

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

REAL ESTATE TRAINING
INTERNATIONAL, LLC, D/B/A
ARMANDO MONTELONGO SEMINARS

Plaintiff,

V.

THE NICK VERTUCCI
COMPANIES, INC. and NICK
VERTUCCI,

Defendants.

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CIVIL ACTION NO. 5:14-cv-00099-XR

PLAINTIFF'S FIRST AMENDED COMPLAINT

1. REAL ESTATE TRAINING INTERNATIONAL, LLC, D/B/A ARMANDO MONTELONGO SEMINARS (“Plaintiff”), files this FIRST AMENDED COMPLAINT against THE NICK VERTUCCI COMPANIES, INC., AND NICK VERTUCCI (“Defendants”), and would respectfully show this Court as follows:

I.
PARTIES

2. Plaintiff, Real Estate Training International, LLC, D/B/A Armando Montelongo Seminars, is a Delaware limited liability company, authorized to do business in the State of Texas, with its principal place of business in San Antonio, Bexar County, Texas.

3. Defendant The Nick Vertucci Companies, Incorporated, is a Nevada Corporation whose address is 4705 South Durango Drive100-A1, Las Vegas, NV 89147. Service of said Defendant as

described above can be effected by serving its registered agent AR Registered Agents at 8960 Clairton Court, Las Vegas, Nevada, 89117.

4. Defendant, Nick Vertucci, is an individual, who may be served at his residence is located 6305 East Abbeywood Road, Orange, California 92867, or wherever he may be found

II.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this case due to diversity of citizenship and Plaintiff's claims exceed \$75,000.00. 28 U.S.C. §1332(a).

6. Venue is property in the Western District of Texas, because a substantial part of the events or omissions giving rise to this claim occurred in the Western District of Texas. 28 U.S.C. §1391(a)(2).

7. The Court has specific and general personal jurisdiction over Defendants because they purposely availed themselves to the privileges of conducting activities within Texas, they have substantial and continuous contacts with the State of Texas, generally and with respect to this action, to satisfy both general and specific minimum contacts, and exercising jurisdiction over them does not offend the traditional notions of fair play and substantial justice.

8. Additionally, Defendants removed this suit from state district court on January 29, 2014, under 28 U.S.C. §1441(a) on the basis of diversity of citizenship. Thus, they have waived any objection to jurisdiction in this District.

III.

FACTS

9. Plaintiff, Real Estate Training International, LLC, d/b/a Armando Montelongo Seminars, and

Defendants entered into a vendor agreement with Plaintiff, attached hereto as exhibit 1, whereby Defendants would provide real estate training services on behalf of Plaintiff's companies to Plaintiff's customers using Plaintiff's teaching materials, methods, and other proprietary information owned by Plaintiff. This business relationship began in 2010, and continued until September of 2013.

10. During this time, in order to carry out Defendants' obligations and duties under the agreement, Defendant Nick Vertucci, on numerous occasions, personally traveled to Plaintiff's Corporate Headquarters located in San Antonio, Texas for business related trainings as established in exhibits 2-5, attached hereto and incorporated by reference.

11. In addition to his personal attendance at the various business trainings here in San Antonio, Defendant Nick Vertucci, in his individual capacity and acting on behalf of Defendant The Nick Vertucci Companies, Inc., traveled to and performed teaching and mentoring duties for Plaintiff's customers at live seminar events in San Antonio, Texas, and other states.

12. Under the terms of the agreement, Defendants agreed to the following provisions enumerated in the contract:

"Vendor agrees to never use or disclose, directly or indirectly, for any reason whatsoever or in any way other than at the direction of AMS or after receipt of the prior written consent of AMS, any Confidential Information of AMS. Specifically, Vendor agrees not to utilize, disclose, copy, duplicate or publish all or any part of, nor lend nor permit the disclosure, copying or duplication or publication of all or any part of the Confidential Information of AMS (including but not limited to books, records, client lists, software, electronic files, customer lists, or any other documents or materials related to the business of AMS) to any person or entity, except with the express prior and

written consent of AMS. Further, Vendor shall maintain the confidentiality of all Confidential Information of AMS for the sole use and benefit of AMS. ”

13. Further, the Defendants agreed to the following provisions enumerated in the contract:

“Except as AMS may waive or modify in its sole discretion, during the term of the business relationship with AMS and for a period of twenty-four (24) months following the effective termination date of Vendor's business relationship with AMS, for any reason, regardless of whether initiated by Vendor or AMS, Vendor shall not solicit, induce, or attempt to induce, any past or current, supplier, client or customer of AMS with whom Vendor dealt, had contact or gained Confidential Information, or any employee or contractor of AMS, as the case may be, to: cease or otherwise modify its doing business, in whole or in part, with or through AMS; or do business with any other person, firm, partnership, corporation, or other entity which provides products or performs services materially similar to or competitive with those provided by AMS or accept any request from any such person or entity to do so.

Vendor will not take any action to directly or indirectly interfere with, circumvent or attempt to circumvent, avoid, by-pass, or obviate the interest of AMS with any individual or entity identified by AMS as a client or potential client at any time during Vendor's business relationship with AMS and for a period of twenty-four (24) months following the effective termination date of Vendor's business relationship with AMS, for any reason, or otherwise benefit, either financially or otherwise from any Confidential Information (as defined in this Agreement) supplied to Vendor by AMS to change, increase or avoid directly or indirectly payment of established or to be established fees or commissions, without the specific written approval of AMS. ”

14. On or about September 11, 2013, Defendants ceased working with Plaintiff. Defendