Crossroad: Addictionology Associates in Piedmont, SC, with whom Defendant Crawford frequently did business on behalf of Millennium during the eighteen (18) months preceding the resignation of his employment, with respect to

products or services offered by Paradigm and competitive with those offered by Millennium at the close of his employment. Upon information and belief, Defendant Crawford has also solicited, accepted or serviced the business of other Millennium customers and potential customers on behalf of Paradigm.

83. Defendant Crawford has breached his contractual obligation of Non-Disclosure by disclosing to third-parties, including Paradigm and/or other employees of Paradigm, Millennium's Confidential Information as defined in the Agreement which includes, but is not limited to: the identity of Millennium's customers and viable potential customers; the identity of the contact persons at Millennium's potential and existing customers who decide or have significant influence over the procurement of UDT, OFT and PGT services; the profitability of Millennium's customers; the UDT, OFT and PGT history of Millennium with customers; the particular idiosyncrasies of each customer and customer contact person, including their likes and dislikes regarding UDT, OFT and PGT; the Millennium reports showing customer specific revenue, volume, payor mix and ordering practices; Millennium's strategies and methods for identifying, targeting and enrolling potential customers and the identity of those potential customers; and other such information as may be shown through discovery.

84. Defendant Crawford further breached his contractual duties of loyalty and non-competition outlined in the Agreement by actively planning to join a competitive enterprise (Paradigm) and taking affirmative and substantive actions to do so while still an employee of Millennium. Such affirmative actions taken by Defendant Crawford include, but are not limited to: planning and working in concert with agents of Paradigm to orchestrate his defection from Millennium and the piracy of Millennium's customers;

participating in the design of the Non-Solicitation Forms and/or their presentation to Millennium customers; deliberately undermining and misrepresenting Millennium's financial solvency or its position in the marketplace; and misrepresenting the nature of Millennium's involvement in lawsuits and the terms and conditions under which Millennium resolved those lawsuits.

85. As a direct and proximate result of these breaches by Defendant Crawford, Millennium has been financially damaged and otherwise harmed.

SECOND CLAIM
(Breach of Duty of Loyalty – Defendant Crawford)

86. Millennium re-alleges the allegations of the foregoing paragraphs to this Verified Complaint.

87. Defendant Crawford was placed in a supervisory and management position of trust, high responsibility and confidence while employed with Millennium.

88. Defendant Crawford owed Millennium a duty of loyalty and fiduciary responsibility under the laws of the State of South Carolina.

89. While under a duty to serve Millennium, Defendant Crawford appropriated to his own use and to the use of Paradigm carefully developed business relationships and Confidential Information, inconsistent with and detrimental to Millennium.

90. Upon information and belief, Defendant Crawford breached his duty of loyalty and fiduciary responsibility to Millennium in, among other ways:

a. Actively planning for his defection, post-defection competitive employment, and solicitation of Millennium's customers while he was an employee of Millennium;

b. Spreading and disseminating misinformation about Millennium and/or its customers to discourage other Millennium employees (like Ms. Brown) from pursuing viable economic opportunities for the company;

c. Soliciting and/or accepting the business of Millennium customers on behalf of Paradigm, including having certain Millennium customers sign a “Non-Solicitation Acknowledgement” indicating their intention to move their business to Paradigm, while he was still employed with Millennium; and

d. Working in concert with other individuals or entities to accomplish or facilitate all of the foregoing.

91. As a direct and proximate result of Defendant Crawford’s breach of the duty of loyalty, Millennium has been financially and economically damaged and is entitled to recover compensatory damages.

THIRD CLAIM
(Tortious Interference with Contract–Paradigm)

92. Millennium re-alleges the allegations of the foregoing paragraphs to this Amended Verified Complaint.

93. Paradigm tortiously interfered with Millennium’s contractual employment relationship with Defendant Crawford.

94. Millennium had a contractual relationship with Defendant Crawford, as memorialized in the Agreement, which restricted him from: engaging in certain competitive activities while employed with Millennium; disclosing Confidential Information of Millennium both during and after his employment with Millennium; and soliciting or accepting the business of Millennium customers on behalf of himself or another entity for a period of one year following the termination of his employment

relationship with Millennium. **Exhibit D.**

95. Paradigm knew of the contractual obligations owed by Defendant Crawford to Millennium through the Agreement, including the restrictive covenants contained therein, when it helped facilitate his defection from Millennium and allowed and encouraged him to solicit and accept business from Millennium's customers.

96. Paradigm knew of the contractual obligations owed by Defendant Crawford to Millennium through the Agreement, including the restrictive covenants contained therein, when it provided (or designed in concert with him) Paradigm's "Non-Solicitation Authorization" documents to Defendant Crawford to present to Millennium's customers and request those customers to sign the documents for Defendant Crawford's and Paradigm's benefit. This activity occurred on at least one occasion while Defendant Crawford was still employed with Millennium.

97. Paradigm knew of the contractual obligations owed to Millennium by Defendant Crawford when it requested or accepted Millennium's Confidential Information from Defendant Crawford in order to use that information to gain an unfair competitive advantage.

98. Paradigm intentionally procured the breach of Defendant Crawford's contractual obligations to Millennium without justification.

99. Paradigm's conduct has proximately caused and will continue to cause financial and other damages to Millennium and other irreparable damage to Millennium's goodwill with its customer base.

FOURTH CLAIM
(Aiding and Abetting Breach of Duty of Loyalty – Paradigm)

100. Millennium re-alleges the allegations of the foregoing paragraphs to this

Amended Verified Complaint.

101. Defendant Crawford owed Millennium a contractual and common law duty of loyalty under the laws of the State of South Carolina.

102. Paradigm was aware of the employment relationship between Millennium and Defendant Crawford, and the duty of loyalty owed by Defendant Crawford to Millennium, when it allowed and encouraged Defendant Crawford to solicit and/or accept the business of Millennium customers on behalf of Paradigm while Defendant Crawford was still employed with Millennium.

103. Paradigm was aware of the employment relationship between Millennium and Defendant Crawford, and the duty of loyalty and fiduciary responsibility owed by Defendant Crawford to Millennium, when it provided Paradigm's "Non-Solicitation Authorization" documents to Defendant Crawford to present to Millennium's customers and ask those customers to complete the documents for Defendant Crawford's and Paradigm's benefit, on at least one occasion while Defendant Crawford was still employed with Millennium.

104. Paradigm intentionally procured the breach of Defendant Crawford's common law and contractual duties of loyalty to Millennium without justification.

105. Paradigm's conduct has proximately caused and will continue to cause financial and other damages to Millennium and other irreparable damage to Millennium's goodwill with its customer base.

FIFTH CLAIM

(Civil Conspiracy – Defendant Crawford and Paradigm)

106. Millennium re-alleges the allegations of the foregoing paragraphs to this Amended Verified Complaint.

107. Defendant Crawford and Paradigm, through its owners, officers, directors, managers, agents and employees, knowingly and willingly agreed and conspired between themselves, prior to Defendant Crawford becoming employed with Paradigm and while Defendant Crawford was still employed with Millennium, to perform the acts pleaded in this Amended Verified Complaint, and each Defendant adopted, approved and ratified the wrongful acts of the other.

108. Upon information and belief, Defendant Crawford and Paradigm, through its owners, officers, directors, managers, agents and employees, engaged in a deliberate course of conduct for the unlawful purpose of causing serious irreparable injury to Millennium's business by utilizing Defendant Crawford's existing relationships with Millennium customers to their own unfair competitive advantage, making representations to Millennium's customers designed to persuade them to cease doing business with Millennium and instead do business with Paradigm, and soliciting away and/or accepting the business of Millennium's customers, culminating in certain Millennium customers signing Paradigm's "Non-Solicitation Acknowledgment" prior to the termination of Defendant Crawford's employment with Millennium, all in violation of Defendant Crawford's fiduciary duty of loyalty to Millennium.

109. Upon information and belief, Defendant Crawford and Paradigm, through its owners, officers, directors, managers, agents and employees, engaged in a common plan to injure Millennium's business and secure said business for the benefit of Defendants Crawford and Paradigm.

110. By their collective actions, Defendant Crawford and Paradigm have caused greater harm to Millennium than either could have individually caused, resulting

in separate injury to Millennium which would not have occurred but for their concerted actions.

111. The improper conduct of Defendant Crawford and Paradigm has been the actual and proximate cause of Millennium's injuries.

112. These wrongful acts by Defendant Crawford and Paradigm have caused Millennium damages separate from and above the other actual damages alleged herein, and have cause and continue to cause irreparable harm to Millennium for which legal damages are insufficient.

SIXTH CLAIM
(Unjust Enrichment –Defendants Crawford and Paradigm)

113. Millennium re-alleges the allegations of the foregoing paragraphs to this Amended Verified Complaint.

114. Defendant Crawford has, both individually and in concert with Paradigm, through its owners, officers, directors, managers, agents and employees, engaged in an intentional and malicious pattern of behavior aimed to destroy or reduce Millennium's customer goodwill, and has solicited and/or accepted the business of Millennium customers on behalf of Paradigm in breach of his common law and contractual obligations to Millennium and under false pretenses.

115. Permitting Defendant Crawford and Paradigm to retain the benefit of these business relationships obtained in violation of his common law and contractual duties and without Millennium's authorization would be inequitable.

116. Defendants Crawford and Paradigm have been unjustly enriched and should pay restitution such that Millennium is returned to the status quo.

117. Defendant Crawford has further been unjustly enriched in the form of the

compensation and benefits provided to him during his employment, all of which was conditioned upon his agreement to honor the restrictive covenants set forth in the Agreement. Millennium is therefore entitled to recover the full amount of these payments from Defendant Crawford, in addition to the above-demanded restitution.

SEVENTH CLAIM

**(Unfair Trade Practices – Defendants Crawford and Paradigm - UTPA, S.C.
Code Ann. § 39-5-10, et al.)**

118. Millennium re-alleges the allegations of the foregoing paragraphs to this Amended Verified Complaint.

119. Upon information and belief, Paradigm has used or employed unfair methods of competition against Millennium as more fully described above, specifically including falsely representing to Millennium customers and the public that Paradigm is an in-network provider for one of the Carolinas most reputable, visible and highly regarded health insurance providers (the “Insurance Provider”) in an attempt to solicit the business of those customers away from Millennium.

120. This unfair method of competition affects the public interest, because it has caused patients of at least one former Millennium customer to be billed for out-of-network services despite Paradigm having represented to the customer that such services would be in-network for patients.

121. Furthermore, Defendants Crawford and Paradigm have used or employed unfair methods of competition against Millennium in the form of engaging in an intentional and malicious pattern of behavior aimed to destroy or reduce Millennium’s customer goodwill and soliciting and/or accepting the business of Millennium customers on behalf of Paradigm by misrepresenting Millennium’s legal and financial wellbeing

(including public and false statements about Millennium's voluntary civil settlement with the government).

122. These unfair methods of competition employed by Defendants Crawford and Paradigm against Millennium adversely affect the public and the public interest, because upon information and belief, Defendants have attempted to diminish Millennium's reputation and market share by making false and misleading statements regarding Millennium's participation in a voluntary civil settlement and the allegations involved in the lawsuits settled thereby.

123. Specifically, upon information and belief, Defendants Crawford and Paradigm have misrepresented the legal implications of such voluntary settlement to Millennium's customers, thereby negatively influencing the customers' perception or understanding of the effects and consequences of Millennium's voluntary settlement. To the extent that Millennium's customers relied on such misrepresentations and ceased doing business with Millennium as a result of the misrepresentations, the patients of those customers (who are members of the public) have had their medical laboratory service options limited and decision-making unfairly influenced by Defendants Crawford and Paradigm. This conduct is also reasonably likely to influence, chill or deter other members of the public and other businesses from voluntarily resolving disputes with the government for fear that doing so will be used against them by competitors who seek to cause them reputational damage.

124. Defendants Crawford and Paradigm have deliberately and knowingly communicated inaccurate, deceptive and misleading statements about the financial solvency and security of the Millennium, including false statements to the public that

Millennium is “going out of business” (or words to that effect) in order to gain an unfair competitive advantage in the marketplace.

125. The unfair and deceptive acts of Defendants Crawford and Paradigm have affected interstate and intrastate trade and commerce.

126. The unfair and deceptive acts of Defendants Crawford and Paradigm are likely to be repeated, in the absence of judicial intervention.

127. Defendant Crawford and the individual officers, owners and directors of Paradigm are individually and collectively responsible for the aforementioned unfair and deceptive acts and practices.

128. Defendant Crawford and the individual officers, owners and directors of Paradigm knew or should have known that they were willfully engaged in unfair and deceptive acts and practices when they committed the same, thereby entitling Millennium to treble damages pursuant to S.C. Code Ann. § 39-5-140.

129. As a direct and proximate result of the unfair and deceptive acts and practices and unfair methods of competition of Defendants Crawford and Paradigm, including its responsible owners, officers and directors, Millennium has been financially and economically damaged and is entitled to recover compensatory damages, treble damages and attorney’s fees pursuant to S.C. Code Ann. § 39-5-140(a).

EIGHTH CLAIM

(Demand for Preliminary and Permanent Injunction – SCRPC Rule 65.)

130. Millennium re-alleges the allegations of the foregoing paragraphs to this Amended Verified Complaint.

131. As outlined above, Defendant Crawford and Paradigm are actively

soliciting and accepting business of Millennium's customers and potential customers in knowing and willful violation of the contractual obligations owed to Millennium. With each day that passes, Millennium is in imminent danger of losing additional customers and potential customers to Defendants Crawford and Paradigm.

132. The tactics and methods that have been employed by Defendants and Crawford and Paradigm to gain an unfair competitive advantage have harmed Millennium and, if not stopped, are likely to further irreparably harm Millennium in the following ways: disclosure and unfair competitive use of Millennium's Confidential Information; disruption and disturbance of Millennium's relationships with its customers; loss of customers; loss of potential customers in which Millennium has invested time, financial resources and sweat equity to develop and cultivate; loss of customer confidence trust; loss of goodwill; loss of business reputation; damage to corporate stability and the enforcement of reasonable contracts; economic loss, including from loss of customers, which is unascertainable at the present time; and future economic loss, which is presently incalculable.

133. The list and identify of Millennium "customers" (as defined in the Agreement) which are subject to nonsolicitation was previously tendered to the Court subject to a Consent Protective Order.

134. Millennium can further identify the "potential customers" which are the subject of Defendants Crawford and Paradigm's solicitations and inducements. The following sources of proof, among others identified through discovery, will identify "potential customers" subject to nonsolicitation: (A) Defendant Crawford's expense reports, (B) Defendant Crawford's "Outlook" and appointment calendar(s) showing his

direct customer prospecting activity (i.e., coffees, lunches, office visits, educational presentations, etc.) and participation at industry meetings, trade shows and similar events, (C) Defendant Crawford's Millennium email account history showing his electronic communications with potential customers, (D) Defendant Crawford's electronic notes and documents authored by him which detail his prospecting activity and interactions with "potential customers", and (E) the testimony of Defendant Crawford's colleagues, and Defendant Crawford himself concerning the potential customers he called on for Millennium, using Millennium resources and at Millennium's expense during the eighteen (18) months prior to his resignation.

135. Granting injunctive relief and restraining Defendants Crawford and Paradigm from further breach of the material terms of the Agreement would in no way damage the public. Enforcement of the confidentiality, non-competition/non-solicitation covenants would not create in Millennium any monopoly in the medical laboratory testing industry.

136. Granting injunctive relief would further the public policy of South Carolina by respecting reasonable post-employment contractual obligations.

137. On the other hand, Defendant Crawford and Paradigm would be restricted for a limited period from directly or indirectly, soliciting, accepting, or servicing the business of any customers or potential customers with whom he worked or directly contacted during the eighteen (18) months preceding resignation from Millennium with respect to products or services competitive with those offered by Millennium at the close of Defendant Crawford's employment. Defendant Crawford's ability to earn a livelihood would not be jeopardized by the entry of a preliminary injunction. The Agreement

specifically provides Defendant the right to work for a company that competes with Millennium so long as he does not violate the terms of his Agreement with Millennium while doing so.

138. Millennium has demonstrated a reasonable likelihood of success on the merits of its breach-of-contract claim against Defendant Crawford based on the evidence proffered, as set forth above. The Agreement contains valid and enforceable restrictive covenants. The covenants are narrowly tailored and prohibit the solicitation of specifically identified and identifiable “customers” and “potential customers.” Millennium has a legitimate business interest in protecting those customers and potential customers from solicitation. Millennium has a legitimate business interest in protecting its confidential information, which is directly served and advanced by the reasonable restrictions on nonsolicitation. The Agreement is in writing, supported by consideration (*e.g.*, new employment and subsequent promotions), part of the “at will” employment relationship between the parties, and otherwise reasonable in scope and duration.

139. Millennium therefore seeks an Order immediately enjoining Defendants Crawford and Paradigm from:

(a) soliciting the business of any customers or potential customers with whom Defendant Crawford worked or directly contacted during the eighteen (18) months preceding resignation from Millennium with respect to products or services competitive with those offered by Millennium at the close of Defendant Crawford’s employment.

(b) accepting or servicing the business of any customers or potential customers with whom Defendant Crawford worked or directly contacted during the eighteen (18) months preceding resignation from Millennium with respect to products or

services competitive with those offered by Millennium at the close of Defendant Crawford's employment.

(c) using, disclosing, or transmitting for any purpose, except for transmission to Millennium, Millennium's Confidential Information; and

(d) destroying, erasing, or otherwise making unavailable for further proceedings in this matter, any records or documents (including data or information maintained in computer media) in defendant Crawford's possession, custody or control which were obtained from or contain information derived from any of Millennium's Confidential Information.

PRAYER FOR RELIEF

WHEREFORE, Millennium Health, LLC prays that the Court:

A. Treat this Amended Verified Complaint as a Motion for Preliminary Injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and enjoin Defendant Crawford and from further violation of the material terms of his contract with Millennium Health, LLC;

B. Permanently restrain and enjoin Defendant Crawford from further violations of the material terms of Defendant Crawford's contract with Millennium Health, LLC;

C. Permanently restrain and enjoin Defendants Crawford and Paradigm from further engaging in civil conspiracy to injure Millennium, and further engaging in unfair trade practices;

D. Permanently restrain and enjoin Paradigm from further tortious interference with the material terms of Defendant Crawford's contractual agreement with Millennium Health, LLC;

E. Enter judgment against Defendant Crawford and Paradigm for compensatory damages and treble damages allowed by law and statute;

F. Award Millennium Health, LLC pre and post-judgment interest as allowed by law;

G. Award Millennium Health, LLC its costs and reasonable attorney's fees as allowed by law and contract; and

H. Grant Millennium Health, LLC such further relief as the Court deems just and proper.

Dated this 13th day of September, 2016.

Respectfully Submitted,

WILLIAMS MULLEN

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LLC*


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STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

VERIFICATION

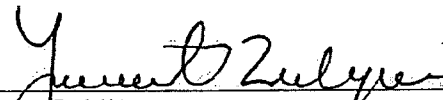
COMES NOW **Brian D. Fowler** being first duly sworn, deposes and says that he is the **General Counsel** of Millennium Health LLC and that he has read the foregoing **Amended Verified Complaint**, and knows the contents thereof; that the same are true of his knowledge as a representative of the corporation based on his understanding and review of corporate books and records; that as to those matters and things therein alleged to be true "upon information and belief," if any, he believes them to be true.

This, the 13th day of September, 2016.



Brian D. Fowler

Sworn to and subscribed before me this, the 13th day of September, 2016.



Notary Public
Printed Name: Jeanette L. Zuleger

My Commission expires:

April 20, 2017
(Notarial stamp or seal)

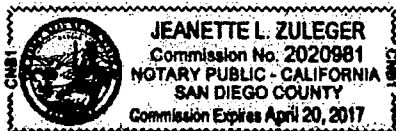


EXHIBIT A

Territory Manager II Job Description



JOB DESCRIPTION

PROFILE	
JOB TITLE	Territory Manager II
DEPARTMENT	Sales
REPORTS TO	Regional Manager
SUPERVISORY RESPONSIBILITY	Yes
EXEMPTION STATUS	Exempt
ADP JOB CODE	4010
DATE UPDATED	04.2014

GENERAL SUMMARY
This position is responsible for building sample volumes in the assigned territory through ongoing account management and development of new customer accounts.

ESSENTIAL FUNCTIONS
<p>The following are intended to be examples of the accountabilities for which the person in this position is responsible. This position is not intended to be complete or all-inclusive and does not preclude management from assigning other or related functions for which the individual has demonstrated competency through performance.</p> <ul style="list-style-type: none"> • Demonstrate strategic business acumen by providing examples of tracking sales progress and decline • Meet and exceed territory volume growth objectives by developing new accounts and increasing business in existing accounts • Deliver sales goals while respecting expense budgets • Utilize savvy business prospecting techniques, networking and other lead generation tools to establish new customers • Develop and manage strong sustainable relationships with customer base • Provide regular updates to Regional Manager on prospects, pipeline and monthly volume forecasts • Forge a strong partnership with the Customer Support Specialist for the territory and work as a team to achieve seamless interaction with customers from sign up to long term support and business growth • Attend local and national conferences and tradeshows as assigned, to represent Millenium's products and services, generate leads and interact with customers • Arrange and host peer-to-peer educational programs, providing physicians with a forum to learn about Millenium's services • Adhere to all HIPAA confidentiality requirements • Manage Laboratory Service Assistants following company policy • Additional duties as assigned ▪ Regular and reliable attendance • All essential functions are to be accomplished following all company policies and procedures and respect to the individual practice's needs

SECONDARY ACCOUNTABILITIES
Remains aware of evolving needs and opportunities, showing flexibility in doing whatever is appropriate to support the Company's success. Pursues educational opportunities to maintain advanced and up-to-date knowledge in the field. Performs all other related duties as required and assigned and understands that the items in this description are not all-inclusive.

Revised 9-2012

EXHIBIT B

First Affidavit of Natalie Brown

(and reacting accordingly). Mr. Crawford also served as an ambassador and representative of Millennium at local and national conferences and tradeshow to represent the company's products, generate leads and interact with customers.

7. From approximately January 2014 through his resignation from Millennium effective April 8, 2016, Mr. Crawford was responsible for managing more than two hundred Millennium customer accounts that were within the territory referred to as "Upstate South Carolina" by Millennium. The Upstate South Carolina territory also included customers located in western North Carolina. I have been informed that Mr. Crawford also managed customer accounts in Alabama, Georgia and Tennessee that were outside the Upstate South Carolina boundary lines, but were nonetheless under his supervision.

8. As an Account Manager II, my job was to work cooperatively with Mr. Crawford to fully support, service and maintain the Millennium customers that he helped originate. A strong partnership between an Account Manager and Territory Manager is essential. This partnership promotes seamless interaction with our mutual customers from the date the customer is signed-up in order to achieve long-term business growth with the customer. Open, consistent, honest communication and contact between Account Manager and Territory Manager is essential to effectively serve Millennium customers.

9. Once Mr. Crawford helped originate a customer, I assumed primary responsibility for regular customer service. My primary responsibilities included routine service calls, in-person meetings, lunches, informational and educational presentations, and addressing patient billing and insurance related questions, etc.

10. My in-person contacts and communications with Millennium customers helps develop trust and confidence between the customer and the company. Like most sales and service-driven businesses, one of Millennium's most valuable assets is the strength of relationships that are formed with its customers. Millennium provided Mr. Crawford the resources he needed to originate

those relationships. I, in turn, relied on Mr. Crawford to give me access to Millennium customers. Access to the customers provides the opportunity to maintain, strengthen and grow those customer relationships.

11. Mr. Crawford, as my direct supervisor, entirely controlled my access to the Millennium customers within his territory.

12. Mr. Crawford regularly encouraged and facilitated my access to certain Millennium customers that we mutually served. We worked in partnership to successfully grow those Millennium customer relationships.

13. However, there were a number of customers that Mr. Crawford seemed to exclude me from accessing, interacting with or contacting. For example, with respect to one such customer, Mr. Crawford told me not to make routine visits to drop of supplies, which was something I regularly did for all Millennium customers. I noticed a stark difference in the way he shielded me from these particular customers compared to the way he worked with me on other customer accounts.

14. The customers of Millennium that I noticed were being guarded by Mr. Crawford, and to which I was being excluded access, included:

- a. Pavillion Outpatient Services located in Greenville, South Carolina ("Pavillion Greenville");
- b. Orthopedic Associates, PA located in Spartanburg, South Carolina ("Orthopaedic Associates");
- c. A New Crossroad Addictionology Associates located in Piedmont, South Carolina ("A New Crossroad");
- d. Dr. Scott's Personalized Healthcare located in Piedmont, South Carolina ("Dr. Scott's").

15. Unfortunately, although I discussed the customer access issue with Mr. Crawford, he never gave me access. I knew that Mr. Crawford had a very good, friendly relationship with his

former direct supervisor, Chance Ingle. Frankly, I was concerned that if I continued to bring the issue up, Mr. Crawford would hold it against me and it might negatively impact my access to other customers that I depended on to perform.

16. Beginning in late 2015 (October – December), I noticed a decline in the quality and frequency of communications that I had with Mr. Crawford. Prior to that time, we regularly talked by phone (sometimes daily) and often met in person to communicate on our business development and customer service activities. Each of us needed to know what was going on with the Millennium customers we were supporting.

17. As 2016 progressed, Mr. Crawford became less communicative, less available and less responsive. I sensed something was different with him.

18. During early 2016, Mr. Crawford, spoke increasingly negatively about Millennium. He claimed he was upset about a recent senior management change.

19. Some of his other comments to me now seem like they were intentionally and strategically placed. For example, prior to resigning, Mr. Crawford randomly commented to me that Orthopaedic Associates (identified above) was likely going to pull its business from Millennium. He claimed that the customer was purchasing an expensive “LC-MS” laboratory machine that would allow it to process its entire urine drug testing (“UDT”) internally. I thought this comment was strange, because Orthopaedic Associates was a customer that Mr. Crawford had previously shielded from me. He had not talked much about the customer previously, unless it was to discourage me from making relationship calls. So, the comment about the LC-MS machine seemed out of place.

20. Mr. Crawford resigned abruptly, effective April 8, 2016.

21. Regarding his resignation, Mr. Crawford told me he had resigned and that he “*was taking some time off*” or words to that effect. I specifically remember him telling me that he was “*getting out of the lab business.*” He also said he was “*probably going to work in cancer genetics.*”

22. When he resigned, I focused on contacting all of the customers in Mr. Crawford's former territory and scheduling meetings. I was particularly focused on contacting the customers to which I had previously been denied access. I wanted to make those Millennium customers a priority.

23. I promptly arranged a meeting with Orthopaedic Associates after Mr. Crawford resigned. Orthopaedic Associates had previously been a valuable customer to Millennium, typically requesting a few hundred UDT's each month. I arranged a lunch meeting with one of the customer's decision-maker doctors that took place on April 28, 2016.

24. The doctor with whom I had lunch volunteered that he knew Mr. Crawford both through Millennium and outside of work, through church. The doctor casually told me that Mr. Crawford "*was venturing off to start a new lab business with a couple of his buddies.*" I was surprised to hear this, because Mr. Crawford told me just a few weeks earlier that he "*was getting out of the lab business*" altogether.

25. I asked this doctor about Mr. Crawford's prior statements to me that Orthopaedic Associates' was planning to purchase an LC-MS, machine and take their laboratory work in-house. He appeared surprised. He told me "*no,*" the practice had no plans to purchase that equipment. The doctor explained that the practice had explored that issue "*some time ago,*" but that the equipment was too expensive and not financially justified. This caused me to question whether Mr. Crawford had deliberately misled me with the information about the customer taking its lab work in-house, in order to discourage me from focusing on that relationship after he left the company. Given Mr. Crawford's close relationship with the doctor I met with, and his close relationship with the customer generally, it is reasonable for me to conclude that Mr. Crawford would have known the customer's ultimate decision *not* to purchase the LC-MS machine. Also, I had learned that he lied to me about "*getting out of the lab business.*" I naturally suspected Mr. Crawford might have misrepresented other information about his plans and work activities.

26. Unfortunately, that lunch meeting was the last meeting I was able to obtain with Orthopaedic Associates. Now, when I try to schedule business meetings with the customer, I am told that the doctors "*do not see a need for a lunch at this time.*" In my experience, it is highly unusual in for our customers/doctors to consistently decline lunch meetings.

27. Orthopaedic Associates was a customer that Mr. Crawford guarded from me while he was employed by Millennium. It was a good customer of Millennium immediately prior to Mr. Crawford's resignation. Since his resignation, the customer's volume has significantly decreased. Based on what I later learned about Mr. Crawford's contact with other Millennium customers (discussed below), it is logical and reasonable for me to conclude that Mr. Crawford is soliciting or accepting the business of Orthopaedic Associates. I believe Millennium is in immediate danger of losing this customer altogether.

28. I also promptly arranged a business meeting with Pavillion Greenville through its office manager. Her first name is Maria. Maria helped me schedule a lunch meeting with one of the doctors at Pavillion who is a decision-maker when it comes to choosing laboratory service providers. The lunch meeting and informational presentation occurred on or about May 3, 2016. The meeting was a success and I was received very positively. I felt good about growing the relationship. In fact, we went ahead and scheduled a second lunch so that I could meet with another Pavillion Greenville doctor. The next lunch meeting was scheduled for May 19, 2016.

29. Unfortunately, the second meeting with Pavillion Greenville never occurred. Before the meeting, I received an abrupt email from the customer telling me that Pavillion would no longer be using Millennium's services. The email, however, did not come from *Pavillion Greenville*; rather, it was sent to me from an employee of *Pavillion Mill Spring*. Pavillion Mill Spring is one of the customer's treatment facilities located in Mill Spring, North Carolina.

30. I personally had never worked with anyone at Pavillion Mill Spring. I knew, though, that Pavillion Mill Spring was a Millennium customer that had been managed previously by Mr. Crawford.

31. I thought it was very strange that someone from Pavillion Mill Spring would email me to terminate the customer relationship. To my knowledge, I had never given my email address to anyone at Pavillion Mill Spring. I responded to the email to try and obtain more information about why the customer was cancelling. The customer did not reply to my response.

32. Millennium had just lost a good customer. I was disappointed and confused in light of my positive lunch meeting with Pavillion Greenville on May 3. However, I immediately suspected Mr. Crawford was involved in this decision, give that I had learned he was still in the UDT business.

33. I next contacted the Pavillion Greenville office manager, Maria, to try and learn more about why the customer was ending a solid business relationship with Millennium. I explained that I was disappointed by the news and wondered what, if anything, I had done to disrupt the relationship. The office manager reluctantly confided in me that "the North Carolina [Mill Spring] office has made the decision to give the business to Kyle." She was referring to Mr. Crawford. The office manager went on to tell me that she wanted to me to know the real reason; she didn't want me to think that I had done anything wrong in my recent presentation in their office or in my handling of the customer's business.

34. Maria also told me that she had not given my contact information or email address to anyone Pavillion Mill Spring. Therefore, I immediately suspected Mr. Crawford had given my email address to his contact at pavilion Mill Spring. Based on what I now know, it is reasonable for me to conclude, and I believe that Mr. Crawford did, in fact, provide my email address to Pavillion Mill Spring in order to encourage that customer to stop doing business with Millennium.

35. Even though Millennium had lost Pavillion Greenville and Pavillion Mill Spring to Mr. Crawford, I continued to follow-up with Maria at Pavillion Greenville to maintain a good rapport. Several weeks after Pavillion cancelled with Millennium, Maria told me that Pavillion Greenville was using a lab company called "Paradigm" for all of its UDT.

36. To my knowledge, this was the first time I have ever heard of a UDT laboratory called "Paradigm" operating in my territory.

37. Later, on July 5, 2016, the nurse manager for Pavillion Mill Spring (named "Kaye") also admitted to me during a phone conversation that Pavillion was using Mr. Crawford for their UDT labs.

38. Most recently, I have been trying to grow the relationships with A New Crossroads and Dr. Scott's. Both practices are located in the same office building in Piedmont, South Carolina. These are two more customers of Millennium that Mr. Crawford guarded from me prior to his resignation by limiting my access and contact.

39. Since Mr. Crawford resigned, both A New Crossroads and Dr. Scott's suddenly and unexpectedly stopped sending specimens to Millennium for testing.

40. Based on what I know, it is logical and reasonable for me to conclude that Mr. Crawford is soliciting or accepting the business of these customers.

41. I sincerely and reasonably believe that all of the Millennium customers who were serviced by Mr. Crawford during the last eighteen (18) months of his employment with the company are in immediate jeopardy of being solicited by him. I have discussed the customers that have already been lost, some admittedly to Mr. Crawford. Others are in immediate danger of being lost. Losing these customers will negatively impact Millennium financially and, in turn, negatively impact me professionally.

42. I can provide additional information on the volume of business that Millennium has lost from customers Mr. Crawford previously serviced since he resigned on April 8, 2016.

43. I reserve the right to supplement this Affidavit.

This the 11th day of July, 2016.

Natalie Brown

Natalie Brown

STATE OF Texas

Tarrant COUNTY

I, Destiny Row a Notary Public do hereby certify that Natalie Brown appeared before me this day and acknowledged the due execution of the foregoing Affidavit.

WITNESS my hand and official seal, this the 11 day of July, 2016.

Destiny Row

NOTARY PUBLIC

My Commission Expires: 4/25/2020

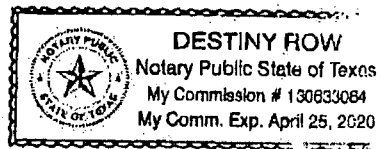


EXHIBIT C

Second Affidavit of Natalie Brown

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Millennium Health, LLC,

Plaintiff,

vs.

Kyle B. Crawford, and
Unidentified John Does

Defendants.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) CIVIL ACTION No.: 2016-CP-23-04218

) **SECOND AFFIDAVIT OF NATALIE**
) **BROWN**

I, Natalie R. Brown, being first duly sworn, hereby depose and say:

1. I am over 18 years of age, and I am competent to testify as to the matters herein.

2. The statements made by me in this affidavit are based upon my personal knowledge, except as to any statements made "upon information and belief." As to statements made "upon information and belief," I believe such statements to be true.

3. The statements made by me in this affidavit are intended to supplement and expand upon the statements made in a prior affidavit executed by me on July 11, 2016 (the "First Affidavit").

4. I am currently employed by Millennium Health, LLC ("Millennium") as Territory Manager I. I worked previously worked under the immediate supervision of Kyle Crawford ("Mr. Crawford"), who was most recently employed in the position of Territory Manager II prior to his leaving his employment with Millennium in April 2016.

5. I worked with Mr. Crawford within the territory referred to as "Upstate South Carolina" by Millennium. In my previous position as an Account Manager II, I worked with Mr. Crawford to fully support, service and maintain the Millennium customers that he helped originate. I have formed relationships with and gained extensive knowledge of the customers located in the Upstate South Carolina territory.

6. Through my employment with Millennium, I am familiar with the lawsuits which resulted in Millennium's settlement with the Department of Justice and agreement to enter a Corporate Integrity Agreement ("CIA"). I am generally familiar with the allegations that Millennium allegedly billed federal health care programs for medically unnecessary testing and provided free items to physicians in exchange for their laboratory testing business, as well as Millennium's denial of the allegations. I am aware that the CIA was reached as part of a voluntary settlement and was not the result of any determination of liability.

7. As an employee of Millennium employed in a customer-facing sales position throughout the pendency of the lawsuits and ultimate settlement, I am personally aware of the climate among customers and throughout the industry in reaction to the lawsuits and settlement, and am personally aware of how the litigation and settlement were received and discussed by customers, competitors, and other industry players.

8. During the pendency of the lawsuits and following Millennium's settlement of the allegations, I personally witnessed competitors of Millennium employ tactics which were clearly intended to use the litigation to their advantage and persuade Millennium customers to cease doing business with Millennium.

9. Specifically, I personally observed printed copies of news articles and other documents regarding the lawsuits and settlement placed in various locations at Millennium customers' offices, including posted on bulletin boards and even in employee break rooms. I reasonably believe that these items were placed at Millennium customers' offices by various competitors of Millennium within the Upstate South Carolina territory, including competitive laboratory Ameritox.

10. Of the customers whom I witnessed being subjected to these competitor tactics within the Upstate South Carolina territory, none was successfully persuaded to cease or reduce its business with Millennium. I personally witnessed Millennium customers dismissing these competitor tactics

by removing the items and even telling Millennium's competitors that they were not interested in the information.

11. On one occasion, I was informed directly by a Millennium customer, CSRA Pain Management, of an interaction between an Ameritox sales representative and the customer. The Ameritox representative had scheduled a lunch meeting at the customer's office. During the presentation, the representative offered a copy of an article regarding the Millennium lawsuits and settlement, along with statements regarding the allegations against Millennium. In response, the nurses attending the meeting immediately ended the meeting and expressed to the Ameritox representative that they were happy with Millennium and were not interested in hearing any more of the presentation. CSRA Pain Management remains an active customer of Millennium. On another occasion, I personally witnessed an interaction between an Ameritox representative and another customer, The Hatfield Clinic, when the Ameritox representative did not realize I was present. The representative arrived at the clinic and asked for a meeting, and was told by the receptionist that she would need to return another time. I was standing nearby and was within earshot of the exchange. While speaking with the receptionist, the Ameritox representative asked the receptionist if The Hatfield Clinic was aware that Millennium was involved in the lawsuits and was filing for bankruptcy. The receptionist responded that the clinic was well aware. I then introduced myself as the Millennium representative to the Ameritox representative, whom I had met previously, and offered to meet with her to provide her with accurate information regarding the lawsuits and settlement and avoid Ameritox misrepresenting facts to our customers. I never received follow-up from the Ameritox representative regarding the offer. The Hatfield Clinic remains an active customer of Millennium.

12. In my personal experience and observations, the competitors of Millennium who tried to tactically use misinformation and news of the lawsuits or the settlement to gain a competitive

advantage were not successful. To the contrary, in the encounters I observed and of those which I heard, their tactics actually backfired.

13. Other than the customers referenced in the First Affidavit as those that I know or reasonably believe to have terminated their relationship with Millennium in order to work with Mr. Crawford, I am aware of only one other Millennium customer within the Upstate South Carolina territory that has ceased to do business or reduced its business with Millennium during the pendency of the lawsuits or following the settlement and CIA. That customer, Southern Psychiatric Practice, left Millennium due to complaints about Mr. Crawford and allegedly false representations he had made to them about Millennium's billing practices. Millennium is actively in the process of soliciting new work from and repairing the relationship with Southern Psychiatric Practice that was damaged by Mr. Crawford.

14. I am not aware of any other Millennium customer in the Upstate South Carolina territory leaving Millennium or reducing its business with Millennium as a result of the lawsuits or otherwise since the settlement. Millennium continues to actively do business with customers within the Upstate South Carolina territory Millennium's ability to sustain and grow its sales volume and customer base in Upstate South Carolina is absolute proof of the goodwill between Millennium and its customers and prospects.

15. In fact, the number of accounts and volume of business in the Upstate South Carolina territory is largely the same as it was before the settlement of the lawsuits was announced.

16. All three of the Millennium customers which I know or believe are now doing business with Mr. Crawford—Pavilion International Mill Spring, A New Crossroad: Addictionology Associates, and Orthopaedic Associates, PA (this customer is still doing some business with Millennium)—were customers with whom Mr. Crawford would not allow me to have any significant or direct contact. Millennium's Territory Managers are expected to allow Account Managers to service all accounts, and this is how most territories operate. Mr. Crawford's insistence on excluding

me from certain accounts strengthened his relationships and goodwill with those accounts, to the detriment of Millennium, since those customers did not form any relationship with me or any other Millennium representative other than Mr. Crawford.

17. Based on my personal observation of Millennium customers dismissing competitors' attempts to use the lawsuits and settlement to solicit their business away from Millennium, and the fact that I am aware of no Millennium customer within the Upstate South Carolina territory ceasing its business with Millennium other than Southern Psychiatric Practice and those which I know or believe to have left to do business with Mr. Crawford, I sincerely and reasonably believe that it is Mr. Crawford's existing relationships with Millennium customers gained through his employment with Millennium, and not the lawsuits or settlement, which have caused certain Millennium customers to leave Millennium.

18. Mr. Crawford's willingness to utilize these existing customer relationships, which he formed and grew through Millennium's resources, to unfairly compete with Millennium will continue to jeopardize Millennium's relationships with other customers previously serviced by Mr. Crawford.

19. I reserve the right to supplement this Affidavit.

[SIGNATURE PAGE FOLLOWS]

This the 31st day of July, 2016.

Natalie Brown

Natalie Brown

STATE OF SOUTH CAROLINA

LEXINGTON COUNTY

I, BROOKE E. ANGELL, a Notary Public do hereby certify that Natalie Brown appeared before me this day and acknowledged the due execution of the foregoing Affidavit.

WITNESS my hand and official seal, this the 31st day of July, 2016.

BROOKE E ANGELL
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 10-28-2021

Brooke E. Angell

NOTARY PUBLIC

My Commission Expires: _____

ELECTRONICALLY FILED - 2016 Sep 13 4:33 PM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304218

EXHIBIT D

Agreement Regarding Confidentiality, Nondisclosure and Noncompetition

**AGREEMENT REGARDING CONFIDENTIALITY,
NON-DISCLOSURE AND NON-COMPETITION**

This Agreement Regarding Confidentiality, Non-Disclosure and Non-Competition ("Agreement") is made this 10 day of October, 2011, between Kyle Crawford (referred to as "Employee") and Millennium Laboratories, Inc., a California corporation located at 16981 Via Tazon, Suite F, San Diego, California 92127 (referred to as "Company"). Upon execution of this Agreement, Company agrees to disclose to Employee confidential information and trade secrets to which Employee did not previously have access. This information is vital to Company's continued ability to compete in the industry and thus is critical to its continued profitability. Company only agrees to disclose this information to Employee in reliance on Employee's promise not to use or disclose it as set forth below.

RECITALS:

A. **WHEREAS**, Employee is an employee of Company;

B. **WHEREAS**, Employee's employment by Company creates in Employee a duty of trust and confidentiality to Company with respect to information that is confidential, proprietary and/or not generally available to the public;

C. **WHEREAS**, in the course of fulfilling Employee's duties for Company, Employee works directly with Company's customers through personal visits, telephone conversations, e-mail and other means of communication;

D. **WHEREAS**, Company agrees to disclose to Employee confidential information and trade secrets to which Employee did not previously have access, including, without limitation, unique technical and non-technical information developed or used in connection with the business of Company; information concerning the concepts and ideas behind the current, future and proposed products and processes of Company, including, but not limited to, research, design details and specifications, inventions, formulae, diagrams, software, flow charts, unique data, and methods of doing business; and marketing, customer, vendor, financial, and employee information related to Company including, but not limited to, marketing techniques and materials, product or service development plans, business forecasts, price lists, profit information, margin information, bank account records, financial statements, ledgers, deposits, receipts, product information, inventory, customer lists, names and addresses of customers, and any information and records concerning customers or other third parties which are unique to Company (collectively, the "Confidential Information"). The term "Confidential Information" shall also include trade secret information concerning any formula, pattern, device or compilation of information which is used in Company's business and presents an opportunity to obtain an advantage over Company's competitors who do not know or use the secret information. The term "Confidential Information" shall not include information which: (a) is or becomes generally available to the public through no violation of this Agreement; (b) was available to Employee on a non-confidential basis prior to and apart from Employee's relationship with Company; or (c) became or becomes available to Employee on a non-confidential basis from a third party lawfully in possession thereof without any obligation of confidentiality, provided the availability of the information is not based, to any extent or degree, upon Employee's relationship with Company.

NOW THEREFORE, in consideration of Employee's employment with Company and in consideration of Company's agreement to disclose Confidential Information to Employee, Company and Employee (collectively the "Parties") agree as follows:

1. At-Will Employment:

This Agreement does not confer upon Employee any right to continue in the employment of Company, nor does it affect in any way Company's right to terminate Employee's employment at any time, with or without cause. Employee acknowledges that Employee's employment is "at-will" which means that either Company or Employee may terminate Employee's employment at any time, with or without notice and with or without cause. Nothing herein shall be interpreted to alter Company's at-will employment policy.

2. Confidential Information:

- a. Non-Disclosure. Employee shall keep in strictest confidence and trust all Confidential Information, and Employee shall not directly or indirectly reveal, report, publish, transfer, disclose, use, access, or sell any Confidential Information, either during Employee's employment or thereafter, or assist in any of the aforementioned actions, except as may be necessary in the ordinary course of properly performing Employee's duties for Company.
- b. Unfair Competition. Employee acknowledges that the unauthorized revelation, reporting, publishing, transfer, sale, use, access, or disclosure of Confidential Information is unfair competition. Employee agrees not to engage at any time in unfair competition with Company.
- c. Inadvertent Disclosure. Employee shall promptly advise Company of any knowledge of any unauthorized release or use of Confidential Information and shall take reasonable measures to prevent unauthorized persons or entities from having access to, obtaining, or being furnished with any Confidential Information.
- d. Third-Party Confidential Information. Company has received and in the future will receive from third parties their confidential or proprietary information, subject to Company's duty to maintain the confidentiality of such information and to use it only for certain limited purposes. Employee owes Company and such third parties a duty to hold all such confidential or proprietary information in the strictest confidence, and shall not disclose, use, access, or assist in the access, use or disclosure of any such confidential or proprietary information, except as may be necessary in the ordinary course of properly performing Employee's duties as an employee of Company.
- e. Judicial Process. If Employee becomes legally compelled to disclose any Confidential Information in accordance with the requirement of any valid and legally binding statute, regulation, court order, subpoena or document discovery request, Employee shall immediately provide Company with

written notice thereof so that Company may seek a protective order or other remedy and/or waive compliance by Employee with this Agreement. If such protective order or other remedy is not sought within fifteen (15) days following the receipt by Company of any such written notice, or if Company waives compliance by Employee with this Agreement, any such waiver to be effective only if it is in writing. Employee shall thereafter be permitted to disclose only that portion of Confidential Information which Employee is advised, by written opinion of Company's legal counsel, as being legally required to be disclosed, and Employee shall use reasonable efforts to obtain reliable assurances that confidential treatment will be given to Confidential Information so disclosed.

- f. No Prior Disclosure. Employee hereby represents and warrants that Employee has not previously disclosed or used any Confidential Information except as was necessary in the ordinary course of properly performing Employee's duties for Company.
- g. Identification Of Confidential Information. The Parties agree that "Confidential Information" shall include not only information encompassed in the definition in Recital D above, but also information that is marked using a legend such as "confidential" or "proprietary" or if not so marked, is reasonably understood by Employee from the context of disclosure or from the information itself, to be confidential. Information which is disclosed orally or visually falling within the scope of the information described in Recital D is deemed Confidential Information. Any issue as to the confidentiality expectations of Company regarding particular information shall be submitted to Company for determination.
- h. Confidential Information Of Prior Employers. Employee agrees not to disclose to Company and not to use in any way in connection with Employee's employment therewith any confidential information or trade secrets of any kind, or any embodiments thereof, that Employee obtained as a result of employment with any previous employer. Employee hereby represents that Employee does not possess any documents or things embodying trade secrets or confidential information of any former employer, and acknowledges that this representation is a material term of this Agreement. Specifically, and without limitation, Employee agrees to use only Employee's general knowledge, experience, and skill in connection with Employee's employment with Company and acknowledges that this is the purpose for which Employee has been hired by Company.
- i. Future Employment. If Employee, in the future, seeks or is offered employment by any other company, firm, or person, Employee agrees to provide a copy of this Agreement to the prospective employer before accepting employment with that prospective employer.

3. Non-Solicitation And Non-Competition:

a. During Employment: During Employee's employment with Company, Employee will not directly or indirectly: (a) engage in a business that competes, directly or indirectly, with any of Company's products or services; (b) be or become a stockholder, partner, owner, officer, director, employee or agent of, or a consultant to, or give financial or other assistance to, any person or entity engaged in or considering engaging in any such business; (c) seek in competition with Company's business to procure orders from or do business with any Company customer; (d) solicit, or contact with a view to the engagement or employment of, any person who is a Company employee; (e) seek to contract or engage (in such a way as to adversely affect or interfere with Company's business) any person or entity who has been contracted with or engaged to deliver goods, materials or services to Company; or (f) engage in or participate in any effort or act to induce any of Company's customers or employees to take any action which might be disadvantageous to Company; provided, however, that nothing herein shall prohibit Employee from owning, as a passive investor, in the aggregate not more than 5% of the outstanding publicly traded stock of any corporation so engaged.

b. After Termination Of Employment Relationship. To protect the legitimate interests of Company in, among other things, protecting its Confidential Information, employment relationships, relationships with Company customers and goodwill, and in consideration for, among other things as provided in this Agreement, Company's promise to give Employee certain Confidential Information, some of which constitutes trade secrets of Company, which Employee did not previously have and to enforce Employee's promise not to disclose such Confidential Information, Employee hereby agrees to be legally bound to the following restrictive covenants, which Employee acknowledges and agrees are reasonably necessary and narrowly tailored to protect Company's legitimate business interests:

(i) Non-Solicitation; Non-Competition:

IN GEORGIA, NEBRASKA, OKLAHOMA AND WISCONSIN ONLY: Employee and Company agree that during the period of time, if any, Employee is principally employed in the States of GEORGIA, NEBRASKA, OKLAHOMA, or WISCONSIN this subsection paragraph 3(b)(i) will not be considered part of this Agreement and will be replaced in its entirety by Exhibit A to this Agreement, which is incorporated by reference. Employee understands and acknowledges that the use of Exhibit A is necessitated by the requirements and peculiarities of the laws of these states. Exhibit A will only apply if it is attached hereto and signed by both Company and Employee.

IN LOUISIANA ONLY: Employee and Company agree that during the period of time, if any, Employee is principally employed in the State of LOUISIANA, this subsection paragraph 3(b)(i) will only be effective in the parishes and/or counties listed in Exhibit B to this Agreement, which is

incorporated by reference, for so long as Company continues to carry on or engage in Company's business in such parish and/or county. Employee understands and acknowledges that the use of Exhibit B is necessitated by the requirements and peculiarities of the laws of the State of Louisiana. Exhibit B will only apply if it is attached hereto and signed by both Company and Employee.

IN ALL OTHER STATES: Employee agrees that Employee will not, directly or indirectly, solicit, accept, or service the business of any customers or potential customers with whom Employee worked or directly contacted during the eighteen (18) months preceding Employee's termination of employment with respect to products or services competitive with those offered by Company at the close of Employee's employment. Employee agrees that this restriction will last for one (1) year from the effective date of Employee's termination from Company. Employee agrees that application of this covenant to certain of Company's business relationships instead of a geographical area is the most reasonable, and the narrowest, method of protecting Company's legitimate business interests, Confidential Information, and goodwill.

Should Employee breach or violate this paragraph 3(b)(i) of this Agreement, the one (1) year period of Employee's obligations specified in this paragraph of this Agreement will be extended by the period of time for which Employee was in breach or violation so that Company is provided with the benefit of the full one (1) year period.

Though Company has made its best efforts to create a restriction as narrow as possible, Employee understands and agrees that one of the purposes of this Agreement is to protect the information described above. Under any and all circumstances, Employee's use of Company's Confidential Information to compete against Company is prohibited by this Agreement, and Employee agrees with that prohibition.

(ii) Ability To Work For A Competing Business:

This covenant does not prohibit Employee from being employed by a business that competes with Company after the termination of the employment relationship with Company so long as Employee does so within the parameters of the preceding paragraph and without using or disclosing any of Company's Confidential Information. Employee understands and agrees that this restrictive covenant is designed, among other things, to enforce Employee's promise not to disclose Confidential Information. Accordingly, Employee agrees that this restrictive covenant protects Company's legitimate business interests and that the restrictions in this covenant are reasonable.

(iii) Non-Solicitation Of Employees:

Employee agrees that Employee will not, directly or indirectly, solicit, induce, or attempt to induce any other employee of Company who worked for Company during the eighteen (18) months preceding Employee's termination of employment, to leave Company's employ to work for a competitor of Company in the same or similar capacity as the employee worked for Company during the eighteen (18) months preceding Employee's termination of employment. Employee agrees that this restriction will last for one (1) year from the effective date of Employee's termination from Company.

4. No Further Rights Or Duties Implied:

Nothing contained herein shall grant a license, assignment, or conveyance under any patent, trademark, copyright, or other intellectual property right. All Confidential Information will remain the exclusive property of Company, and Employee will have no rights, by license or otherwise, to use Confidential Information except as expressly provided herein.

5. Acknowledgments Of Employee:

The covenants in this Agreement are given by Employee acknowledging and agreeing as follows:

- a. Each and all of the covenants and restrictions contained in this Agreement are reasonable and valid and necessary for the protection of the legitimate business interests of Company, and any and all defenses to the strict enforcement thereof by Company are hereby irrevocably and unconditionally waived by Employee.
- b. The covenants contained in this Agreement are essential elements to Employee's continued employment with Company; but for the agreement of Employee to give such covenants and to abide by the respective terms thereof, Company would have terminated Employee.

6. Remedies:

Without limiting the remedies available to Company, Employee acknowledges that monetary damages at law will be an insufficient remedy in view of the irreparable harm which will be suffered by Company if Employee should breach or violate, or threaten to breach or violate, any of the terms of this Agreement and, without limiting the relief available to Company, Employee hereby irrevocably agrees that Company may apply for and have temporary injunctive and other equitable relief in any court of competent jurisdiction specifically to enforce any such terms upon the breach or violation or threatened breach or violation thereof. Furthermore, Company shall have the right to terminate Employee immediately upon any breach by Employee of this Agreement. Nothing in this paragraph shall be interpreted to limit Company's right to terminate Employee.

7. No Construction Against Drafter:

This Agreement, or any portion of it, shall not be construed against the party who drafted it.

8. Independent Judgment:

The Parties declare and represent that in making this Agreement, it is understood and agreed that each has read it carefully, knows the contents and has signed as a free, reasoned and independent act. Each relies wholly upon his, her or its own judgment, belief and knowledge and has not been influenced to any extent whatsoever in entering this Agreement by any representations or statements made by any other party or by any person or persons representing any other party.

9. Signatures:

This Agreement may be executed and delivered in separate counterparts, each of which, when all are so executed and delivered, shall be deemed an original and together shall constitute a single instrument.

10. Severability, Reformation, No Defense And Effective Of Termination:

The invalidity or unenforceability of any part, term, portion or provision of this Agreement will in no way affect the validity or enforceability of any other part, term, portion or provision. In the event that any part, term, portion or provision of this Agreement is held to be invalid or unenforceable, Company and Employee agree that the remaining parts, terms, portions or provisions will be deemed in full force and effect as if they had been executed by both Company and Employee subsequent to the expungement of the invalid or unenforceable part, term, portion or provision.

It is Company's intention to restrict Employee's activities only to the extent necessary for the protection of the legitimate business interests of Company, and both Company and Employee specifically agree that should any of the parts, terms, portions or provisions set forth in this Agreement under any set of circumstances not now foreseen by either Company or Employee be deemed too broad for that purpose, said parts, terms, portions or provisions will nevertheless be reformed by the court and will be valid and enforceable to the fullest extent permitted by law.

The restrictions, covenants and agreements contained in this Agreement will each be construed as independent of any other part, term, portion or provision contained in this Agreement, and the existence of any claim or cause of action by Employee against Company, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by Company of such restrictions, covenants and agreements.

Company and Employee further agree that this Agreement will remain in full force and effect regardless of whether Company or Employee terminates the employment relationship, and regardless of whether such termination was with or without cause.

11. Headings:

The headings of paragraphs in this Agreement are for convenience only. The headings form no part of this Agreement and shall not affect its interpretation.

12. Entire Agreement:

This Agreement supersedes any other agreement respecting confidentiality between the Parties, either oral or written, and contains the entire agreement between the Parties with regard to the confidentiality of information supplied by Company to Employee. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, any attorney for any party, or anyone acting on behalf of any party, which are not contained herein. This Agreement is the full and final agreement between the Parties. Any modification to this Agreement shall not bind the Parties unless set forth in writing and executed by all the Parties.

13. Right To Inform:

Without limiting Company's rights, Company is expressly granted permission to disclose to third parties, such as customers, and competitors, the fact that Employee has agreed to the terms of this Agreement.

14. Waiver:

No right or remedy given to Company on the breach of any provision of this Agreement is intended by the Parties to be exclusive; each shall be cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. No failure by Company to exercise, and no delay in exercising, any right shall operate as a waiver of that right, nor shall any single or partial exercise of any right, power, or privilege preclude Company from any other or further exercise of a right, power, or privilege granted by this Agreement or otherwise. No waiver by Company of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by Company. No waiver by Company of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver by Company constitute a continuing waiver unless the writing signed by Company so specifies.

15. Choice Of Law:

This Agreement will be governed exclusively by, and be construed and enforced in accordance with, the laws of the state where Employee was principally employed on the date of Employee's termination, without regard to conflicts of law principles. Company and Employee agree that they will not contest and hereby waive any challenge to the choice of law provision in this paragraph to any dispute or claim arising from or related to this Agreement.

16. Venue:

Employee and Company agree that any legal proceedings arising under or related to this Agreement will be filed and resolved solely and exclusively in the county, municipality or parish where Employee was principally employed on the date of Employee's termination. Company and Employee agree that they will not contest and hereby waive any challenge to the exclusive venue provision in this paragraph to any dispute or claim arising under or related to this Agreement.

17. Attorneys' Fees:

In any legal proceeding brought by either party to enforce this Agreement, the prevailing party shall be entitled to be reimbursed for reasonable legal fees by the other party.

18. Return Of Confidential Information:

Within two (2) days after any written request by Company, Employee shall promptly return all copies of Confidential Information, without retention of any copies thereof.

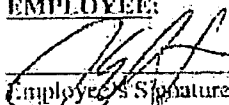
19. Cumulative Obligations:

This Agreement shall not be construed to limit or restrict any obligations imposed upon Employee by the laws pertaining to privacy, trade secrets, and the like.

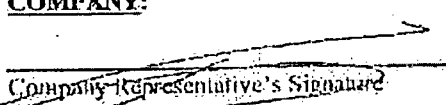
I HAVE READ THE TERMS LISTED ABOVE AND ACKNOWLEDGE MY UNDERSTANDING OF AND AGREEMENT WITH THOSE TERMS, AS EVIDENCED BY MY SIGNATURE BELOW.

EMPLOYEE:

COMPANY:



Employee's Signature



Company Representative's Signature

Kyle Crawford

Employee's Printed Name

Howard Appol

President

10/6/16

Date

Date

16. Venue:

Employee and Company agree that any legal proceedings arising under or related to this Agreement will be filed and resolved solely and exclusively in the county, municipality or parish where Employee was principally employed on the date of Employee's termination. Company and Employee agree that they will not contest and hereby waive any challenge to the exclusive venue provision in this paragraph to any dispute or claim arising under or related to this Agreement.

17. Attorneys' Fees:

In any legal proceeding brought by either party to enforce this Agreement, the prevailing party shall be entitled to be reimbursed for reasonable legal fees by the other party.

18. Return Of Confidential Information:

Within two (2) days after any written request by Company, Employee shall promptly return all copies of Confidential Information, without retention of any copies thereof.

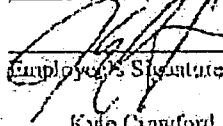
19. Cumulative Obligations:

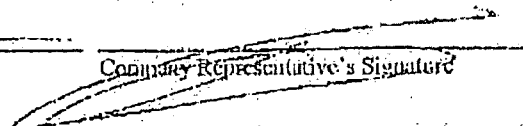
This Agreement shall not be construed to limit or restrict any obligations imposed upon Employee by the laws pertaining to privacy, trade secrets, and the like.

I HAVE READ THE TERMS LISTED ABOVE AND ACKNOWLEDGE MY UNDERSTANDING OF AND AGREEMENT WITH THOSE TERMS, AS EVIDENCED BY MY SIGNATURE BELOW.

EMPLOYEE:

COMPANY:





Kyle Crawford
Employee's Printed Name

Howard Appel

President

10/6/11
Date

10/06/11
Date

EXHIBIT E

Affidavit of Defendant Kyle Crawford

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Millennium Health, LLC,)
)
Plaintiff,)
)
v.)
)
Kyle Crawford, and Unidentified John)
Does,)
)
Defendants.)
)

COURT OF COMMON PLEAS
Civil Action No. 2016-CP-23-04218

AFFIDAVIT OF KYLE CRAWFORD

1. I am at least eighteen years of age and fully competent to testify to the matters stated within this affidavit. This affidavit is based upon my personal knowledge.
2. I am employed in sales at Paradigm, LLC ("Paradigm"). My primary focus at Paradigm is establishing our cancer genetics and blood testing lab services, although until recently I was also involved in urine drug testing. Paradigm offers medical services for hospitals and doctors' offices in three key areas: blood testing, urine testing, and cancer genetics.
3. After several years as a salesman for other companies and products, I joined Millennium Health, LLC ("Millennium") in 2011 as a customer support specialist for the territory of Tennessee. Later, in 2012, I moved to upstate South Carolina to serve as a Sales Specialist. I was later promoted to Senior Sales Specialist in 2013.
4. In 2011, I signed the Agreement Regarding Confidentiality, Non-Disclosure, and Non-Competition with Millennium. However, in March of 2013, I recall signing a new non-compete agreement with Millennium, as did a great many other employees at that time. This agreement was not supported by any consideration and would therefore be unenforceable.

However, I was not given a copy of this 2013 agreement, and Millennium claims that either I did not sign the agreement or that it cannot find this agreement.

6. From 2011 to April 2016—when I resigned my employment with Millennium—I managed a number of accounts for Millennium. Within the last year of my employment, I typically managed approximately forty to fifty active accounts at a time. Contrary to insinuations of my nefarious intentions that Natalie Brown has included in her affidavit, I did not shield her from accessing certain customers with the intent of stealing them away when I left. As Ms. Brown well knows, customers simply interact well with certain people better than others, generally for reasons no more complicated than how personalities mesh between a customer and a particular salesperson. I had several customers that were more comfortable with me than they were with other Millennium employees, and so I handled these customers personally. Ms. Brown also serviced certain customers that she was the primary support specialist on, simply because the customer preferred working with Ms. Brown. I never “excluded” Ms. Brown from any customers.

7. My ultimate decision to leave Millennium’s employ was based on several factors, the most serious of which concerned Millennium’s fraudulent and illegal corporate practices that came to light in the fall of 2015 that resulted in Millennium entering into a Corporate Integrity Agreement (“CIA”) with the Department of Health and Human Services Office of the Inspector General in October 2015, as well as paying a \$256 million fine to the federal government. In addition to ordering excessive, non-patient specific tests and thereby defrauding Medicare and Medicaid, Millennium obtained business through illegal kickbacks (i.e., offering “free” sample cups to doctor’s offices on the condition that all specimens be sent to Millennium for testing). Millennium’s actions resulted in an increased level of distrust between my customers and

Millennium, of which I was the face and representative. I faced questions every single day from customers and prospective customers after the CIA was signed. Not only was the credibility and goodwill of Millennium deeply damaged by Millennium's own actions, I found that my own credibility with customers and potential customers was being undermined by the fallout of Millennium's fraudulent activity. These company policies were later determined by the Department of Justice to be fraudulent, and they occurred in accounts that I serviced and which Millennium is now trying to shield from moving their business to Paradigm. This included Millennium's direction to its employees that we distribute "free" sample cups to prospective customers, which was one of the practices that caused Millennium so much trouble later. Ultimately, competitors of Millennium used these developments to their advantage by dropping off newspaper articles at our customers' offices about Millennium's activities, along with their business card and the implicit promise that they didn't defraud their customers.

8. We were provided with talking points from Millennium's legal department and senior management to use in defending Millennium from these charges, which meant I began spending more time defending the company than making sales on its behalf. I also caught heat from my customers and potential customers because of a new billing practice that Millennium put in place that resulted in many of my customers' patients being sent collection notices for certain tests. Millennium did not bother informing me of these changes, so I had to deal with the fallout directly with my now-angry customers. These developments with Millennium resulted in the loss of several of my customers in the last few months of my employment. The idea that any of my alleged actions could have damaged the goodwill of Millennium or the trust that it had with its customers more than Millennium's own shortsighted and illegal actions already had is simply not true. I cannot damage those relationships if Millennium has already destroyed them.

9. Not only was my reputation being damaged by Millennium's practices, but I was also dealing with drastic cuts in my pay and elimination of my car allowance. By the beginning of April 2016, I was facing the reality that Millennium was cutting my commission nearly in half, which was a significant financial loss for me. I am the sole breadwinner in my family, as my wife stays at home to take care of our two young daughters, and with the impending birth of our third child rapidly approaching, I could not afford to have my compensation unilaterally cut in half by Millennium so that it could pay the fines for its own poor business decisions. Millennium's decision to file for chapter 11 bankruptcy protection certainly didn't help my confidence in the direction or future stability of the company.

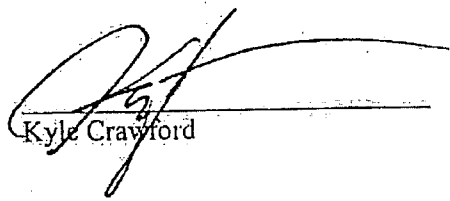
10. After I made my decision to leave Millennium, I did not solicit any of my Millennium customers to leave with me and go to my new employer, Paradigm. I simply informed these customers that I was leaving. Several of them asked me where I was going, and when I told them, they decided to go with me, at least partially because Paradigm would be offering additional services (blood testing and cancer genetics) that Millennium did not offer. They, after all, knew me and were comfortable with me, not with Millennium. Before I would agree to their request, I required them to sign a non-solicitation acknowledgment that affirmed the simple reality: that they unilaterally decided to come over to Paradigm and that I did not solicit their business at all, either before or after leaving Millennium. (See Non-Solicitation Acknowledgments, Attached as Exhibit 1 to this Affidavit). These business include Orthopedic Associates in Spartanburg, SC; Pavillion International in Mill Spring, NC; and A New Crossroad Addictionology Associates in Piedmont, SC. Each business reached out to me about coming along to where ever I ended up working. Additionally, none of these accounts are currently being serviced by me; all servicing is being handled by other Paradigm employees.

11. While I was employed with Millennium, an essential part of my job was soliciting new business. Many of my customers were gained only after a long wooing process, sometimes over several years. For example, just in the last 12 months of my employment with Millennium, I had approximately 75 lunches with prospective customers, and we only wound up doing business with 5 to 10 of them, which means that I solicited 65 to 70 prospective customers with whom Millennium ultimately did not do any business at all. This seemingly benign fact, however, could have potentially devastating consequences, as the non-competition agreement that Millennium seeks to enforce purports to prevent me from soliciting or accepting the business of "customers or potential customers" that I ever contacted within the last 18 months of my employment. Millennium is, in effect, seeking to prevent from working with a great many businesses that it has never done business with and that I have never done business with. I can't think of any legitimate reason that Millennium would seek to prevent me from doing business with these potential customers other than an attempt to prevent legitimate competition from a competitor.

12. Upon my resignation, I returned all company documents to Millennium as required, and Millennium wiped my cell phone of all company information. I do not have in my possession, nor have I given to my new employer, any confidential information of Millennium, nor have I used any confidential information of Millennium for competitive purposes.

13. Regarding any conversations I had with Ms. Brown prior to my resignation, Ms. Brown seems to believe that I had some sort of obligation to relay to her all of my future plans in employment or personal matters. Of course, I owed her no such explanation. I did tell her that I was interested in cancer genetics, which is one of the areas that Paradigm is specializing in, and an area that Millennium does not practice in.


14. This affidavit is true and accurate to the best of my knowledge.



Kyle Crawford

7/27/16
Date

Sworn to before me this
27TH day of July, 2016



Notary Public for South Carolina
My Commission Expires: 8-12-24

EXHIBIT 1

ELECTRONICALLY FILED - 2016 Sep 13 4:33 PM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304218
ELECTRONICALLY FILED - 2016 Aug 01 8:52 AM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304218

ELECTRONICALLY FILED - 2016 SEP 13 4:33 PM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304218
ELECTRONICALLY FILED - 2016 AUG 01 8:52 AM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304218

NON-SOLICITATION ACKNOWLEDGMENT

The undersigned hereby acknowledges the following:
On behalf of A New Crossroad / DR. Scott's Personalized Healthcare, I have voluntarily chosen to do business with Kyle Crawford and Paradigm LLC.

This business was not directly or indirectly solicited by Kyle Crawford, but initiated by the undersigned on behalf of A New Crossroad / DR. Scott's Personalized Healthcare

No payment or other consideration was tendered by Paradigm LLC or Kyle Crawford for the execution of this document; instead this document is executed by the undersigned freely and voluntarily as an expression of the undersigned's intention and non-solicited decision to do business with Kyle Crawford and Paradigm LLC.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

Dated: 6/22/16

Jinfa S. Howard
(Name)
On behalf of: A New Crossroad / DR. Scott's Personalized Healthcare

NON-SOLICITATION ACKNOWLEDGMENT

The undersigned hereby acknowledges the following:

On behalf of Orthopaedic Associates, I have voluntarily chosen to do business with Kyle Crawford and Paradigm LLC.

This business was not directly or indirectly solicited by Kyle Crawford, but initiated by the undersigned on behalf of Orthopaedic Associates

No payment or other consideration was tendered by Paradigm LLC or Kyle Crawford for the execution of this document; instead this document is executed by the undersigned freely and voluntarily as an expression of the undersigned's intention and non-solicited decision to do business with Kyle Crawford and Paradigm LLC.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

Dated: 4/8/16

Kelly Roper
(Name)
On behalf of: Orthopaedic Associates

ELECTRONICALLY FILED - 2016 Sep 13 4:33 PM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304218
ELECTRONICALLY FILED - 2016 Aug 01 8:52 AM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304218

NON-SOLICITATION ACKNOWLEDGMENT

The undersigned hereby acknowledges the following:

On behalf of Pavillon, I have voluntarily chosen to do business with Kyle Crawford and Paradigm LLC.

This business was not directly or indirectly solicited by Kyle Crawford, but initiated by the undersigned on behalf of Pavillon.

No payment or other consideration was tendered by Paradigm LLC or Kyle Crawford for the execution of this document; instead this document is executed by the undersigned freely and voluntarily as an expression of the undersigned's intention and non-solicited decision to do business with Kyle Crawford and Paradigm LLC.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

Dated: 4/18/16

Kay Bend
(Name)
On behalf of: Pavillon

NON-SOLICITATION ACKNOWLEDGMENT

The undersigned hereby acknowledges the following:

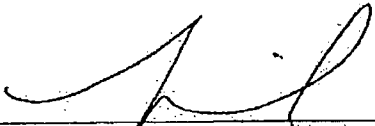
On behalf of Orthopaedic Associates I have voluntarily chosen to do business with Kyle Crawford and Paradigm LLC.

This business was not directly or indirectly solicited by Kyle Crawford, but initiated by the undersigned on behalf of Orthopaedic Associates

No payment or other consideration was tendered by Paradigm LLC or Kyle Crawford for the execution of this document; instead this document is executed by the undersigned freely and voluntarily as an expression of the undersigned's intention and non-solicited decision to do business with Kyle Crawford and Paradigm LLC.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

Dated: 4/27/16



(Name)
On behalf of: Orthopaedic Associates

NON-SOLICITATION ACKNOWLEDGMENT

The undersigned hereby acknowledges the following:


On behalf of C Pamela Lowe / NC Brookhaven, I have voluntarily chosen to do business with Kyle Crawford and Paradigm LLC.

This business was not directly or indirectly solicited by Kyle Crawford, but initiated by the undersigned on behalf of C Pamela Lowe / NC Brookhaven.

No payment or other consideration was tendered by Paradigm LLC or Kyle Crawford for the execution of this document; instead this document is executed by the undersigned freely and voluntarily as an expression of the undersigned's intention and non-solicited decision to do business with Kyle Crawford and Paradigm LLC.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

Dated: 5/3/16


(Name)
On behalf of: C Pamela Lowe / NC Brookhaven

NON-SOLICITATION ACKNOWLEDGMENT

The undersigned hereby acknowledges the following:

On behalf of Mary Benson House, I have voluntarily chosen to do business with Kyle Crawford and Paradigm LLC.

This business was not directly or indirectly solicited by Kyle Crawford, but initiated by the undersigned on behalf of Mary Benson House

No payment or other consideration was tendered by Paradigm LLC or Kyle Crawford for the execution of this document; instead this document is executed by the undersigned freely and voluntarily as an expression of the undersigned's intention and non-solicited decision to do business with Kyle Crawford and Paradigm LLC.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

Dated: 6/16/16

Mary Benson
(Name)
On behalf of: Mary Benson House

NON-SOLICITATION ACKNOWLEDGMENT

The undersigned hereby acknowledges the following:

On behalf of Wilson Place, I have voluntarily chosen to do business with Kyle Crawford and Paradigm LLC.

This business was not directly or indirectly solicited by Kyle Crawford, but initiated by the undersigned on behalf of Wilson Place.

No payment or other consideration was tendered by Paradigm LLC or Kyle Crawford for the execution of this document; instead this document is executed by the undersigned freely and voluntarily as an expression of the undersigned's intention and non-solicited decision to do business with Kyle Crawford and Paradigm LLC.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

Dated: 4.13.16

[Signature]
(Name)
On behalf of: Wilson Place

NON-SOLICITATION ACKNOWLEDGMENT

The undersigned hereby acknowledges the following:

On behalf of Blue Ridge Park Management
Kyle Crawford have voluntarily chosen to do business with
Kyle Crawford and Paradigm LLC.

This business was not directly or indirectly solicited by Kyle Crawford but initiated by the
undersigned on behalf of Blue Ridge Park Management

No payment or other consideration was tendered by Paradigm LLC or _____ for
the execution of this document; instead this document is executed by the undersigned freely and
voluntarily as an expression of the undersigned's intention and non-solicited decision to do
business with Kyle Crawford and Paradigm LLC.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE
TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND
BELIEF.

Dated: 4/24/16

Jalen Street
(Name)
On behalf of: Blue Ridge Park Management

NON-SOLICITATION ACKNOWLEDGMENT

The undersigned hereby acknowledges the following:

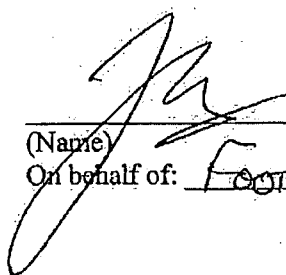
On behalf of FOOTHILLS MEDICAL I have voluntarily chosen to do business with Kyle Crawford and Paradigm LLC.

This business was not directly or indirectly solicited by Kyle Crawford, but initiated by the undersigned on behalf of FOOTHILLS MEDICAL.

No payment or other consideration was tendered by Paradigm LLC or Kyle Crawford for the execution of this document; instead this document is executed by the undersigned freely and voluntarily as an expression of the undersigned's intention and non-solicited decision to do business with Kyle Crawford and Paradigm LLC.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

Dated: 4/8/16



(Name)
On behalf of: FOOTHILLS MEDICAL

EXHIBIT F

June 27, 2016 Cease and Desist Letter



June 27, 2016

BY FEDERAL EXPRESS AND ELECTRONIC MAIL

Mr. Kyle Crawford (kbcrawford1@gmail.com)
27 Ridgeburg Court
Greer, South Carolina 29651

**RE: Notice re: Your Post-Employment Obligations to Millennium Health, LLC /
Cease and Desist Demand / Claim Notice / Document Preservation Demand**

Dear Mr. Crawford:

I am writing to provide notice that Millennium Health, LLC ("Millennium" or "Company") has serious concerns about your recent conduct; to remind you of your post-employment obligations to the Company; to demand that you immediately cease and desist from breach of those obligations; to provide notice of a claim against you; and to demand that you take steps immediately to preserve all documents and evidence relevant to such claim.

We understand that on April 8, 2016, you abruptly resigned your employment with Millennium. We have learned that since that time, you have become affiliated with a competing laboratory, Paradigm Labs, LLC ("Paradigm"), out of St. Simons Island, Georgia, that you are providing competing sales services in the same territory you worked while employed by Millennium and soliciting Millennium accounts, and that you are coordinating your activities with other former Millennium employees who are likewise in breach of their contractual obligations to the Company. Please take notice that Millennium believes this conduct constitutes a clear violation of your contractual obligations to the Company, that the Company intends to enforce those obligations, and that the Company demands that you immediately cease and desist from further breaches of your obligations.

At the inception of your employment with Millennium you executed an Agreement Regarding Confidentiality, Non-Disclosure and Non-Competition ("Agreement"). A copy of the Agreement is enclosed for your reference. The Agreement creates a series of post-employment obligations and restrictions concerning your ability to compete with Millennium, use or disclose Millennium's confidential information, and solicit Millennium customers or employees, and provides for injunctive relief and monetary damages in the event of breach. A few of the relevant provisions are highlighted below.¹

¹ This letter is intended only to highlight and summarize certain post-employment obligations that you owe to the Company. The fact that a provision or obligation is not highlighted or set forth herein does not constitute a waiver by the Company of such provision/obligation. The Company expressly reserves all of its rights.

Paragraph 2 of the Agreement prohibits you from directly or indirectly revealing, reporting, publishing, transferring, disclosing, using, accessing, or selling any of Millennium's confidential information, and acknowledges that violation of such provision would constitute unfair competition.

Paragraph 3(b) of the Agreement imposes post-employment non-solicitation and non-competition obligations on you. Specifically, you agreed that for a period of one year following your departure from the Company you would not

...directly or indirectly, solicit, accept, or service the business of any customers or potential customers with whom [you] worked or directly contacted during the eighteen (18) months preceding [your] termination of employment with respect to products or services competitive with those offered by Company at the close of [your] employment.

In Paragraph 3(b)(iii) you also agreed that for a period of one year following your departure from the Company you would not

...directly or indirectly, solicit, induce, or attempt to induce any other employee of Company who worked for Company during the eighteen (18) months preceding [your] termination of employment, to leave Company's employ to work for a competitor of Company in the same or similar capacity as the employee worked for Company during the eighteen (18) months preceding [your] termination of employment.

To deter a third party from encouraging or allowing you to violate these provisions, Paragraph 2(i) requires you to provide a copy of the Agreement to any new employer prior to accepting new employment.

Your conduct outlined above clearly violates these provisions. Millennium intends to take action to enjoin you from further breach, to recover damages you have caused, and to seek such other relief as is necessary and proper.

Accordingly, Millennium demands that you:

- (1) Return all of Millennium's equipment, documents, and information immediately to Lori Cornin in Millennium's Human Resources Department;
- (2) Immediately cease and desist, and refrain in the future, from directly or indirectly selling any competitive products or services in your former Millennium territory or to customers you interacted with while employed by Millennium;

- (3) Immediately cease and desist, and refrain in the future, from using or disclosing Millennium's confidential information, including customer lists and customer preference information;
- (4) Immediately cease and desist, and refrain in the future, from soliciting current or former Millennium employees;
- (5) Immediately cease and desist, and refrain in the future, from otherwise breaching your Agreements or any other obligations that you owe to the Company; and
- (6) Comply with the Claim Notice and Document Preservation Demand set forth below.

As noted above, the Company intends to take legal action against you to protect its rights. Accordingly, we demand that you comply with the following Claim Notice and Document Preservation Demand.

Claim Notice and Document Preservation Demand

This CLAIM NOTICE AND DOCUMENT PRESERVATION DEMAND is intended to provide you with formal notice of Millennium's potential claims against you. Millennium's claims relate to—without limitation—your breach of the Agreement Regarding Confidentiality, Non-Disclosure and Non-Competition, which has harmed, and is continuing to harm, Millennium. Millennium intends to take all appropriate legal action to protect its interests, to remedy the harm you have caused, and to prevent future harm.

We are not aware if you are currently represented by counsel in connection with this or any other matters. If you are represented by counsel, please forward this CLAIM NOTICE AND DOCUMENT PRESERVATION DEMAND to such counsel.

In light of Millennium's potential claims, we also formally request that you forward this CLAIM NOTICE AND DOCUMENT PRESERVATION DEMAND to any persons or entities in your control who may be involved in, or have evidence (as described below) of, the issues outlined above.

We believe you have physical evidence, documentary evidence,² and electronic data in your possession, custody, or control related to Millennium's claims that would be subject to discovery in any litigation.

² The term "documentary evidence" and "document(s)" are employed in the broadest possible sense. "Documents" include, but are not limited to, any printed, written, recorded, typed, electronic (including e-mail and deleted electronic media that is recoverable in any form), graphic, or other tangible matter from whatever source, however produced or reproduced, whether in draft or otherwise, whether sent or received or neither, including the original, all amendments

Electronic data is a valuable and irreplaceable source of discoverable information, is subject to discovery in litigation, and is admissible at trial. Electronic data is broadly defined, and includes—but is not limited to—all of the following:

1. Electronically-stored documents of any kind (including all drafts, versions, revisions, and metadata associated with such documents);
2. Originals and all copies of electronic mail ("e-mail"), including all personal web-based email accounts such as Hotmail, Gmail, Yahoo Mail, etc, as well as all messaging apps and other means of electronic communications;
3. Activity listings of electronic mail receipts and/or transmittals;
4. Electronically-maintained calendars;
5. Audio or video recordings of any kind (including voice-mails);
6. Text messages and instant messages of any kind;
7. Computer programs (whether private, commercial or a work-in-progress);
8. Programming notes or instructions; output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs, and outlines;
9. Databases and document management systems;
10. Operating systems;
11. Source code of all types;
12. PDF files;

and addenda and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) of any and all writings, correspondence, letters, telegraphs, telex communications, cables, notes, notations, papers, newsletters, memoranda, interoffice communications, e-mails, releases, agreements, contracts, books, pamphlets, studies, minutes of meetings, recordings or other memorials of any type of personal or telephone conversations, meetings or conferences, reports, analyses, test results, examinations, evaluations, estimates, projections, forecasts, receipts, statements, accounts, books of account, diaries, calendars, desk pads, appointment books, stenographer's notebooks, transcripts, ledgers, registers, worksheets, journals, statistical records, cost sheets, summaries, lists, tabulations, digests, canceled or uncanceled checks or drafts, vouchers, charge slips, invoices, purchase orders, hotel charges, accountant's reports, financial statements, newspapers, periodicals or magazine materials, and any materials underlying, supporting, or used in the preparation of any documents. The term "document(s)" also specifically includes any records stored on computer tape or computer disk or otherwise stored by or in a computer, including telephone voice mail or electronic mail, whether or not a hard copy (*i.e.*, paper copy) of the document is or was at any time in existence. A document includes all documents appended thereto and any marked copy thereof. A "marked copy" is any document containing any writing, or any markings of any kind in the text, in the margins, or on the reverse side of the document.

13. Batch files;
14. ASCII files; and
15. All miscellaneous electronic files and/or file fragments, regardless of the media on which they are stored and regardless of whether the data resides in an active file, deleted file, or file fragment.

Electronic data also includes any and all information stored on hard disks, floppy disks, CD-ROM disks, thumb drives, zip drives, Bernoulli disks and their equivalents, magnetic tapes, and computer chips (including but not limited to EPROM, PROM, RAM and ROM). Electronic data also includes the file, folder tabs, containers, or labels appended to any storage device containing electronic data.

Pursuant to this CLAIM NOTICE AND DOCUMENT PRESERVATION DEMAND, you have an affirmative obligation to take immediate steps to preserve in its current form all information relevant to this claim or reasonably likely to be subject to discovery, including the categories of information listed above. Accordingly, until all parties can complete a full and complete backup of all electronic data, we demand that you and any persons or entities under your control suspend any document retention/destruction policies currently in place. We further demand that you and all persons/entities under your control refrain from the following activities:

1. Initiating any procedure that would alter any active, deleted, or fragmented electronic data. Such procedures may include, but are not limited to, deleting or attempting to delete any electronic information, saving newly-created files to disks that already contain information, loading new software on such disks, or running data compression or de-fragmentation (optimization) routines on them.
2. Rotating, altering, or destroying any media where such activity could result in the alteration or loss of any relevant or discoverable electronic data; and/or
3. Disposing of any media that contains electronic data.

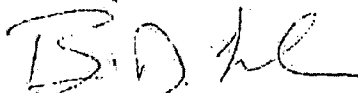
You have a duty to take appropriate measures to preserve crucial physical evidence, documentary evidence, and electronic data, including but not limited to, the information detailed above. Any failure to preserve evidence could subject you to penalties and sanctions.

We emphasize that this CLAIM NOTICE AND DOCUMENT PRESERVATION DEMAND is expressly made with respect to any electronic data (defined above) constituting communications or correspondence between and/or among you, Tony Calabristi, Chance Ingle, Nick Wyatt, Courtney Popov, Jamie Henningway, and Paradigm, and any other third-parties, including all employees, agents, subcontractors, vendors, and suppliers of such individuals and entities.

We request that you confirm within three (3) days that you have received this correspondence and intend to fully comply with its terms.

Please govern yourself accordingly.

Sincerely,



Brian D. Fowler
Assistant General Counsel

Enclosures

cc: Paradigm Labs, LLC (ATTN: Catherine Veal, President, 249 Redfern Village, St. Simons Island, GA 31522) (by Federal Express))

ELECTRONICALLY FILED - 2016 Sep 13 4:33 PM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304218

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Millennium Health, L.L.C.,)
)
Plaintiff,)
)
v.) Case No. 16-CP-23-04218
)
Kyle B. Crawford, *et. al.*)
)
Defendants.)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on August 3rd, 2016, before The Honorable Perry H. Gravely, in Courtroom 6 of the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

Edward B. Schenk, III, Esq.
Kip McAlister, Esq.
WILLIAMS MULLEN
1441 Main Street, Suite 1250
Columbia, South Carolina 29201
Appearing for Plaintiff

Andrew Arnold, Esq.
307 Pettigrew Street
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1 THE COURT: All right. This is
2 the Millennium Health, L.L.C. versus Kyle
3 Crawford; is that correct? It's the first
4 one up this morning; right?

5 MR. SCHENK: Yes, Your Honor.

6 THE COURT: All right. There's
7 two issues here. I know that I was sent a
8 consent Order for confidentiality on this
9 one. And I just thought I would -- before I
10 signed anything, I'd just wait and have this
11 hearing. But it sounds like that's something
12 everybody's consented to.

13 MR. ARNOLD: We've agreed to it.

14 THE COURT: Right. I'll go ahead
15 and -- I think there was a consent order in
16 the E-file que. Well, -- or was there is
17 just a motion.

18 MR. SCHENK: There was a proposed
19 Order, Your Honor.

20 THE COURT: Okay.

21 MR. SCHENK: And we've got hard
22 copies prepared for signature whatever ---

23 THE COURT: No, I can sign it here
24 at the end of the hearing. All right. All
25 right. I'll be glad to hear from you.

1 MR. McALISTER: Your Honor, this
2 is plaintiff Millennium Health's motion for
3 preliminary injunction it was filed on the
4 12th of July with our verified complaint.

5 I'm Kip McAlister, attorney here in
6 Columbia. Edward Schenk is a partner of ours
7 from Raleigh. He's has been admitted *pro hac*
8 *vice*, and he's going to be arguing the Motion
9 here today with your approval.

10 THE COURT: Yeah, that's fine. I
11 had signed the Order previously. Yes, I'll
12 be glad to -- yes, sir.

13 MR. SCHENK: Thank you, Your Honor.
14 And I appreciate the opportunity to be in
15 court today and admitted conditionally to the
16 Bar of this State. In working with Mr.
17 Arnold, I've been treated professionally and
18 cordially and I appreciate the opportunity to
19 be before you today.

20 THE COURT: Until right this
21 second. Now it's all changing.

22 MR. SCHENK: Well, the caveat was I
23 hope that he would reserve that until after
24 today's hearing. In any event, on behalf of
25 Millennium Health Care, I am joined today by

1 Brian Fowler, its General Counsel who is
2 appear as a client representative, in that
3 capacity. I'm also joined today by Natalie
4 Brown. Ms. Brown is an affidavit witness.
5 Their presence today, I hope, shows the Court
6 that they take this matter very seriously.

7 Your Honor, I know that the Court is
8 very familiar with the legal standards and
9 the issues that apply to a preliminary
10 injunction in a non-solicitation case, and I
11 want to be respectful of that knowledge.

12 I do want to frame the case up for
13 you by way of background. This is a simple,
14 frankly, but unfortunately a common case. We
15 contend it's a case of a former employee and
16 the Defendant, Kyle Crawford, who made a
17 contractual promise to Millennium when he
18 went to work with them. That promise was
19 simply to not solicit or accept the business
20 of Millennium's customers after he resigned
21 his employment. That simple promise was made
22 in a written, enforceable agreement at the
23 outset of his employment.

24 Unfortunately, that promise was
25 broken the very day he resigned from

1 Millennium on April 8th, 2016. That promise
2 was broken while he was still on Millennium's
3 clock, if you will. That is one of the
4 issues that makes this case rather uncommon,
5 that some of the actions that we'll describe,
6 that Mr. Crawford has admitted to in this
7 case, occurred the very day that he tendered
8 his resignation while still a Millennium
9 employee.

10 We have been presented, and it's in
11 the court's record now, no fewer than nine,
12 nine customer statements signed by Millennium
13 employees. Those were affidavit exhibits
14 attached to Mr. Crawford's Complaint --
15 excuse me -- Affidavit. Those customers have
16 admitted that they gave him, and Mr. Crawford
17 readily accepted, their business.

18 THE COURT: Let me ask you this.
19 Since those are now sworn acknowledgements,
20 do I have -- can the Court consider those?

21 MR. SCHENK: They are sworn ---

22 THE COURT: They're acknowledge-
23 ments, but -- and I reviewed all of this
24 yesterday.

25 MR. SCHENK: Okay.

1 THE COURT: None of these were
2 sworn.

3 MR. SCHENK: The witnesses say "I
4 swear or affirm."

5 THE COURT: Right, but not ---

6 MR. SCHENK: Not notarized
7 documents, no, Your Honor. But we know now
8 from other sources, directly from the
9 customers themselves, according to Ms.
10 Brown's affidavit, that they told Ms. Brown
11 that they're now with Mr. Crawford and
12 Paradigm.

13 Your Honor, the stakes for our
14 client are high in this matter. You'll see
15 the Complaint names unidentified John Does
16 and alleged coconspirators. We didn't know
17 the identity of those folks when we filed
18 this lawsuit. We have since learned --
19 Millennium is a client who likes to aim first
20 before shooting. And we anticipate that this
21 litigation will involve other parties here
22 and in other states.

23 We take this matter seriously
24 because this is the first effort, a
25 critically important effort to stop what we

1 contend are clear contractual breaches.

2 Your Honor, to give you background
3 on the specific facts of the history of Mr.
4 Crawford and his employment with Millennium.
5 Millennium, as you know from the pleadings,
6 is one of the nation's leading health
7 solutions companies. It is the nation's
8 leading urine drug testing laboratory. They
9 also provide oral fluid testing and another
10 variety of testing services for health care
11 providers of all size, public and private,
12 across the country.

13 As detailed in the complaint,
14 Millennium relies on this network of well-
15 trained highly-compensated sales
16 professionals to prospect, to originate, to
17 develop, to manage and grow its customer
18 base.

19 Millennium's customers are, as other
20 organizations of its size and caliber, those
21 customers are its life blood.

22 Defendant Crawford's employment with
23 Millennium began in 2011 when he was hired as
24 a customer support specialist. At that time
25 he signed the agreement that brings us here

1 today. It's attached as an exhibit to the
2 Complaint as the agreement regarding non-
3 disclosure, confidentiality and non-
4 competition.

5 For five years Mr. Crawford was
6 promoted several times. Received tens of
7 thousands of dollars in additional base
8 compensation raises, incentive compensation,
9 other fringe benefits, and was making well
10 into the six figures as a Millennium
11 employee.

12 He was given access to and learned
13 confidential information that was uniquely
14 and expensively acquired by Millennium. He
15 derived substantial benefit, personally and
16 professionally, from Millennium's resources
17 and access in training and development.

18 Importantly regarding the relation-
19 ships with the customers, Your Honor, Mr.
20 Crawford, over a period of years learned, of
21 course, the identity of the customers but the
22 identity of the decision-makers, the
23 influencers, the people who had the leverage
24 and control over the purses of the UBT
25 services. He learned the profitability of

1 these particular customers. He learned their
2 purchasing history. He learned the
3 idiosyncrasies, if you will, the likes and
4 the dislikes of the front lines of these
5 organizations. He had access to use and rely
6 on Millennium reports showing revenues,
7 volumes, pair mixes and ordering practice.

8 Fast forward to 2016, Your Honor,
9 Mr. Crawford was a territory manager too,
10 managing a territory that covered Upstate
11 South Carolina, parts of Western North
12 Carolina, Georgia and Tennessee. In the
13 eighteen months before he abruptly resigned,
14 Mr. Crawford worked with, was responsible for
15 or managed a hundred and eighty-nine
16 Millennium customers.

17 A list of those customers,
18 including their names, their geographic
19 location, and their origination date, is in
20 our possession today. At the appropriate
21 time if we need to discuss that customer
22 list, we can tender it to the Court. It's
23 been designed as Confidential and
24 appropriately covered within the exhibit
25 statute.

1 Briefly stated, Your Honor, in those
2 five years Mr. Crawford became the face of
3 Millennium for its customers.

4 The verified Complaint, Your Honor,
5 is supported by Ms. Brown's affidavit. Ms.
6 Brown worked directly under Mr. Crawford for
7 the entire time she was with Millennium;
8 first, as an account manager. If Mr.
9 Crawford was the "General", if you will, a
10 customer facing sales organization, Ms. Brown
11 was his most loyal soldier.

12 Ms. Brown's affidavit discusses how
13 over time the relationship, symbiotic if you
14 will, between a territory manager and account
15 manager works. She discusses the need for
16 communication, for access to customers in
17 order to promote her, to allow her to better
18 serve Millennium's customers.

19 She tells the Court in the affidavit
20 about how in late 2015 and early 2016 the
21 relationship with Mr. Crawford starts to
22 change. He became more distant, less
23 communicative, and frankly negative about the
24 company.

25 There were a handful of customers

1 within both Ms. Brown and Mr. Crawford's
2 territory who she noticed being isolated
3 from. Contact was limited. There were
4 explanations as to why she need not bother
5 with these particular customers or just her
6 access to the customers was discouraged. She
7 suspected that something was wrong there. We
8 now know that that lists of customers is
9 within the very group that Mr. Crawford has
10 taken and accepted the business for on behalf
11 of his new employer.

12 Fast forward to April 8, 2016.

13 We have, literally, an out-of-the-blue
14 resignation. Mr. Crawford is not truthful
15 when he communicates to Millennium about the
16 reasons why he is leaving and his plans. He
17 tells the company in his own words, that he
18 is getting out of the lab business. He tells
19 the company that he is taking time off and
20 that he is going to work in cancer genetics.
21 April 8, 2016.

22 In reality, Your Honor, that simply
23 wasn't true and I submit that Mr. Crawford
24 knew it wasn't true because the very day that
25 he announced that to the company, he took the

1 business of two Millennium customers and he
2 accepted them on behalf of his new employer,
3 Paradigm. And we have those signed
4 acknowledgments. He did that while he was on
5 the clock for Millennium during the day that
6 he was paid as a Millennium employee.

7 These forms, Your Honor -- and
8 you've looked at them -- they strike me as
9 being clearly the product of a deliberate and
10 premeditated effort. Essentially trying to
11 cover one's tracks by stating that the
12 pirated customers were merely willing
13 participants, unsolicited volunteers, if you
14 will. His words directly from his affidavit
15 tell us, quote, "I simply informed the
16 customers I was leaving. Several of them
17 asked where I was going. And when I told
18 them where, they decided to go with me."
19 Period.

20 As discussed in the argument, these
21 forms do nothing more, Your Honor, than
22 conclusively establish the contractual
23 breach. They do not absolve the liability.
24 I submit that they establish conclusively
25 liability.

1 THE COURT: Do you have any
2 evidence that shows, though -- I mean,
3 assuming that -- and I guess for this purpose
4 I've got to assume what records are in front
5 of me. Do you have any evidence that shows
6 that he actually solicited, to say 'hey, I
7 need you to come to my new company'?

8 MR. SCHENK: I do not have active
9 evidence of direct solicitation. However,
10 the Agreement in this case, as many do, many
11 agreements that have been upheld by the
12 courts of South Carolina, the agreement
13 prohibits not only the active solicitation
14 but, of course, the passive acceptance of
15 business or servicing the business of
16 customers.

17 It goes without saying -- in this
18 case, I think, we've got an open acknowledge-
19 ment of an acceptance of business.

20 And I would submit that a form that
21 was signed on the very day that one resigned,
22 had to involve some form of discussion and
23 preplanning.

24 But from my perspective, Your Honor,
25 the Agreement is clear, that the Agreement

1 prohibits the acceptance of business. And
2 I'm glad to discuss the litany of cases and
3 orders filed by courts in this State that
4 have said soliciting or accepting of business
5 is within the definition of the covenant and
6 is enforceable.

7 Your Honor, Millennium learned about
8 these customer losses through other sources
9 first. In fact, it wasn't until last Friday
10 that these agreements were disclosed.
11 Millennium has tried to move with speed on
12 this case. Millennium has tried to avoid
13 litigation. Millennium has sent cease-and-
14 desist letters.

15 But we are here today -- Mr.
16 Crawford reaped the benefits of the bargain
17 with Millennium. Essentially, he wants to
18 escape contractual obligations that now
19 appear inconvenient.

20 There's not an argument that the
21 contract was breached. It's simply now, 'oh,
22 well, it's overbroad.'

23 That brings me to the legal
24 argument, Your Honor. At this stage, I know
25 the Court knows the three elements I need to

1 prove. I'm happy to discuss irreparable harm
2 first.

3 THE COURT: Okay.

4 MR. SCHENK: I understand it to be
5 black letter law in South Carolina, as it is
6 in North Carolina and many other
7 jurisdictions, that the loss of customers,
8 the loss of goodwill and the compromise of
9 business information is, by definition,
10 irreparable harm. Cases that we cite in
11 brief go back to the famous *Dudley* decision
12 of 1983 and its progeny.

13 THE COURT: I'm not sure it's as
14 black and white as you think it is, or at
15 least the way I read it.

16 MR. SCHENK: Well, you're the one
17 who will be reading it for our purposes
18 today, Your Honor, but I cite to *Wolf* and to
19 *Dudley* that describe the loss of customers,
20 the loss of goodwill, as being within the
21 definition of irreparable harm. And,
22 frankly, it appears to me that that is the
23 loss that most of the cases rely on.

24 THE COURT: But don't those cases
25 say 'under certain circumstances' and have

1 certain fact patterns. They don't just say
2 as an absolute rule that the loss of
3 customers and loss of goodwill is irreparable
4 harm.

5 MR. SCHENK: The loss of customers
6 as the result of a breach of a contractual
7 promise, when the loss of that customer is
8 perhaps financially incalculable or even in
9 the future may be difficult to calculate, is
10 within that definition, Your Honor.

11 And I've got a case that I'd like to
12 walk you through -- discuss with you when we
13 get to that point, and I'm going to get
14 there.

15 THE COURT: All right.

16 MR. SCHENK: Millennium has shown
17 that it has loss of customers. Mr.
18 Crawford's admitted that nine have been
19 diverted. Ms. Brown has testified in her
20 affidavit that more are likely imminent.

21 Ms. Brown is an employee who, after
22 Mr. Crawford left, before we knew about this,
23 went out on damage control, arranged meetings
24 with physicians that we're now just aware of.
25 She had favorable feedback from the people

1 that she was meeting with. They were
2 encouraged about her. She diverted her time
3 and her resources to focus on these customers
4 that she had been shielded from and was
5 getting positive feedback. Unfortunately,
6 the front line decision maker had already
7 signed the form.

8 I suggest that the loss of the
9 customers, through an employee who has,
10 frankly, not been truthful about getting out
11 of the lab business, about going to work in
12 another field and about taking the time off,
13 an employee who has demonstrated a capacity
14 from my perspective, Your Honor, to be
15 deceptive, constitutes irreparable harm.

16 We come to the Court for the only
17 remedy that exists and that is an injunction.

18 Second, as the Court well knows,
19 Millennium has to prove a likelihood of
20 success on the merits. A likelihood or
21 probability that it's more likely than not
22 that the contract will ultimately be
23 enforceable.

24 That gets us to the legal analysis
25 of the *Dudley* test, the five-part test that

1 this Court knows. I can start with the first
2 and easiest:

3 The contract is supported by
4 consideration.

5 It was signed at the outset of
6 employment.

7 The contract is necessary to protect
8 the legitimate business interests of
9 Millennium. *Dudley and Wolf* and the others
10 tell us that is a requirement. Well, that
11 business interest is covered within the
12 argument on irreparable harm. We have a loss
13 of customers. We have an eroding of
14 relationships. We have damaged goodwill.
15 That legitimate business interest is what is
16 targeted by the covenant.

17 But let's look at it because I want
18 to focus on the narrow activity that
19 prohibits, that it prohibits.

20 And then I want to focus on all of
21 the other universe of activity that it allows
22 because that, of course, goes to the second
23 element, which is whether the covenant
24 unreasonably restricts Mr. Crawford from
25 earning a living or whether it is unduly

1 oppressive or harsh.

2 Your Honor, in brief -- and I've got
3 a copy of all printed materials that I can
4 direct you to via tab if you'd like to have
5 that.

6 THE COURT: Yeah. I mean, that's

7 ---

8 MR. SCHENK: All right. If you
9 don't mind, I'll approach.

10 THE COURT: Yeah.

11 MR. SCHENK: (Tenders) -- it is not
12 a hearing until the lawyer hands up a big
13 notebook. Correct?

14 THE COURT: Thank you.

15 MR. SCHENK: And typically they
16 hand them right back to me.

17 THE COURT: I'm getting quite a
18 collection.

19 MR. SCHENK: We recycle, so I'll be
20 glad to have it back.

21 THE COURT: Thank you. We take
22 them to some of the schools.

23 MR. SCHENK: Our brief will be
24 found in the inside jacket pocket facing you
25 as you open it. In looking at the covenant

1 itself, it is excerpted verbatim on page five
2 of the brief. Excuse me -- page six of the
3 brief.

4 The covenant narrowly and directly
5 prohibits one form of activity. This is not
6 a non-compete agreement. This is not an
7 agreement that ices an employee out of a
8 geographic region or a profession.

9 This covenant reads: "*The employee*
10 *will not directly or indirectly...*" --
11 indirectly being a term that's been accepted
12 in South Carolina as prohibiting by other
13 means, through other entities or persons,
14 that which one cannot do his or herself.
15 (Reading): "*The employee will not indirectly*
16 *or directly solicit, accept or service the*
17 *business of any customers or potential*
18 *customers with whom the employee worked or*
19 *directly contacted during the eighteen months*
20 *preceding the employees termination.*"

21 So we're talking about customers
22 where there was meaningful work contact
23 during a limited look-back period, a period
24 that's been reviewed by other South Carolina
25 courts.

1 It narrowly defines the business of
2 the customer to be only that product or
3 service that is competitive with those
4 offered by Millennium.

5 We're talking about a pure non-
6 solicitation limited to an identified list of
7 customers in an identified period of time.
8 That universe of customers is exactly what
9 we've confirmed through business record
10 affidavits with our confidential file that we
11 tender today.

12 Now, what does a covenant
13 specifically allow when they look at the
14 issue of whether it is unduly oppressive?
15 Your Honor, we'll look at page twelve of the
16 brief. The contract in bold letters
17 underlined says ABILITY TO WORK FOR COMPETING
18 BUSINESS. 'Go across the street', Your
19 Honor, 'work for Paradigm, but do not violate
20 the non-solicitation provision.' The
21 covenant, quote, "does not prohibit the
22 employee from being employed by a business
23 that competes with the company after the
24 termination of the employment so long as the
25 employee does so within the parameters of the

1 preceding paragraph."

2 So long as the employee does not
3 solicit.

4 So long as the employee does not use
5 confidential information.

6 We've got a statement of free
7 competition authorization here in the
8 contract itself. I'd submit by definition
9 that satisfies my burden to show it's not
10 unduly oppressive.

11 As to the notion of injunctive
12 relief and just to dovetail back to
13 irreparable harm, Mr. Crawford has once
14 agreed to the very relief that I am asking
15 the Court to order in this case.

16 On the remedies section of the
17 document, highlighted at paragraph five:
18 *"Remedies: The employee acknowledges that*
19 *money damages at-law will be an insufficient*
20 *remedy. Employee hereby irrevocably agrees*
21 *that the company may apply for and have*
22 *injunctive relief in any court of competent*
23 *jurisdiction."*

24 Your Honor, I know that that
25 language appears in some contracts. In South

1 Carolina, the *Levine* court, I believe cited
2 in the Court of Appeals, rely upon similar
3 language when he came to the irreparable harm
4 issue saying, you know, whether it was read
5 or not, the employee who signed it is charged
6 with the responsibility of understanding that
7 they were acknowledging irreparable harm and
8 entitlement to injunctive relief. We have
9 that in our document.

10 Your Honor, I'd now briefly like to
11 address the issue of so-called passive
12 acceptance versus active solicitation. A
13 number of the cases that we've cited in the
14 brief address that issue. I don't want to
15 belabor all of them. I would like to read a
16 couple of highlights.

17 Tab 8-H. Going back to the old
18 *Skinner v. Elrod Photography* case, Court of
19 Appeals from 1992. In that particular case a
20 covenant provided that the former business
21 partner "should not canvass, solicit or
22 accept any business." That is Tab 8-H in the
23 back of the notebook. *Skinner V. Elrod*, a
24 1992 Court of Appeals case, the sale of a
25 photography business provided that the former

1 owner should not solicit or accept any
2 business for any similar photography company
3 for any past or present clients. "Solicit or
4 accept any business."

5 The court in that case at the trial
6 court level found one violation of the
7 agreement when the defendant, quote,
8 "accepted a job for Thermo Kenetics", a
9 company who wanted photography services.
10 Case number one on acceptance.

11 Case number two, 2009, *Icon*
12 *Solutions Matter*, a district court case
13 citing South Carolina law. Tab 8-A. We've
14 got the Order from the court that
15 specifically enjoined -- the Court entered an
16 Order enjoining the defendant and his name is
17 Ray. Ordered that Ray "*shall not directly or*
18 *indirectly, whether acting alone or in*
19 *concert with others, solicit, attempt to*
20 *solicit, initiate contact with, accept*
21 *business from, accept commissions, accept*
22 *fees, concerning or otherwise engaged in*
23 *business with or for any Icon customer.*"

24 Case number two I would offer on acceptance
25 versus solicitation.

1 Your Honor, the case of *Rockford*
2 *Manufacturing*, the case of *Ball v. Columbia*
3 *Hardiplank*. The case of *Industrial Packaging*
4 *Supply*. The Court in those -- and I don't
5 want to overstay my welcome on that point.
6 The Orders in those cases all enjoined
7 defendants for the period of the injunction,
8 consistent with the covenant, from accepting
9 business.

10 The last case I want to talk about, Your
11 Honor, because it bears such similarity to
12 the one that brings us here today. In fact,
13 as Mr. Arnold and I, I guess laughed about
14 it, it is a case from last September. A case
15 he was involved in on behalf of a defecting
16 employee making essentially the same
17 arguments that I anticipate he'll make here.
18 Certainly the same arguments that we saw in
19 the brief. That's the case of *Vessel v.*
20 *Elliott and Mako Labs*. Coincidentally, it's
21 the case of two medical laboratory agencies.
22 The case involved a solicitation covenant.
23 Your Honor, the case which is discussed at
24 length in our brief at page ten, the court
25 specifically upheld an eighteen-month-long,

1 non-solicitation covenant that prevented the
2 former employee from directly or indirectly
3 soliciting or accepting business of Vessel's
4 customers.

5 The Judge who entered that Order, citing
6 to the some of the cases that we've discussed
7 earlier said the following, (reading):

8 "*Covenants prohibiting the solicitation...*" --
9 and I'm reading from page eleven of the
10 Vessel decision. "*Covenants prohibiting the*
11 *solicitation of former customers are*
12 *enforceable under South Carolina law.*" It
13 cites *Ball v. Columbia Hardiplank*.

14 "*The non-solicitation provision also extends*
15 *to perspective customers of plaintiffs. That*
16 *fact alone does not render it void*
17 *automatically.*"

18 The court cites to Columbia
19 Hardiplank saying, quote, "*An otherwise*
20 *reasonable limitation on the solicitation of*
21 *former clients can substitute for a*
22 *territorial restriction.*"

23 Based on that, those findings, the
24 Court entered an Order enjoining Mr. Arnold's
25 client from "*soliciting, accepting, selling,*

1 *assisting in the sale of any product or*
2 *service, which competes with any product or*
3 *service of Vessel."* That Order was not
4 appealed.

5 Your Honor, the issue of money
6 damages, the last element there -- and I can
7 speak to the public policy argument. This,
8 which is really part and parcel, I think, of
9 whether the covenant is unduly harsh or
10 oppressive, this Agreement does not remotely
11 curtail Mr. Crawford's ability to earn a
12 living. In fact, if the Court is to take him
13 in his word, he is engaged in cancer genetics
14 now not UDT services. The contract
15 specifically gives him the right to work for
16 a competitor but to do so fairly and to abide
17 by his obligation. So for that reason, I
18 think that the public policy is in favor of
19 the Court enforcing a narrowly tailored,
20 otherwise reasonable, covenant.

21 THE COURT: Again, I think you're
22 getting ready to address this. But tell me
23 about, why are money damages not appropriate?

24 MR. SCHENK: Well, number one,
25 presently incalculable. We have no idea the

1 volume. Some customers have been entirely
2 lost. Some business has been diverted.
3 Ultimately that may prove to be difficult to
4 calculate. But I go back to the concept of
5 the relationship that has been eroded and
6 damaged in some cases irrevocably. It's been
7 proven by Ms. Brown's affidavit that she was
8 in front of these people. They were giving
9 her positive feedback. At the same time, a
10 decision maker in another office had already
11 signed a form.

12 THE COURT: Well, if those
13 relationships are irreparable then how does
14 this injunction help? I mean, you can't get
15 those customers back.

16 MR. SCHENK: Number one, to
17 prohibit an on-going wrong. To prohibit that
18 wrong that is started with the nine we know
19 of to grow to twenty and fifty and so on.

20 Ms. Brown will testify that she
21 literally lays in bed at night waiting for
22 the next customer, the notice to come from
23 some other third party or even another signed
24 acknowledgement saying that the business is
25 gone.

1 The goodwill that's damaged that's
2 inherent, almost assumed, in the value of a
3 customer relationship is harmed. And on that
4 point I am compelled, if the Court wants to
5 hear from me now, on an interesting argument
6 about goodwill that I anticipate we'll hear
7 from Mr. Arnold, that's been made in brief,
8 that supposedly Millennium has no goodwill.
9 I'm happy to talk about that offensively now
10 or I can fully respond to it when he ---

11 THE COURT: I mean, I've read your
12 client's affidavit. It's a bunch of hearsay
13 information. But, I mean, I didn't see
14 anything that wasn't hearsay. Like 'oh
15 there' -- you know.

16 MR. SCHENK: Well, as to the
17 absence of hearsay, the issue about goodwill,
18 as you know, goes to Millennium's participa-
19 tion and resolution of lawsuits filed by the
20 Department of Justice.

21 THE COURT: But, I mean, you can't
22 really say that there's not some goodwill
23 lost by your client signing a two hundred and
24 fifty million dollar and filing bankruptcy.
25 I mean, I think I can almost take judicial

1 notice that some goodwill is lost on that.
2 Whether it relates to this customer or not,
3 I'm, you know ---

4 MR. SCHENK: Without going too far
5 to directly disagree with you, and I take
6 your point very well, I did my research on
7 corporate integrity agreements. There is
8 currently two hundred and twenty-three, I
9 believe on file with the Office of Inspector
10 General. The names of those corporate
11 clients include the nation's and world's
12 leading healthcare research and development
13 groups, including Johnson & Johnson, CVS
14 Caremark, GlaxoSmithKline, Merck, Novartis
15 Pharmaceuticals and others.

16 By the argument that I anticipate
17 hearing, the appearance of those industry
18 leaders and their voluntary participation in
19 a CIA, eviscerates every noncompete across
20 the country that their workforce has
21 otherwise signed and that is otherwise legal
22 and enforceable. Your Honor, there's not a
23 single, single reported decision that follows
24 that thinking.

25 In fact, as early as yesterday, I

1 received a notice that -- breaking news
2 yesterday. Pfizer to pay four hundred and
3 eighty-six million dollars to settle
4 Celebrex, Baxter Securities, multi-district
5 litigation involving investor manipulation.
6 So under that argument, a four hundred and
7 eighty-six million dollar voluntary
8 settlement throws out the window the non-
9 compete agreements and non-solicitation
10 agreements of all its workforce.

11 THE COURT: I mean, I think that's
12 kind of a tangential argument anyway. But, I
13 mean, you know, it's subject -- so your
14 position is since everybody's corrupt there's
15 no goodwill lost.

16 MR. SCHENK: Well, Your Honor ---

17 THE COURT: Not to make ---

18 MR. SCHENK: No, I understand.

19 THE COURT: Okay.

20 MR. SCHENK: I'd say the admissible
21 non-hearsay proof is in the pudding. We've
22 got sworn testimony that we haven't lost any
23 customers that anyone attributes to this
24 issue. In fact, from personal observation,
25 Ms. Brown has told us her observations,

1 personal knowledge. When she saw competitors
2 bring these articles in the Wall Street
3 Journal and tack them up, she saw her
4 customers say 'no, take that down.'

5 THE COURT: I understand. You
6 know, the goodwill issue is not going to make
7 or break -- you know, that's not going to be
8 the deciding factor.

9 MR. SCHENK: Well, I'll move on
10 from that one, Your Honor.

11 THE COURT: Okay.

12 MR. SCHENK: And wrap it up. It is
13 with a great sense of urgency that we
14 respectfully pray this Court enter an
15 injunctive order and stop the solicitation.
16 Stop the acceptance of business. Put a stop-
17 work order on the nine customers that have
18 been solicited in violation of this
19 agreement. I come today with a proposed
20 injunctive order, am happy to submit it to
21 the Court and to opposing counsel.

22 But, Your Honor, this agreement, the
23 company went out of its way to only focus on
24 what was important, to only focus on
25 solicitation, to only focus on customers that

1 Mr. Crawford was responsible for developing
2 and having work contact with. Mr. Crawford
3 has admitted that he has accepted the
4 business of those customers. If I had known
5 what I know now, frankly, that those
6 acknowledgements were signed on April 8th,
7 while he was an employee, there'd be a duty
8 to loyalty claim in this case.

9 Your Honor, we pray to the Court
10 that the injunction be ordered as requested
11 on the Motion and brief. And I'll be glad to
12 answer any additional questions. Thank you,
13 for your patience.

14 THE COURT: No, thank you. Mr.
15 Arnold?

16 MR. ARNOLD: May it please the
17 Court. I'm Andy Arnold representing the
18 Defendant, Kyle Crawford. You've read the
19 briefs, obviously.

20 Counsel has -- I appreciate the
21 tenor of his arguments, a little bit of
22 difference though. I expect our relationship
23 to continue intact after today.

24 I do want to just briefly highlight
25 some differences in the factual posture of

1 this case. First of all, setting aside the
2 goodwill arguments on the settlement, the
3 bankruptcy, that episode had another
4 significant impact on Mr. Crawford and with
5 all of the sales representatives, many of
6 whom have left Millennium. And so he wasn't
7 the first and I'm sure he won't be the last.

8 But the result of that was a
9 reduction in his commissions by fifty
10 percent. Now, he's got a wife, kids. She
11 stays at home with the kids. He's the sole
12 breadwinner. This is a fifty percent
13 reduction in his compensation that arose out
14 of this conduct, this bankruptcy. So this
15 idea, again, that it has no relevance.
16 Again, it had absolute relevance to Mr.
17 Crawford because it was a significant
18 reduction in his commissions. So I want to
19 point that out. And again, but the idea that
20 this was some plan to harm Millennium or do
21 something nefarious is just simply not the
22 case. This is about someone who worked. The
23 compensation that he touts had been given to
24 Mr. Crawford, Mr. Crawford earned that
25 compensation. And so having done that and

1 invested himself in this business to one be
2 confronted with these allegations in this
3 *Wall Street Journal* article and other
4 articles. There's a -- you can Google and
5 that may show you some of the more extreme
6 things he was confronted with. But it had a
7 direct impact on his day-to-day life, his
8 ability to make a living. So I want to point
9 that out to Your Honor.

10 The other thing, this idea that he
11 was dishonest, we take exception with that.
12 Of course, that's disputed facts. It'll be
13 resolved through discovery and through ---

14 THE COURT: And that's something
15 more for, I think, the final hearing.

16 MR. ARNOLD: I agree. I agree.
17 But I want to just say, Your Honor, that to
18 the degree he mentioned cancer genetics,
19 that, in fact, the company he works for,
20 Paradigm, they do urine testing, but they
21 also do blood testing, which Millennium does
22 not do. And they do do cancer genetic
23 testing. Paradigm is the exclusive sales
24 organization for one of the largest or the
25 largest cancer genetic testing companies in

1 the country.

2 And one of the customers, at least
3 one of the customers, Foothills Medical
4 Associates has engaged Paradigm to do this
5 cancer genetics testing. So the idea again is
6 that was a dishonest representation, I think
7 when he testifies he will say that one of the
8 most exciting parts of the opportunity
9 presented to him was to be a part of this
10 cutting-edge technology in cancer genetics.
11 So, again, not only was he not dishonest but
12 he told the truth. He didn't hide what he
13 was doing.

14 And so, I mean, there's just a
15 little bit of a contradiction that 'hey, he's
16 going to get out of testing, he's going to
17 just take some time off, and he's going into
18 cancer genetics.' I mean, which is it?
19 Well, he went into cancer genetics as well as
20 other types of testing.

21 This idea that -- in a lot of these
22 cases that deal with irreparable harm, you do
23 have a goodwill component. You also have
24 confidential trade secret information. In a
25 non-solicitation case, what we're really

1 talking about is the customers and the
2 identity of customers. One, he didn't take a
3 customer list. He didn't need to take a
4 customer list. In fact, our Honor, you know
5 all the customers and prospective customers
6 of Millenium, physicians. If a physician
7 write a prescription, they are a prospective
8 customer because that's who does the urine
9 test. So this idea that 'hey, he's got some
10 inside information', it's just not true.
11 What he would do would be ride around, he
12 sees a physician's office, he pulls in there
13 and gives them his card and tries to talk to
14 them.

15 He took sixty to seventy-five
16 different -- over the last eighteen months --
17 different physicians or decision makers,
18 physician practices to lunch who did not do
19 business with Millennium. Yet, they are
20 covered by this agreement. So there's been a
21 focus on customers.

22 And I would -- the *Vessel* case, I
23 will tell you is not my proudest achievement
24 particular because, you know, he's not here
25 today but Mr. Foster was on the other side.

1 So it is a thorn in my rear end, I can assure
2 you. But one of the things we talked about
3 before was, -- Judge is that if you look at
4 the case, there is a clear difference between
5 federal courts and our state appellate
6 courts. The federal courts have been a
7 little looser with the granting of
8 injunctions and the interpretation of what is
9 enforceable in the non-compete area or the
10 non-solicitation area. If you'll look at the
11 state court cases, and I've cited them, they
12 focus on existing customers, existing
13 customers. So, yeah, the *Vessel* case went
14 further than our State appellate courts have.

15 I cite another case, the Joe
16 Anderson case where he said former customers,
17 that's too broad. What legitimate interest
18 do they have in preventing him or anybody
19 else going after a customer they no longer do
20 business with? I mean, what legitimate
21 interest could you have? He cites a case
22 cited by the court in *Vessel*, the *Ball* case.
23 The *Heart Clinic* case. That was a non-
24 compete case. I mean, you go read it, a non-
25 solicitation was not at issue in that case.

1 His sentence is inexplicable because it cites
2 cases, including the *Wolf* case that
3 specifically said it was limited to existing
4 policyholders. Now, the *Heart Clinic* case,
5 in its description of -- the kind of a
6 boilerplate description of the law close the
7 *Heart Clinic* case -- because it does use the
8 term former customers. The only way to
9 reconcile that -- and it wasn't a holding --
10 it was just kind of reciting the things that
11 we do kind of in our briefs, you know, that a
12 restricted or a non-solicitation can be a
13 replacement for a geographic limitation.
14 That case didn't involve that issue. Nobody
15 argued that issue. I think if you read the
16 case, the only way to reconcile that with the
17 holdings of the cases it cites is that former
18 customers meant the former customers of the
19 employee, not the former customers of the
20 employer. These are -- he can go solicit his
21 former customers or could not solicit the
22 former customers as long as they're existing
23 customers of the employer. You just look at
24 the case and you decide for yourself. But
25 that was the case they were relying on or

1 that *Vessel* relied upon is not even a non-
2 solicitation case. It was a territorial
3 restriction in a non-compete case. So that
4 case is inapplicable, he's relying on dicta
5 and, look, I would too -- I mean, if that's
6 what you're left with.

7 But there's not a holding from a
8 South Carolina Appellate Court as broad as
9 *Vessel*, which would have been appealed if my
10 client had wanted to appeal it. The court
11 got it wrong in *Vessel*.

12 This Court is bound by the South
13 Carolina Appellate Courts and those limit
14 non-solicitations to existing customers,
15 existing policyholders. And it just doesn't
16 make sense to apply it to former customers.
17 But let us get past former customers. Look
18 at the language. It doesn't even just apply
19 to customers or former customers. It is
20 former prospective customers. This is
21 anybody he had any contact with, any
22 physician's office that he had contact with
23 whether they've ever done business with
24 Millennium at all. If he went to lunch with
25 them seventeen months ago and they never did

1 business, he is prohibited by this non-
2 compete from soliciting former prospective
3 customers. Not even former customers, not
4 even customers, former prospective customers.
5 I will tell you -- you won't find a case.
6 You may find a federal court case that says
7 prospective customers. You won't find one
8 that says former prospective customers. I
9 mean, that's just -- they were getting lists.
10 Here's everybody who has ever written a
11 prescription in South Carolina. That's who
12 gets this and that's who does the testing.
13 That's everybody. So the idea that again,
14 there's confidential information that needs
15 to be protected, there's customer
16 relationships that need to be protected.

17 Again, this is a shotgun approach.
18 You go to all these physician practices.
19 Some do business with you and some do not.
20 The last thing I will say, Your Honor, unless
21 you have questions for me, I do want to say
22 look, the reason they don't and can't
23 calculate damages is simply because discovery
24 hasn't taken place. He said 'we can't
25 calculate it yet.' Well, if you can't

1 calculate it yet. We haven't done discovery.

2 If you can prove that this thing is
3 enforceable. Then you're going to say well
4 who were our customers? How much business
5 did Paradigm do with these customers. He's
6 not servicing these customers at present on
7 this urine testing. And you can add up all
8 the revenue from urine testing and say that
9 would have been our revenue. If he can meet
10 his burden of proof and connect the dots,
11 then that is subject to calculation. This is
12 as clear-cut a case because we're not looking
13 -- walking out with trade secrets.

14 Again, the customers are not
15 confidential. So this is purely about the
16 loss of revenue from urine testing. Period.

17 So, Your Honor, without belaboring
18 any of my points -- you've been patient -- I
19 would just simply say it's overly broad. It
20 applies to former customers, former
21 prospective customers. It is -- the damage
22 here is calculable to the extent that this
23 agreement is deemed to be enforceable in the
24 future. It's calculable in dollars and
25 cents. Anybody who can do math will be able

1 to calculate damage. We're don't need an
2 expert in this case to calculate the damages.
3 We can just do the math. And so this is
4 quintessentially the case where they need to
5 prove their case first and enter the remedy.
6 But they're not entitled to this drastic
7 remedy of injunction which was run in,
8 particularly based on the affidavit, the type
9 of evidence they presented, which Your Honor
10 has rightly pointed out is primarily hearsay
11 and speculation. And most of the points,
12 there is another side to the story. I don't
13 think they've met their burden and are not
14 entitled to this remedy.

15 THE COURT: Okay.

16 MR. SCHENK: Briefly, Your Honor.

17 THE COURT: Yes, sir?

18 MR. SCHENK: We just want an Order
19 requiring Mr. Crawford to abide by his
20 promise, to stop soliciting and accepting
21 business.

22 At this stage, we think that we've
23 proven our case on all of those elements. I
24 don't know where the concept of former
25 prospective customers comes from. It's

1 certainly not in the covenant itself. It
2 says customers. There's no mention of former
3 customers. It talks about customers who had
4 work contact and to whom he contributed on
5 Millennium's behalf during an eighteen-month
6 period. Millennium -- the exhibit that we
7 have in the list of a hundred and eighty-
8 nine, these aren't just random people who
9 were taken out for lunch one time. To get
10 setup in Millennium's system, you have to
11 have a process that justifies the person
12 being named a customer. And all of the one
13 hundred and eighty-nine were people who are
14 customers who contributed volume during that
15 period.

16 THE COURT: Well, it does say
17 potential customers in the employee contact.

18 MR. SCHENK: Customers and
19 potential customers. But I want to take off
20 the table this notion of former remote
21 prospects or customers. You know, the only
22 list that we're focused on now is the list of
23 customers that meet Millennium's definition,
24 which means sufficient work contact to be
25 setup in the system and they have given

1 Millennium the UET, PGT and other specimen
2 volumes during that period of time, customers
3 that were directly under Mr. Crawford's
4 supervision.

5 So this notion -- I certainly
6 haven't made the argument today, the document
7 hasn't made the argument that former people
8 who he may have had lunch with that, frankly,
9 by the way we paid for, are off limits.

10 THE COURT: Well, but I think what
11 they're saying though, at least the way I
12 understand his argument is, because it has
13 the term "potential customer" in there,
14 doesn't that make it too broad and
15 unenforceable?

16 MR. SCHENK: I submit to Your Honor
17 that it does not. I'd submit that a prospect
18 that he had meaningful work contact with is a
19 narrowly-tailored definition.

20 But I'd also submit to the Court
21 that the list that we're asking for are those
22 customers that have been setup, provided,
23 work volume, provided revenue to Millenium
24 through Mr. Crawford. And that's what we're
25 focused on.

1 We believe -- I just couldn't
2 disagree more with the narrow tailoring of
3 this. You know, the company went out of its
4 way to specifically authorize competitive
5 activity that didn't involve taking or
6 accepting business from Millennium's
7 customers.

8 And I'll just say this, you know,
9 this is all a matter of discovery. But this
10 notion that Paradigm is a forward-thinking
11 cancer genetics operation and that, you know,
12 Mr. Crawford's not doing anything in the UDT
13 space, he's admitted that he has done UDT
14 work for them. He's admitted that the
15 customers that he's taken were UDT customers.
16 And the only information I could find about
17 Paradigm on its website and specifically the
18 brochures that it offers, all go to UDT
19 services on the brochure that they publicize
20 to the rest of the world.

21 So, Your Honor, I think that, you
22 know, I've said all I can on these points.
23 At this stage irreparable harm is the loss of
24 goodwill, is the loss of the relationship.
25 That is almost assumed in these cases. And I

1 believe that *Vessel* does cite to -- it cites
2 South Carolina controlling authority on that
3 point. And I'd rest there, Your Honor. I'd
4 be happy to answer any additional questions.

5 THE COURT: All right. Let me
6 just ask this. I'm going to take this under
7 advisement because I want to review all of
8 this information. But -- okay. I'm just
9 saying, assuming that I grant your relief, do
10 we need -- well, how do we need to deal with
11 the list? I mean, is that something that
12 y'all -- I guess you haven't looked at it
13 because you didn't have the confidentiality.

14 MR. SCHENK: I've got a suggestion
15 on that, Your Honor.

16 THE COURT: Yes.

17 MR. SCHENK: I'll tender the list.
18 I'll tender it to the Court. If the Court's
19 inclined to grant the injunctive relief, do
20 so pursuant to that list. Then we'll do the
21 discovery on it. My client stands ready to
22 post a performance bond necessary to satisfy
23 the Court. If we're wrong about a handful of
24 those customers, that'll be compensated on
25 down the road.

1 THE COURT: All right. Well, let
2 me hear about -- okay. Do you want to
3 respond to that?

4 MR. ARNOLD: Well, I want sixty
5 seconds.

6 THE COURT: All right. And I'm
7 not indicating how I -- I am just saying that
8 I want to look at all my options here.

9 MR. ARNOLD: I understand. Sixty
10 seconds. So, look, first of all *Faces*
11 *Boutique*. The *Faces Boutique* case said you
12 enforce the covenant as written or not at
13 all. Now, what they're doing is saying, Your
14 Honor, we've scaled this back. We don't want
15 you to protect potential customers. We're
16 only asking you to protect customers. Why is
17 that? Because they realize they would never
18 give you -- because they couldn't identify.
19 The potential customers is everybody, every
20 physician in the State of South Carolina. So
21 they have peeled it back. And I think that
22 is an admission that, Your Honor, we're not
23 asking for everything you said we're asking
24 for.

25 The other thing I want to just point

1 out and just make sure I am clear, it says
2 potential customers you are in contact with
3 during the last eighteen months. So my point
4 of former perspective would be if there was
5 somebody that was contacted seventeen months
6 ago, because they were a perspective
7 customer, and hasn't been contacted since,
8 who has never done business with Millennium,
9 they still come up in this. That would be a
10 former perspective customer. So, my point
11 there is just simply that that is overly
12 broad.

13 They're saying Your Honor 'we're
14 not asking for all of that.' But the reason
15 they're not asking for that is because it's
16 overly board. But you have to either enforce
17 the covenant as written or not at all.

18 THE COURT: All right. Again,
19 just so that I have all of my options here.
20 What about -- tell me if I decide to go with
21 the injunction, I need to hear what about
22 y'all think a bond should be?

23 MR. SCHENK: I'll tell you, Your
24 Honor, I'm a little bit -- I'm a little bit
25 confused on that one. Typically, in bonding

1 cases, we look at if it's a non-compete
2 situation or an employee is going to be
3 literally sidelined, sitting on the bench
4 during the period of the litigation, we look
5 at what their salary was. We forecast that
6 over a period of weeks or months. And that's
7 how we arrive at our bond.

8 He is free, given his experience,
9 his education, the world of opportunities
10 that he has described with Paradigm, he's
11 free to go out and earn that living all that
12 he wants. I think a fair case can be made
13 for a nominal bond, therefore. Unless he's
14 prepared to attribute the exact amount of
15 revenue flowing from this customer list
16 directly into his pocket, I have a hard time
17 at doing anything, other than throwing at a
18 dart board. But I know the Court's got wide
19 discretion on that.

20 The bonding issue, as long as it's
21 reasonable is certainly one that I'm sure my
22 client will be comfortable with, you know,
23 subject to our ability to weigh-in on it
24 further. But that's what I land on.

25 THE COURT: Okay.

1 MR. ARNOLD: Well, Your Honor,
2 because it's going to restrict his ability to
3 earn commissions, I would think one way you
4 would do this would be to look at the amount
5 of business that had been done while at
6 Millennium, the business they say they've
7 lost and what his commissions would be on
8 that business.

9 THE COURT: I'll tell you what --
10 it may make sense, if I get to that point
11 then I'll just ---

12 MR. ARNOLD: And then we can submit
13 additional information.

14 THE COURT: Right. Anything
15 further? And, also, I've got the consent
16 Order, which I'm signing as we speak. I just
17 added the date in there, today's date. So
18 that'll be E-filed. I guess y'all will get
19 it. You know, how soon after I sign an Order
20 does it come to the ---

21 MR. ARNOLD: I would think fairly
22 shortly.

23 THE COURT: I think it goes to the
24 clerk's office first.

25 MR. ARNOLD: I would suspect today

1 some time.

2 THE COURT: All right. But it has
3 been signed. Yes, sir?

4 MR. SCHENK: Would you like us to
5 file the confidential exhibit electronically?

6 THE COURT: No, why don't we just
7 hand that up to me. And this is something
8 you haven't seen, right?

9 MR. ARNOLD: (Negative gesture).

10 MR. SCHENK: (Tendering) -- Your
11 Honor, these are customers through which Mr.
12 Kyle -- Mr. Crawford, excuse me, -- received
13 commissions on, worked with during the
14 eighteen-month period. You don't have to
15 take that from me. It's in the affidavit.

16 THE COURT: And I don't -- all
17 right, thank you. This is just one, two,
18 three ---

19 MR. SCHENK: It's a Bates-labeled
20 five-page.

21 THE COURT: --- four, five. All
22 right.

23 MR. SCHENK: I use all these cover
24 pages that the ---

25 THE COURT: And I'm going to

1 accept this just for the purposes of in the
2 event that -- we're not going to file it
3 because it's Confidential. But I don't want
4 this to generate anything on any side. I'll
5 be happy to look at it. It's not relevant to
6 anybody's argument. This is just for me in
7 the event that the injunction is granted, I
8 will reference this.

9 MR. SCHENK: And I'd ask Mr. Arnold
10 if he would keep possession of it.

11 MR. ARNOLD: Oh, sure. Yeah.

12 THE COURT: Yeah, he's bound by
13 the confidentiality and it'll be subject to
14 the order.

15 MR. ARNOLD: Sure.

16 MR. SCHENK: Should we mark this
17 for the record as an exhibit?

18 THE COURT: Yeah. Let's mark
19 this. Madam Court Reporter, if you'll mark
20 that as a Court's Exhibit 1.

21 COURT REPORTER: Court's Exhibit 1.

22 (SO MARKED AS COURT'S EXHIBIT 1)

23 MR. SCHENK: And the last item I
24 could suggest, Your Honor, or offer I should
25 say is we've got a draft Order, the finding

1 of facts and conclusions that I would submit
2 simultaneous or in advance if Your Honor
3 would ---

4 THE COURT: I mean, I'll take a
5 copy if I can get you to submit it ---

6 MR. SCHENK: Would you like that
7 electronically as well?

8 THE COURT: You can go ahead and
9 send it to him if you want.

10 MR. SCHENK: And I will fully
11 expect Mr. Arnold would ---

12 THE COURT: All right. I'll let
13 y'all know something next week.

14 MR. SCHENK: Thank you very much,
15 Your Honor. I appreciate the opportunity to
16 be here today.

17 (TRANSCRIPT CONCLUDED)

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Millennium Health, LLC,

Plaintiff,

vs.

Kyle B. Crawford, and

Unidentified John Does.

Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

CIVIL ACTION No.: 2016-CP-23-04218

**PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

PLEASE TAKE NOTICE the Plaintiff Millennium Health, LLC ("Millennium"), by and through its undersigned counsel, moves pursuant to Rule 65 of the South Carolina Rules of Civil Procedure for a Temporary Restraining Order and Preliminary Injunction against the Defendant Kyle B. Crawford ("Defendant") resulting from Defendant's breach of a contract regarding confidentiality, non-disclosure and non-competition in connection with Defendant's prior employment with Millennium, as more fully described in the Verified Complaint filed contemporaneously with this Motion. The Verified Complaint is attached hereto as Exhibit 1 and incorporated by reference herein as if fully set forth. This Motion is supported by the Verified Complaint and supporting Exhibits, which includes the sworn Affidavit of a representative and employee of Millennium. In support of this Motion, Millennium will respectfully show the following:

1. Millennium has filed a lawsuit for, among other claims, injunctive relief and damages resulting from Defendant's breach of his employment contract. Millennium requests this Court require Defendant to maintain the *status quo* during the pendency of the action

regarding Defendant's post-employment contractual obligations and refrain from interfering in Millennium's rights, including but not limited to solicitation of Millennium customers.

2. As outlined in the Verified Complaint, Millennium is informed and believes that Defendant is soliciting and accepting the business of Millennium customers in violation of his contractual obligations owed to Millennium. Millennium has lost business and has been financially damaged as a direct and proximate result of Defendant's solicitations of Millennium's customers. Millennium is in immediate jeopardy of losing additional customers and sustaining additional financial damages.

3. As a result of Defendant's, conduct, Millennium will suffer immediate and irreparable harm, and loss and damage of a substantial nature if preliminary injunctive relief is not granted as more fully set forth in the Verified Complaint.

4. Millennium is likely to prevail on the merits of its causes of action as set forth in the Complaint.

5. Millennium has no adequate remedy at law.

6. Defendant will not suffer any undue prejudice by being required to maintain the *status quo* through the issuance of a Temporary Restraining Order and/or Preliminary Injunction Order.

7. A Temporary Restraining Order and Preliminary Injunction are reasonably necessary to protect the legal rights of Millennium pending in this action. Millennium seeks a court Order in the form of a Temporary Restraining Order and Preliminary Injunction compelling Defendant Crawford to adhere to his post-employment contractual obligations, enjoining Defendant Crawford from interfering in Millennium's rights as stated herein and as set forth in the Verified Complaint, and maintaining the *status quo* to prevent possible irreparable harm during the pendency of this action.

8. Prior to filing the Verified Complaint and this Motion, the undersigned counsel communicated with counsel for Defendant, Michael G. Corley and the Rothstein Law Firm, PA, who agreed to accept service of pleadings on behalf of Defendant. Counsel for Defendant will be properly served with the Verified Complaint and this Motion in accordance with applicable rules.

WHEREFORE, Millennium, through its undersigned counsel, hereby requests the Court schedule a hearing on its Motion for a Temporary Restraining Order and Preliminary Injunction so the parties can be heard on this matter and enter an Order in favor of Millennium enjoining Defendant from the unlawful conduct stated herein and more fully described in the Verified Complaint and for such other relief this Court may deem just and proper.

A Memorandum of Law in Support of this Motion will be filed with the Court before the scheduled hearing.

This the 12th day of July, 2016.

Respectfully Submitted,

WILLIAMS MULLEN

s/ Allen Keith McAlister, Jr.

A. Keith McAlister, Jr.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
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Millennium Health, LLC,)
)
Plaintiff,)
)
v.)
)
Kyle B. Crawford, and Unidentified)
John Does,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

Case Number: 2016-CP-23-04218

**DEFENDANT KYLE CRAWFORD’S
MEMORANDUM IN OPPOSITION TO
PLAINTIFF’S MOTION FOR INJUNCTIVE
RELIEF**

COMES NOW Defendant Kyle Crawford and files this Memorandum in Opposition to Plaintiff’s Motion for Preliminary Injunctive Relief as follows:

I. INTRODUCTION/SUMMARY

Plaintiff Millennium Health, LLC (“Plaintiff”)—the former employer of Defendant Kyle Crawford (“Crawford”)—has filed an action against Crawford seeking damages and injunctive relief for an alleged violation of a non-solicitation provision. In addition, Plaintiff filed a motion for temporary restraining order and for preliminary injunctive relief. However, as will be discussed in more detail below, Plaintiff supports its motion for preliminary injunctive relief with little more than boilerplate claims that Plaintiff has “no adequate remedy at law” and that “Millennium has *likely* lost valuable customers, and the financial revenue associated with those customers, to Defendant Crawford because of his breach of contract.” (Verified Complaint, ¶ 48) (emphasis added). As will be demonstrated below, Plaintiff clearly has an adequate remedy at law.

In further support of its motion, Plaintiff also identifies “loss of goodwill,” “loss of confidence and trust of customers,” and “loss of business reputation” as additional examples of “irreparable harm” that require the Court’s intervention to prevent. However, as laid out in Crawford’s affidavit and as available in the public record, the facts tell a different story. Just nine

months ago, Plaintiff entered into a “Corporate Integrity Agreement” with the U.S. Department of Health and Human Services Office of Inspector General, in which it agreed to pay a fine of \$256 million for its nationwide a fraudulent scheme involving customers, which included providing kickbacks to physicians, including those serviced by Crawford. Crawford Affidavit, ¶ 7. The illegal kickback scheme to physicians (who were/are Plaintiff’s customers) was represented to its customers as lawful, and the scheme was the source of much of Plaintiff’s goodwill, as it was a key part of the marketing and sales strategy for Plaintiff. *Id.* This widely reported facts behind Plaintiff’s fraud severely damaged Plaintiff’s goodwill and sullied Plaintiff’s reputation and the reputation of all those who work for it. *Id.* at ¶ 8-9. Eventually, Plaintiff declared bankruptcy as a result of its own actions. *Id.* at ¶ 9. Now Plaintiff seeks the aid of this court in enjoining Crawford under the guise of protecting that which it has all but destroyed itself.

As a final argument, the non-solicitation is overly broad because it encompasses former customers and former prospective customers, which is beyond the scope of what is deemed lawful under South Carolina precedent. South Carolina law clearly protects existing customers, but there is no legitimate interest in protecting accounts previously lost or accounts with which Plaintiff never did business. For all these reasons, Plaintiff’s motion for injunctive relief should be denied.

II. STATEMENT OF FACTS

Defendant relies on the facts in Crawford’s affidavit filed in support of this Memorandum, which is attached hereto. For sake of brevity, the facts contained in the affidavit are not repeated but are simply incorporated by reference.

III. ARGUMENT

A. Plaintiff Fails to Establish a Basis for Injunctive Relief.

In *Strategic Res. Co. v. BCS Life Ins. Co.*, the South Carolina Supreme Court set out clearly the nature of an injunction and the high burden for obtaining one:

The power of the court to grant an injunction is in equity. The court will reserve its equitable powers for situations when there is no adequate remedy at law. The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction. The remedy of an injunction is a drastic one and ought to be applied with caution.

367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) (internal citations omitted); *see also Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (“An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.”). To establish a cause of action for injunction, the moving party must show (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (S.C. 2010); *see also Scratch Golf*, 361 S.C. at 121, 603 S.E.2d at 908; *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001).

1. **Plaintiff has failed to establish that it will suffer irreparable harm.**

Plaintiff’s Verified Complaint and accompanying affidavit fail to establish that Plaintiff will suffer irreparable harm absent this court granting an injunction. Under South Carolina Law, a complaint fails to state a cause of action for injunctive relief *unless* facts are alleged that show that the plaintiff has no adequate remedy at law and will suffer irreparable harm. *See South Carolina Public Service Authority v. Carolina Power and Light Co.*, 244 S.C. 466, 474, 137 S.E.2d 507, 510

(1964); *see also* *Knohl v. Duke Power Co.*, 260 S.C. 374, 376, 196 S.E.2d 115, 116 (1973).¹ Pursuant to SCRCP 65, even if the complaint is properly pled, an injunction may be granted “only if it clearly appears from **specific facts** shown . . . that immediate and irreparable injury, loss, or damage will result to the applicant.”² (emphasis added). It is well established in South Carolina that the plaintiff must make a clear showing that it “will suffer immediate, irreparable harm without the injunction . . .” *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011); *see also* *Direx Israel, Ltd. v. Breakthrough Medical Corp.*, 952 F.2d 802, 812 (4th Cir. 1991). “Plaintiff must demonstrate it faces an immediate threat of irreparable harm without an injunction. The required irreparable harm must be neither remote nor speculative, but actual and imminent.” *Hagemeyer N. Am., Inc. v. Thompson*, 2006 U.S. Dist. LEXIS 19468, 8 (D.S.C. Mar. 1; 2006) (internal quotation marks omitted). “When the record indicates that [plaintiff's loss] is a matter of simple mathematical calculation, a plaintiff fails to establish irreparable injury for preliminary injunction purposes.” *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551 (4th Cir. 1994).

Plaintiff has failed to allege sufficient factual allegations in its complaint and has failed to prove come forward with any specific facts that would even suggest that irreparable harm is imminent and actual. Loss of business that is certainly compensable in money damages is not irreparable harm. Moreover, the loss of goodwill assumes that the company has goodwill to lose. In fact, the only irreparable harm in this case is the damage caused by Plaintiff to its own reputation and to the reputation of those associated with it. Boilerplate allegations, devoid of facts to support it and

¹ “Irreparable injury,” as used in the law of injunctions, does not necessarily mean that the injury is beyond the possibility of compensation in damages. The fact that no actual damages can be proved, and in an action at law that the jury could award only nominal damages, is often the best reason for a court of equity to interfere to prevent a continuous injury. 27 S.C. Jur. *Injunctions* § 4 (2012).

² South Carolina Rule of Civil Procedure 65 is based upon the federal rule and uses an identical standard for immediate and irreparable harm.

contradicted by evidence in the record, simply is not enough to interfere with Defendant's right to pursue his greatest worth.³

2. Plaintiff's alleged damages, if proven, can be calculated and compensated in dollars, which means it has an adequate remedy at law.

Plaintiff is seeking monetary damages that can be calculated in dollars. As alleged in the Verified Complaint: "Millennium has *likely* lost valuable customers, and the financial revenue associated with those customers, to Defendant Crawford because of his breach of contract." (Verified Complaint, ¶ 48) (emphasis added). The South Carolina Court of Appeals has previously upheld the denial of an injunction on the ground that the plaintiff had the ability to seek and prove damages from an alleged breach of a non-compete. The court noted that "[a]n injunction is an equitable remedy; as such, it is available only where no remedy at law exists or where the legal remedy would fail to make the party whole." *Mailsorce v. M. A. Bailey & Assocs.*, 356 S.C. 363, 369-70, 588 S.E.2d 635, 639 (Ct. App. 2003) (overruled on other grounds by *Poynter Invs. v. Century Builders of Piedmont*, 387 S.C. 583, 587-588, 694 S.E.2d 15, 17-18 (2010)). Plaintiff's only alleged damages are pecuniary, and accordingly, Plaintiff is seeking monetary damages, which are readily calculable. Therefore, Plaintiff has an adequate remedy at law.

3. Plaintiff is unlikely to succeed on the merits because the underlying non-solicitation agreement is unenforceable.

The South Carolina Court of Appeals has summarized the law governing non-competes as follows:

³ "[T]he right of an individual to follow and pursue the particular occupation for which he is best trained is a most fundamental right. Our society is extremely mobile and our free economy is based competition. One who has worked in a particular field cannot be compelled to erase from his mind all of the general skills, knowledge and expertise acquired through his experience. These skills are valuable to such employee in the marketplace for his services. Restraints cannot be lightly placed upon his right to compete in the area of his greatest worth." *Carolina Chemical Equipment Company v. Muckenfuss* 322 S.C. 289, 471 S.E.2d 721 (S.C. Ct. App. 1996).

Covenants not to compete contained in employment contracts are generally disfavored and will be strictly construed against the employer. A restriction against competition must be narrowly drawn to protect the legitimate business interests of the employer. A covenant not to compete will be upheld only if it is:

- (1) necessary for the protection of the legitimate interest of the employer;
- (2) reasonably limited in its operation with respect to time and place;
- (3) not unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood;
- (4) reasonable from the standpoint of sound public policy; and
- (5) supported by a valuable consideration.

* * * *

If a covenant not to compete is defective in one of the above referenced areas, it is totally defective and cannot be saved.

Faces Boutique, Ltd. v. Gibbs, 455 S.E.2d 707, 708-09 (Ct. App. 1995) (citations omitted). **“We must uphold the covenant as written or not at all, it must stand or fall integrally.”** *Id.* (emphasis added). Whether or not such a non-compete is reasonably limited in its operation is a question of law. *See Stringer v. Herron*, 424 S.E.2d 547 (Ct. App. 1992).

“The general test is that contractual prohibitions must be geographically limited to what is reasonably necessary to protect the employer's business. Prohibitions against contacting **existing customers** can be a valid substitute for a geographic limitation.” *Wolf v. Colonial Life and Acc. Ins. Co.*, 309 S.C. 100, 109, 420 S.E.2d 217, 222 (Ct. App. 1992) (emphasis added) (citing *Caine & Estes Ins. Agency, Inc. v. Watts*, 278 S.C. 207, 293 S.E.2d 859 (1982)); *see also Team IA, Inc. v. Lucas*, 395 S.C. 237, 717 S.E.2d 103, fn. 1 & 2 (Ct. App. 2011). However, if the court finds this provision to be enforceable, then it would be the South Carolina court to reach such a result. In fact, there is not one reported South Carolina case that permits prohibitions against contacting prior

customers and former prospective customers to substitute for a geographic limitation. “Soliciting business from former clients of [the former employer] is not unfair or improper; [the former employer] has no relationship with these customers whatsoever.” *Fournil v. Turbeville Ins. Agency, Inc.*, 2009 U.S. Dist. LEXIS 16303, *14-15, 2009 WL 512261 (D.S.C. Mar. 2, 2009);⁴ *see also Hejl v. Hood, Hargett & Assocs.*, 674 S.E.2d 425, 430 (N.C. Ct. App. 2009) (holding that a non-solicitation agreement that encompassed former prospective customers was overly broad: “Defendant's attempt to prevent Plaintiff from obtaining clients where Defendant had failed to do so, is an impermissible restraint on Plaintiff.”).

In *Wolf*, the plaintiff-employee had been employed in insurance sales and had signed a non-compete agreeing not to solicit any “existing policyholders and payroll deduction accounts.” 309 S.C. at 105, 420 S.E.2d at 220. However, significantly, the agreement did not contain any geographic-based restrictions or a “blanket prohibition against competition,” such as exists here, but only applied to **existing customers** of the employer. The court upheld this narrowly tailored prohibition, based upon a South Carolina Supreme Court decision, *Caine & Estes Ins. Agency, Inc. v. Watts*, that limited its holding to current/existing customers. *Id.*; *see also Caine & Estes*, 278 S.C. at 209, 293 S.E.2d at 860. And once again in *Oxman v. Profitt*, the South Carolina Supreme Court upheld a non-solicitation that was limited to existing policyholders. 241 S.C. 28, 126 S.E.2d 852.

The logic is clear: a business has no legitimate interest in prohibiting solicitation of non-customers, including those who have never been customers. Competition for this sort of business does not cause any loss to a business, and certainly no irreparable harm to a business. Despite the fact that it has no legitimate interest in protecting former customers and non-customers from

⁴ The District Court adopted the Report and Recommendation of the Federal Magistrate, who held: “[A] covenant prohibiting [an employee] from accepting business from customers who no longer do business with TIA advances no legitimate business interest of her former employer.” *Fournil v. Turbeville Ins. Agency, Inc.*, 2008 U.S. Dist. LEXIS 116469, *13 (D.S.C. Dec. 29, 2008).

competition, Plaintiff has incredulously represented that failing to do so will result in “irreparable harm.” This court should reject such an untenable position.

4. Plaintiff’s own previous fraudulent behavior constitutes unclean hands under settled principles of equity, which prevents it from now seeking equity from this court.

As laid out in Paragraphs 7 to 9 of Kyle Crawford’s Affidavit, Plaintiff engaged in a nationwide scheme to defraud and give illegal kickbacks to physicians, including the very accounts Plaintiff now seeks to enjoin Crawford from soliciting or servicing. Such inequitable conduct by Plaintiff disallows it from obtaining equitable relief from the court now. South Carolina law is clear that “[u]nclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 292 (2000); *see also Williams v. Riedman*, 339 S.C. 251, 278, 529 S.E.2d 28 (Ct. App. 2000); *Associated Spring Corp. v. Roy F. Wilson & Avnet, Inc.*, 410 F. Supp. 967, 978 (D.S.C. 1976) (in denying enforcement of a non-compete, the court held that “[t]he doctrines that ‘He who seeks equity must do equity’ and that ‘He who comes into equity must come with clean hands’ are firmly established in South Carolina as applicable to any of the multitude of matters which may arise in equity.”) To provide an equitable remedy to protect business obtained and bilked unlawfully would violate seemingly every equitable maxim in the book.

Crawford had no knowledge that the practices pushed by his employer were illegal. Crawford Affidavit, ¶ 8. Of course, every employee who engaged in sales under these corporately-mandated practices became implicated by association with the unlawful conduct of Plaintiff. Upon discovering that Plaintiff’s sales and marketing strategies had been unlawful and fraudulent, Crawford came quickly to believe that unless he left Plaintiff’s employment, his reputation would remain tarnished.

Crawford Affidavit, ¶ 7. In April 2016, Crawford learned that he and other salesmen would pay the price for Plaintiff's fraud when his commissions were cut by nearly fifty percent. Crawford Affidavit, ¶ 9. So, when Crawford informed some of his accounts of his departure from Millennium, several immediately expressed a desire to follow him. Crawford Affidavit, ¶ 10. And who could blame them? One customer sought his assistance in establishing its own lab. (Each of these accounts have provided affidavits that they were not solicited. Crawford Affidavit, ¶ 10.) Clearly, Plaintiff comes to the court now with unclean hands while seeking a drastic equitable remedy against Crawford who has done nothing wrong.

IV. CONCLUSION

There has been no showing of irreparable harm, and Plaintiff clearly has an adequate remedy at law. Moreover, the non-solicitation/non-compete at issue is overly broad, unreasonable, and not necessary to protect a legitimate interest, and is therefore unenforceable. Finally, Plaintiff has unclean hands, and cannot now seek equity. Plaintiff's motion for injunctive relief should be denied.

[signature and date on following page]

Respectfully submitted,

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July 29, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Millennium Health, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Kyle B. Crawford, and)
)
 Unidentified John Does.)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION No.: 2016-CP-23-04218

**PLAINTIFF'S MOTION TO
 RECONSIDER, ALTER AND
 AMEND ORDER ON
 PRELIMINARY INJUNCTION**

Rules 52, 59, S.C. R. Civ. P.

Pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure (SCRCP), Plaintiff, Millennium Health, LLC ("Millennium"), respectfully moves the court to reconsider, alter and amend the Order of the Honorable Perry H. Gravely, entered by the Court on September 1, 2016, denying Millennium's motion for preliminary injunction and attached hereto as **Exhibit 1** (hereafter "the Order"). Millennium requests the Court reconsider, alter and amend its Order because:

- (1) The Court overlooked key language that narrowly defines the term "potential customers", tethering that term specifically to prospecting work performed for Millennium and at Millennium's expense. Therefore, the definition as written is not overbroad;
- (2) South Carolina appellate courts acknowledge Millennium's legitimate business interest in protecting "potential customers" from solicitation;
- (3) South Carolina law permits the Court to narrowly "blue pencil" the nonsolicitation covenant as long as the Court does not "rewrite" the covenant; and
- (4) It was premature for the Court to declare the nonsolicitation covenant unenforceable.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Millennium commenced this action by filing a verified complaint on July 12, 2016. On August 3, 2016, the Court heard Millennium’s motion for preliminary injunction through which Millennium sought to enforce restrictive covenants contained in a contract between Millennium and Defendant Crawford. That motion was denied by Order of the Court entered on September 1, 2016. Thereafter, Millennium timely filed this motion for reconsideration. Millennium incorporates herein by reference the factual allegations contained in its verified complaint, including exhibits and supporting affidavits.

ARGUMENT

I. The Court Overlooked Key Limiting Language That Narrowly Defines the Term “Potential Customers.” The Definition as Written is Not Overbroad.

The Court denied the motion for preliminary injunction based on its conclusion that the nonsolicitation covenant was “too broad” and, therefore, “not enforceable” (Order, p.3). The Order concludes:

The Court finds that the prohibition against *contacting* “potential customers” is too broad, *difficult to determine* and *could encompass all customers in the market* even if these customers have never been customers of the Plaintiff. Therefore, the Court finds that the protection of these “potential customers” is not a legitimate business interest and the provision is unenforceable.

(Order, p.3) (emphasis added).

The Court’s conclusion overlooks the plain wording of the covenant and the complete definition of “potential customers” as written. Upon reconsideration, the Court will see the covenant contains a narrowly tailored definition of “potential customers.” This narrow definition is designed to protect *only* those potential customers that Defendant Crawford *directly contacted* through *use of Millennium’s resources* to offer them *Millennium’s services* while he was being

paid as a *Millennium employee* in furtherance of *Millennium's business*. The covenant expressly limits the narrow class of restricted "potential customers" to:

[T]hose potential customers "*with whom [Defendant Crawford] worked or directly contacted during the eighteen (18) months preceding [his] termination of employment*" with respect to products or services competitive with those offered by the Company at the close of [Defendant Crawford's] employment....

Verified Compl. Exhibit C, pp.4-5 (emphasis added)

Therefore, in order to qualify as a "potential customer" triggering the non-solicitation covenant:

1. Defendant Crawford must have actually "worked" with the potential customer; or
2. Defendant Crawford must have "directly contacted" the potential customer; and
3. The work-contact with the potential customer must have been made in connection with offering products and services offered by Millennium; and
4. The work-contact with the potential customer must have occurred during the defined eighteen (18) month window preceding Defendant Crawford's employment resignation (i.e., the "look-back" period).

The narrowly tailored definition of "potential customers" as written in the Agreement belies the Court's conclusion that the definition was "too broad, difficult to determine and could encompass all customers in the market...." (Order, p.3).

Further, Millennium can *readily* show the identity of its potential customers through discovery Exhibit 2 (Second Aff. of B. Fowler). The following are some examples of Millennium's proof covering the eighteen (18) month look-back period that will readily identify

“potential customers”: (A) Defendant Crawford’s expense reports¹, (B) Defendant Crawford’s “Outlook” and appointment calendar(s) showing his direct customer prospecting activity and participation at industry events, trade shows and similar events, (C) Defendant Crawford’s Millennium email account history, and (D) Defendant Crawford’s electronic notes and documents authored by him tracking his prospecting activity; and (E) testimony from Defendant Crawford’s former co-workers, supervisors and subordinates and from Defendant Crawford himself concerning what potential customers he called on for Millennium, using Millennium’s resources and at Millennium’s expense *See Exhibit 2*.

Therefore, Millennium respectfully prays the Court to reconsider and amend its conclusion of law to find the definition of “potential customers” is *not* overbroad inasmuch as that conclusion is not supported by, and is inconsistent with, the definition as it is written in the Agreement and because of the likelihood that Millennium will succeed in identifying those “potential customers” through business and other records in discovery.

II. South Carolina Appellate Courts Acknowledge Millennium’s Legitimate Business Interest in Protecting Its Confidential Information and Its “Potential Customers.”

A. As a Threshold Matter, if the Court Reverses Its Determination on the Overbreadth Issue, the Issue of Legitimate Business Interest is Moot.

As discussed above, the Court determined that the definition of “potential customers” was too broad. The Court then relied *solely* upon that finding to further rule “[t]herefore, the Court

¹ Among other things, Stark Law and the federal Anti-Kick Back Statute significantly limit the giving of anything of value to a healthcare provider in exchange for a business referral and otherwise place monetary limits on gift-giving. Millennium tracks expense reports reflecting business and prospecting contacts between Territory Managers and other employees and healthcare customers and prospects to monitor compliance with these laws. Those expense reports identify the customer or potential customer with whom the employee had work contact, the date of the contact and nature of the interaction.

finds that the protection of ‘potential customers’ is not a legitimate business interest and this provision is unenforceable” (Order, p.3).

If, upon reconsideration, the Court agrees that the definition of “potential customers” is narrowly tailored and *is not* overbroad (as outlined in Section I above) then it naturally follows that the Court would reconsider and amend its determination on the legitimate business interest issue, insomuch as that determination was based solely upon an erroneous finding of overbreadth.

B. Alternatively, Millennium Has a Legitimate Business Interest in Protecting its Confidential Information Which is Directly Served by the Non-Solicitation Provision.

Millennium has a contractual and common law legitimate business interest in protecting its confidential information from disclosure and unfair competitive use by former employees like Defendant Crawford. One of the most valuable and potentially dangerous uses of that confidential information occurs when former employee leverage that information to solicit business from Millennium’s customers and potential customers. The most effective way legally to limit unfair use of confidential information by former employees is reasonably prohibiting them from soliciting customers and potential customers. In other words, prohibiting solicitation necessarily limits the settings and opportunities in which former employees can put confidential information to unfair competitive use. In this regard, the nonsolicitation covenant furthers Millennium’s legitimate interest in safeguarding its confidential information, an interest that South Carolina appellate courts recognize.

Section 3 (b)(i) of the Agreement, which specifically addresses non-solicitation, provides:

Though the Company has made its best effort to create a [non-solicitation] restriction as narrow as possible, Employee understands and agrees that one of the purposes of this Agreement is to *protect the information*

described above. Under any and all circumstances, Employee's use of the Company's Confidential Information to compete against the Company is prohibited by this Agreement, and Employee agrees with that prohibition.

Verified Compl. Exhibit C, p.5 (emphasis added).

This clause immediately follows the non-solicitation provision in the Agreement. This clause further defines the legitimate business interests protected by the non-solicitation covenant, including the protection of Millennium's "Confidential Information." "Confidential Information" includes customer and business contact information, business records, ordering histories, pricing lists, profit information, and "any information concerning customers or *other third-parties*² which are unique to the Company." See Agreement, Recital D, p.1 (emphasis added).

Millennium's "Confidential Information" would inevitably be disclosed and used against it for the benefit of competitors if former employees, like Defendant Crawford, are allowed to solicit Millennium's customers and potential customers.³ In accordance with the majority of jurisdictions (and citing those jurisdictions with approval), the South Carolina Supreme Court has recognized an employer's legitimate business interest in protecting its confidential information from post-employment competitive use by departed employees. See *Milliken & Co. v. Morin*, 399 S.C. 23, 37, 731 S.E.2d 288, 295 (2012) ("[A]n employer has a protectable interest *sufficient to justify enforcement of a noncompete agreement* if an employee was in a position to

² i.e., "potential customers"

³ For example, in the absence of a nonsolicitation covenant, it is dubious for Defendant Crawford to claim he will restrain himself from relying upon and using the extensive, highly confidential information that he learned from Millennium (including purchasing preferences, pricing discounts, ordering cycles, etc.) in his new competitive position with Paradigm as he calls on the same customers and potential customers he served just a few months ago for Millennium. The nonsolicitation provision is a critical safety valve to protect the legitimate business interest Millennium has in its Confidential Information that would otherwise be vulnerable due to inevitable disclosure.

gain confidential information, access to secret lists, or to develop a close relationship with clients. A protectable interest can also arise from the employer's investment in its employee, in terms of time, resources and responsibility.” (quotations and alterations omitted).

Therefore, for this independent reason, Millennium respectfully prays the Court to reconsider and amend its conclusion of law to find that the company has a legitimate business interest in protecting its Confidential Information, an interest which is directly served and protected by the nonsolicitation clause.

C. Alternatively, South Carolina Appellate Courts Acknowledge a Legitimate Interest in Protecting “Potential” and “Prospective” Customers, “Contacts Developed During Employment” and “Business Contacts.”

Based on its findings of overbreadth and lack of a protectable business interest, the Court declared the nonsolicitation provision of the Agreement was “not enforceable” and denied the motion for preliminary injunction.

In *Wolf v. Colonial Life & Acc. Ins. Co.*, a noncompetition and nonsolicitation case, the South Carolina Court of Appeals affirmed the Master-In-Equity’s determination that a former employer had a legitimate business interest in protecting its “existing *business contacts*, including the protection of its customers” 309 S.C. 100, 107, 110, 420 S.E.2d 217, 221, 223 (Ct. App. 1992). In other words, “existing business contacts,” included, *but was not limited to*, the employer’s current customers. In the present case, the nonsolicitation covenant narrowly defines “potential customers” as those prospects with whom Defendant Crawford “had worked” or had “direct contact,” therefore making the prospects comparable, if not identical, to the “business contacts” found to be deserving of protection in *Wolf*.

In *Milliken & Co, supra*. the South Carolina Supreme Court further confirmed:

[The] [l]egitimate interests of an employer that may be protected from competition include: the employer's trade secrets that have been communicated to the employee during the course of employment; confidential information other than trade secrets communicated by the employer to the employee, such as information regarding a unique business method; an employee's special influence over the employer's customers, obtained during the course of employment; ***contacts developed during the employment***; and the employer's development of goodwill and a positive image.

Milliken & Co. v. Morin, 399 S.C. 23, 37, 731 S.E.2d 288, 295 (2012) *citing with approval ACAS Acquisitions (Precitech) Inc. v. Hobert*, 155 N.H.381, 923 A.2d 1076, 1084–85 (2007)(emphasis added).

As recently as 2011, the South Carolina Court of Appeals stated, “South Carolina has enforced a non-solicitation agreement precluding an employee from ‘selling to accounts *or in the territory*’ in which he had been performing his duties as a sales representative.” *Team IA, Inc. v. Lucas*, 395 S.C. 237, 245, 717 S.E.2d 103, 107 (Ct. App. 2011) *citing Standard Register Co. v. Kerrigan*, 238 S.C. 54, 59, 74, 119 S.E.2d 533, 535, 544 (1961). If South Carolina courts are willing to uphold nonsolicitation covenants that entirely preclude employees from selling within a certain geographic territory so, too, are they willing to uphold covenants that narrowly limit solicitation of specifically identifiable “potential customers.”

Additionally, “covenants preventing the solicitation of *former customers* are enforceable under the South Carolina law.”⁴ *See, e.g., Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 12, 738 S.E.2d 480, 486 (S.C.Ct.App.2013) (“[A]n otherwise reasonable limitation on the solicitation of *former clients* can substitute for a territory restriction.”). If the Supreme Court of South Carolina has acknowledged a protectable interest in “former customers” it naturally follows the same protection is extended to “potential customers.” This is especially true where an

employer, like Millennium, provides its employee with the identity of the prospects and the financial resources, training and business opportunities to develop the potential customers.

In *Milliken & Co.*, the South Carolina Supreme Court further acknowledged “[a] protectable interest can also arise from the employer's investment in its employee, in terms of time, resources and responsibility.” *citing with approval ACAS Acquisitions (Precitech) Inc. v. Hobert*, 155 N.H.381, 923 A.2d 1076, 1084–85 (2007) (“Legitimate interests of an employer that may be protected from competition include: the employer's trade secrets that have been communicated to the employee during the course of employment; confidential information other than trade secrets;[and] *contacts developed during the employment.* . . .”) *Milliken & Co.*, 399 S.C. 23, 37, 731 S.E.2d 288, 295 (2012).

Millennium respectfully prays the Court to reconsider and amend its Order to find that the company has a legitimate business interest in protecting its “potential customers” that are within a narrowly defined class and who were identified, targeted and developed through Millennium’s resources.

D. Alternatively, Millennium Has Contractually Established its Legitimate Business Interest in Protecting “Potential Customers.”

Alternatively, Defendant Crawford contractually agreed and acknowledged that Millennium has a legitimate business interest in protecting its prospective customers from post-employment solicitation. In Section 5(a) of the Agreement, entitled “*Acknowledgments of Employee*,” Defendant Crawford agreed that:

Each and all of the covenants and restrictions contained in this Agreement are reasonable and valid *and necessary for the protection of the legitimate business interests of Company*, and any and all defenses to

⁴ *Vessel Medical, Inc. v. Elliott*, No. 6:15-CV-00330-MGL, 2015 WL 5437173, at *5.

strict enforcement thereof by Company are irrevocably and unconditionally waived by Employee.

Verified Compl. Exhibit C, p.6.

This contractual acknowledgment by Defendant Crawford creates a legitimate business interest in protecting narrowly defined “potential customers,” irrespective of whether a legitimate business interest exists under the common law of the State of South Carolina (which it does, as discussed below). For this independent reason, Millennium therefore respectfully prays the Court to reconsider and amend its conclusion of law to find that the company has a legitimate business interest in protecting “potential customers” from solicitation based on Defendant Crawford’s contractual acknowledgment to that effect.

III. Alternatively, The Court Can “Blue Pencil” The Nonsolicitation Covenant Where the Covenant is Divisible, The Contract Has an Express Severability Clause and The Court Does Not “Rewrite” the Covenant.

The Order concluded that “courts have generally held that if it is determined that a clause is overly broad, then it cannot re-write the provision or ‘blue-pencil’ the agreement” (Order, p.3). Millennium concedes the Court may not “rewrite” the covenant by *adding or substituting* additional terms to Agreement. *See Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010); *Facès Boutique, Ltd. v. Gibbs*, 318 S.C. 39, 455 S.E.2d 707 (Ct. App. 1995). However, South Carolina appellate courts have *not* foreclosed the rule of strict-blue penciling, so long as the offensive clause can be “stricken-through” and the covenant can stand on its own without adding additional terms *and* where the covenant has a specific “severability clause” authorizing blue-penciling in this manner. In fact, the appellate courts have discussed this version of blue-penciling favorably.

In *Poynter*, the trial judge rewrote a geographic restriction of seventy-five (75) miles and substituted his own restriction of fifteen (15) miles based upon his determination of geographic reasonableness. 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010). South Carolina law prohibits that degree of judicial revision and intervention and the trial judge was rightfully reversed on appeal. *Id.*

The *Poynter* decision, however, failed to address (or even mention, in order to distinguish) prior South Carolina precedent that suggest strict blue-penciling is permitted under South Carolina law. In one such case, *Somerset v. Reyner*, the South Carolina Supreme Court considered whether to blue-pencil otherwise overly broad provision. In *Somerset*, the Court stated:

A majority of the courts apply the so-called 'blue pencil test', that is, if the excessive restraint *is severable* in terms, it may be disregarded and the remaining part of the contract enforced; but if the contract *is not severable* in terms, the entire covenant falls.

* * *

The covenant here is clearly *indivisible*. It covers the entire State of South Carolina and furnishes no basis for dividing this territory. Not only does the contract show that it was the intent of the parties that this covenant be treated as indivisible, *there is no basis for drawing a sharply defined line separating the excess territory*. We cannot make a new agreement for the parties into which they did not voluntarily enter.

233 S.C. 324, 104 S.E.2d 344 (1958) (emphasis added).

The second case in which the South Carolina Supreme Court favorably considered blue-penciling covenants was *Eastern Business Forms, Inc. v. Kistler*, 258 S.C. 429, 189 S.E.2d 22 (1972). The *Eastern Business Forms* case was similar to *Somerset*, and the opinion quoted the above language, before deciding:

The restrictive covenant here is clearly *indivisible* because it provides a 100-mile radius of the City of Greenville or of the central city where the appellant performs his services as a salesman, and furnishes no basis for

dividing this territory. The contract shows upon its face that it was the intent of the parties thereto that this covenant be treated as *indivisible*. It follows, that there is no basis for drawing a sharply defined line separating the excess territory.

A 2003 federal district court decision cited *Somerset* and *Eastern* favorably for the proposition that South Carolina courts *can* strictly blue-pencil severable terms if it can be done without rewriting the covenant and the contract specifically provides for severability. In the case of *Rockford Mfg., Ltd. v. Bennet* the Court found:

Defendants contend that nowhere in the history of South Carolina jurisprudence has such an application of *Somerset* ever been made. Notwithstanding, it is clear that *Somerset* contemplates as much. *Plaintiffs rightly contend that just because the particular agreements at issue in Eastern and Somerset did not lend themselves to severability does not mean that there is not some covenant properly divisible such that the Court might honor the principles of Somerset and yet still, in effect, "blue pencil" any overbroad provisions of the covenant and enforce the narrowly tailored ones.* The Court also agrees that Plaintiffs have shown a likelihood that the non-solicitation agreement in the present case is one such covenant.

Eastern and *Somerset* delineate two important principles for determining the enforceability of non-solicitation clauses. First, as stated, the contract must be severable. Second the severability must be apparent from the contract itself—in language and subject matter.

296 F. Supp. 2d 681, 688–89 (D.S.C. 2003)

In the present case, the Court would be well within the bounds of South Carolina law to blue-pencil and strike through the term “potential customers” in the nonsolicitation covenant. Unlike the clauses in *Poynter* and *Faces Boutique Ltd.*, the present covenant is divisible. The remaining portions of the covenant can stand independently on their own without the Court adding additional terms or otherwise rewriting the covenant. The Agreement contains an express severability clause allowing the Court to blue-pencil the covenant in the manner described above while keeping, in full force and effect, all remaining and otherwise enforceable provisions of the

Agreement. *See* Agreement Section 10. "Severability, Reformation, No Defense and Effective Termination."

Therefore, for this independent and final alternative reason, Millennium respectfully prays the Court to reconsider and amend its conclusion of law and permit strict blue penciling of the covenant as outlined above.

IV. Alternatively, At a Minimum, It Was Premature For the Court To Declare The Nonsolicitation Covenant Unenforceable.

Respectfully, it was premature for the Court to declare the nonsolicitation covenant unenforceable in a ruling that amounted to judgment as a matter of law. In *Team IA, Inc. v. Lucas*, the court was presented with an appeal by a former employer after a former sales-agent obtained partial summary judgment in a restrictive covenant case. At summary judgment, the employer presented affidavit evidence that tended to show the former employee's nationwide sales and prospecting activity through expense reports, trade and industry show attendance records and the like. 395 S.C. 237, 246, 717 S.E.2d 103, 107-08 (Ct. App. 2011). The employer also presented a supplemental affidavit that specifically listed numerous "customers and prospective customers" with whom the sales agent worked and contacted during his employment within a broad geographic territory. *Id.* at 248. However, it was unclear to the Court of Appeals whether the trial court had considered the supplemental affidavit regarding the employee's contacts with "potential customers." In reviewing the totality of the record, the Court of Appeals noted:

We decline to rule to whether a non-solicitation agreement's prohibition on contact with former *prospective customers* of a former employer *is overbroad and unenforceable on its face*, as that particular issue is not yet ripe for our review. *Specifically, the Record on Appeal is unclear as to whether [the employee] contacted former customers or former potential customers of the [employer].*

Team IA, Inc. v. Lucas, 395 S.C. 237, 247 n. 2 (Ct. App. 2011) (emphasis added).

This notation by the Court of Appeals, in a case reviewing partial summary judgment, stands for the proposition that nonsolicitation covenants addressing “potential” or “prospective” customers *should not* be invalidated on their face, especially, as here, when the employer can produce evidence to show the work-contact and prospecting efforts used to recruit “potential customers.”

This matter was before the Court on a motion for preliminary injunction. Millennium was not required to prove an absolute legal right to its preliminary injunction; rather, the company was only obligated to raise a “fair question” as to the existence of such a right and to demonstrate a likelihood of success on the merits. *AJG Holdings, LLC v. Dunn*, 674 S.E.2d 505, 509 (S.C. App. 2009); *Williams v. Jones*, 75 S.E. 705, 710 (1912). Therefore, Millennium was only required to make a *prima facie* showing that Mr. Crawford breached his non-solicitation covenant. *Hesel v. City of North Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). Whether the non-solicitation covenant is, in fact, ultimately enforceable should be determined later in the proceedings. *Id.*

Defendant Crawford has admitted in affidavit testimony that he breached the nonsolicitation covenant. He admitted readily accepting the business of Millennium’s customers for the benefit of his current employer, Paradigm. Therefore, respectfully, the preliminary injunction should have been issued by the Court upon a finding of a “likelihood of success on the merits.” At a minimum, the portion of the Order declaring the covenant unenforceable should be amended or altered accordingly.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Millennium Health, LLC respectfully prays the Court to alter, amend and reconsider its Order entered September 1, 2016 and further that the Court:

- A. As more fully outlined in the Verified Complaint, preliminarily and permanently restrain and enjoin Defendant Crawford from further violations of the material terms of his contract with Millennium Health, LLC, including prohibiting and restraining Defendant Crawford from further concerted activity with his current employer and other John Does to do indirectly that which he is prohibited from doing directly;
- B. Allow such other and further oral and written argument or evidence as the Court may require in order to rule on this motion; and
- C. Grant such further relief as the Court deems just and proper.

Respectfully submitted, this the 9th day of September, 2016.

WILLIAMS MULLEN

s/ Allen Keith McAlister, Jr.
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P.O. Box 1000
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Attorneys for Plaintiff Millennium Health, LLC

EXHIBIT 2

Second Affidavit of Brian Fowler

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Millennium Health, LLC,)
)
Plaintiff,)
)
vs.)
)
Kyle B. Crawford, and)
Unidentified John Does)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION No.: 2016-CP-23-04218

SECOND AFFIDAVIT OF BRIAN FOWLER

I, Brian Fowler, being first duly sworn, hereby depose and say:

1. I am over 18 years of age, and I am competent to testify as to the matters herein.
2. The statements made by me in this affidavit are based upon my personal knowledge and my review of Millennium business records.
3. As to business records of Millennium reviewed and relied on by me or otherwise providing the basis for my testimony, such records: were made at near the time of the events which they describe, (B) by, or from information transmitted by, a person with knowledge of such events, and (C) were kept in the course of Millennium's regularly conducted business and, (D) it was the regular practice of Millennium to make and keep such records, and (E) such records attached hereto as Exhibits are true, accurate and authentic copies of the documents.
4. As to any statements herein made "upon information and belief," I believe such statements to be true.
5. The "Agreement Regarding Confidentiality, Non-Disclosure and Non-Competition" ("the Agreement") that is the subject of this action contains a narrowly-tailored nonsolicitation covenant that was designed to protect Millennium's legitimate business interests.

Millennium's legitimate interests include protecting its Confidential Information, trade secrets, business contacts, customer relationships, and customer goodwill.

6. Further, Millennium's nonsolicitation covenant is intended to protect the substantial financial resources that Millennium has invested in its processes and procedures for identifying, targeting, recruiting, cultivating and enrolling "prospective" and "potential" customers so that they may ultimately become actual, profitable, revenue generating customers of Millennium. Territory Managers, like Defendant Crawford, rely heavily on, and receive substantial benefit from, Millennium's prospecting resources, data and information. This information is particularly valuable to sales employees like Crawford who, at the time they join Millennium, have no medical sales experience, have no personal list of medical professional contacts to work from, and develop their contacts on Millennium's time at Millennium's expense.

7. The nonsolicitation covenant in the Agreement that applies to Mr. Crawford provides:

Employee agrees that Employee will not directly or indirectly, solicit, accept, or service the business of any customers or potential customers *with whom Employee worked or directly contacted during the eighteen (18) months preceding Employee's termination of employment with respect to products or services competitive with those offered by Company* at the close of Employee's employment. Employee agrees that application of this covenant to certain of Company's business relationships instead of a geographical area is the most reasonable, and the narrowest, methods of protecting the Company's legitimate business interests, Confidential Information, and good will.

Verified Compl. Exhibit C, pp.4-5; Agreement, Section 3(b)(i).

8. Millennium has already tendered to the Court a confidential list of "customers" within the aforementioned definition. *See* B. Fowler First Aff. ¶ 26, Exhibit D - Confidential Customer List.

9. As this matter proceeds in discovery, Millennium will further be able to identify the list of "potential customers" as that term is specifically defined in the Agreement. Millennium may rely on, among other sources of proof, following information to identify "potential customers" subject to nonsolicitation: (A) Defendant Crawford's expense reports, (B) Defendant Crawford's "Outlook" and appointment calendar(s) showing his direct customer prospecting activity (i.e., coffees, lunches, office visits, educational presentations, etc.) and participation at industry meetings, trade shows and similar events, (C) Defendant Crawford's Millennium email account history showing his electronic communications with potential customers, (D) Defendant Crawford's electronic notes and documents authored by him which detail his prospecting activity and interactions with "potential customers", and (E) the testimony of Crawford's colleagues and Crawford himself concerning the potential customers he called on for Millennium and at Millennium's expense.

10. Further, on June 27, 2016, I sent Defendant Crawford a "*Cease and Desist Demand/Claim Notice/Document Preservation Demand*" that specifically requested him to preserve and not destroy all electronic and hard-copy information related to the issues which are now the subject of this litigation. Verified Compl., Exhibit D. Assuming that he complied with his legal obligations of evidence preservation, the information within Defendant Crawford's possession, custody and control should equally identify the "potential customers" he contacted and solicited during the relevant eighteen (18) month look-back period.

11. By making these statements contained in this Affidavit I am not intending to waive any applicable privilege or immunity governing my role as General Counsel for Millennium; rather I specifically reserve all applicable privileges and immunities.

12. I reserve the right to supplement this Second Affidavit.

Sworn by me, this the 8th day of September, 2016.

Brian Fowler

Brian Fowler

STATE OF CALIFORNIA

SAN DIEGO COUNTY

I, Jennifer Black, a Notary Public do hereby certify that Brian Fowler appeared before me this day and acknowledged the due execution of the foregoing Second Affidavit.

WITNESS my hand and official seal, this the 8th day of September, 2016.



Jennifer A. Black
NOTARY PUBLIC

My Commission Expires: 4/30/2020

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Millennium Health, LLC,

Plaintiff,

vs.

Kyle B. Crawford, and
Unidentified John Does

Defendants.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) CIVIL ACTION No.: 2016-CP-23-04218

) **AFFIDAVIT OF BRIAN FOWLER**

I, Brian D. Fowler, being first duly sworn, hereby depose and say:

1. I am over 18 years of age, and I am competent to testify as to the matters herein.
2. The statements made by me in this affidavit are based upon my personal knowledge and my review of Millennium business records.
3. As to business records of Millennium reviewed and relied on by me or otherwise providing the basis for my testimony, such records: were made at near the time of the events which they describe, (B) by, or from information transmitted by, a person with knowledge of such events, and (C) were kept in the course of Millennium's regularly conducted business and, (D) it was the regular practice of Millennium to make and keep such records, and (E) such records attached hereto as Exhibits are true, accurate and authentic copies of the documents.
4. As to any statements herein made "upon information and belief," I believe such statements to be true.
5. I was first admitted to practice law by the Virginia State Bar in 1999. I am currently fully licensed to practice law in the Commonwealth of Virginia, the District of Columbia and I am registered to practice as an in-house corporate counsel in the State of California.

6. I have never been disciplined by any Bar in any jurisdiction in which I practice law. I am a member in good standing in all such jurisdictions.

7. I am currently employed by Millennium Health, LLC ("Millennium") as its General Counsel. I first joined Millennium in October 2012 as its Assistant General Counsel, and served in that role until I was promoted to my current position in July 2016.

8. Millennium takes a number of reasonable measures to protect its business assets, including its customer base, from unfair solicitation and competition. For example, Millennium requires employees to execute an agreement that restricts employees from misappropriating Millennium's confidential and proprietary information, and otherwise restricts their post-employment activities, including a prohibition against the solicitation of its customers following employment separation and, where available and appropriate, noncompetition agreements.

9. Millennium business records show that, at the outset of his employment, on October 6, 2011 Defendant Kyle Crawford ("Mr. Crawford") signed an "*Agreement Regarding Confidentiality, Non-Disclosure and Non-Competition*" (the "2011 Agreement"). A true and correct copy of the 2011 Agreement is attached to the Verified Complaint as Exhibit C and is attached hereto as Exhibit A.

10. In late 2012, Millennium updated and revised its standard confidentiality, non-solicitation, and non-competition agreement to reflect developments and changes in applicable laws in several jurisdictions in which Millennium did business. This review and update process ultimately led to the creation of a revised Agreement (the "2013 Revised Agreement").

11. In January 2013, Millennium began requiring all new sales employees to sign the 2013 Revised Agreement at the outset of their employment.

12. Millennium also made the decision to require many, but not all, existing sales employees to sign the 2013 Revised Agreement.

13. Aware that the laws of some states require “additional consideration” in order for such agreements to be enforceable against existing employees, Millennium engaged outside counsel to conduct an analysis and determine which states required “additional consideration” and which states did not.

14. As a result of its state-by-state analysis, Millennium determined that it could not implement the 2013 Revised Agreement in a handful of states where existing employees were principally employed without providing them additional consideration.

15. Based on its state-by-state analysis, Millennium decided not to require existing employees who resided and were principally employed in the following states and territory to sign a 2013 Revised Agreement: *Connecticut, New Hampshire, Oregon, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Washington and West Virginia.*

16. Millennium’s Legal Department, in conjunction with its Human Resource Department, oversaw the rollout of the 2013 Revised Agreement to the sales force. I, as Assistant General Counsel, oversaw the rollout for the Legal Department.

17. Attached hereto as Exhibit B is a true and accurate hardcopy of a March 7, 2013 email that was sent to all Millennium Sales Managers explaining the rollout of the 2013 Revised Agreement. I personally drafted Exhibit B for distribution by Cosima San, Recruitment Administrative Assistant. Exhibit B was sent by Cosima San at my instruction. I received the email on March 7, 2013 as a “cc” recipient.

18. To reliably and efficiently manage the distribution of the 2013 Revised Agreements and the collection of all return signatures, Millennium relied exclusively on the DocuSign® secure access and signature program.

19. I directly supervised the distribution of the 2013 Revised Agreements and the collection of DocuSign® signatures. Millennium’s Senior Paralegal, Jeanette Zuleger, tracked the

signature collection process and reported to me regularly until Millennium received all of the signatures from employees who were provided a 2013 Revised Agreement.

20. I have examined the business records related to the rollout of the 2013 Revised Agreements. Mr. Crawford was not provided a 2013 revised Agreement as part of the rollout, nor was any then-existing employee based in South Carolina.

21. I have further confirmed that the 2013 Revised Agreement was not sent to any then-existing employee who, according to Millennium records, resided at that time and was principally employed in *Connecticut, New Hampshire, Oregon, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Washington and West Virginia*.

22. I have examined the Millennium business records related to the recovery of electronic signatures for all of the 2013 Revised Agreements that were part of the rollout. I have confirmed that Millennium has no record of receiving an executed 2013 Revised Agreement from Mr. Crawford. The absence of an agreement signed by him is entirely consistent with records showing that Mr. Crawford was not provided a 2013 Revised Agreement in the first place.

23. I have never seen a 2013 Revised Agreement which purports to have been signed by Mr. Crawford, electronically or otherwise. That is because no such document exists.

24. Millennium's records confirm that the only "Agreement Regarding Confidentiality, Non-Disclosure and Non-Competition" that Mr. Crawford was ever presented or ever signed while employed by Millennium was Exhibit A.

25. I have likewise reviewed the Millennium business records that were sent to Mr. Crawford as part of his employment separation, including the "*Separation Documents Acknowledgment*" ("Separation Acknowledgment") signed by Mr. Crawford on April 9, 2016. When he signed the Separation Acknowledgment, he affirmed having received a copy of the 2011 Agreement as the only Agreement Regarding Confidentiality, Non-Disclosure and Non-Competition

to which he was subject. A true and accurate copy of the Separation Acknowledgment is attached hereto as Exhibit C.

26. I have also reviewed the Millennium business records that identify the Millennium Customers with whom Mr. Crawford worked or directly contacted during the eighteen (18) months preceding his employment termination. That Customer List is within the definition of "Confidential Information" as outlined in Exhibit A. The Customer List will be offered to the Court under seal or appropriate Protective Order as Exhibit D - Confidential Customer List so that the Court may appropriately identify the Millennium Customers subject to non-solicitation pursuant to Section 3(b)(i) of Exhibit A.

27. By making these statements contained in this Affidavit I am not intending to waive any applicable privilege or immunity governing my role as Assistant General Counsel for Millennium; rather I specifically reserve all applicable privileges and immunities.

28. I reserve the right to supplement this Affidavit.

Sworn by me, this the 27th day of July, 2016

Brian D. Fowler
Brian D. Fowler

STATE OF California
San Diego COUNTY

I, Jennifer Black, a Notary Public do hereby certify that Brian Fowler appeared before me this day and acknowledged the due execution of the foregoing Affidavit.

WITNESS my hand and official seal, this the 27th day of July, 2016.

Jennifer A. Black
NOTARY PUBLIC

My Commission Expires: 4/30/2020

Notary Consumer Disclosure

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which the certificate is attached, and not the truthfulness, accuracy, or validity of that document.

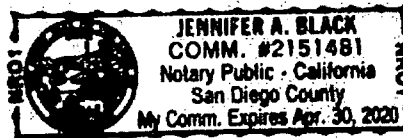


EXHIBIT B

From: Cosima San <Cosima.San@millenniumhealth.com>
Sent: Thursday, March 07, 2013 11:39 AM
Cc: Brian Fowler; Jeanette Zuleger
Subject: Revised Millennium Labs Non-Compete Agreement (Rev. Jan. 2013)

Dear Managers,

As you know, each member of our sales force is required to sign an "Agreement Regarding Confidentiality, Non-Disclosure and Non-Competition" ("Non-Disclosure Agreement") at the time of hire. We recently updated our Non-Disclosure Agreement. Since January 1, 2013, all new sales hires have been required to sign the updated Non-Disclosure Agreement.

We also need most (but not all) members of our sales force who were hired prior to January 1, 2013 to sign the updated Non-Disclosure Agreement.

To that end, later this week we will be sending an email to affected members of the sales force attaching a copy of the updated Non-Disclosure Agreement and instructing them to submit a signed copy using DocuSign within seven days. We are providing this information to you as managers in advance in case any question is raised by your team members. In that regard, there are two issues you should be aware of:

- 1) As noted, due to variance in state law, not every member of the sales force will be required to sign the updated Non-Disclosure Agreement. Specifically, individuals who reside in the following jurisdictions are not affected:
 - Connecticut
 - New Hampshire
 - Oregon
 - Pennsylvania
 - Puerto Rico
 - South Carolina
 - Tennessee
 - Washington
 - West Virginia

- 2) Due to unique state law requirements, members of our sales force who reside in Wisconsin will also receive \$1,000 in exchange for signing the updated Non-Disclosure Agreement.

If you have any question about this, please contact Brian Fowler in the Legal Department.

Thanks for your assistance.

Cosima San
Recruiting Administrative Assistant
16981 Via Tazon
San Diego, CA 92127
Phone: 877-451-3534 Ext.1224
Fax: 858-217-0343
csan@millenniumlabs.com

EXHIBIT C



Separation Documents Acknowledgement

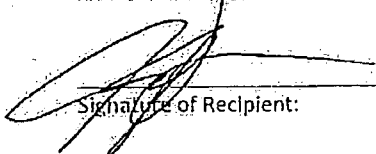
Please read and review the Items indicated below. Once you have read these items, sign, and date below and submit this form to the Human Resources department In the enclosed pre-stamped envelope or you can scan it to HR@millenniumhealth.com.

I, the undersigned recipient, acknowledge that I have:

- o Returned all Millennium Health property and equipment (*including but not limited to: badge, laptop, printer, policy manuals, flash drives or other devices that contain Millennium confidential information, marketing and training materials, billing department guide, trunk stock, any document that contains Millennium confidential nonpublic information and intelligence binder*).
- o Received the Notice to Employee as to Change in Relationship (*Sign and Return*)
- o Received HIPP notice (**CA employees only**)
- o Cigna Group Insurance – Life Insurance Conversion Privilege (only if you've received benefits with Millennium)
- o Received a copy of my Agreement Regarding Confidentiality, Non-Disclosure and Non-Competition
- o Received the Millenniums Frequently Asked Questions fact sheet-exiting employee
- o Received the Unemployment Information pamphlet **IF APPLICABLE**
- o Received Final paycheck (Note: This will be a live check and future payment from ML will not be direct deposited. If you have an address change please update HR@millenniumhealth.com for W-2 purposes).

Kyle Crawford

Name of Recipient:



Signature of Recipient:

4/9/16

Date:

Human Resource Signature:

Date:

ELECTRONICALLY FILED - 2016 Jul 29 4:57 PM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304218

EXHIBIT D

Confidential Customer List

**(To be offered to the Court at a later date under seal
or appropriate Protective Order)**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2016-002318

Millennium Health, LLC, Appellant,

v.

Kyle B. Crawford and Unidentified John Does, Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: *Nick Charles*

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Attorneys for Appellant Millennium Health, LLC

Columbia, South Carolina

May 5, 2017

RECEIVED

MAY 24 2017

SC Court of Appeals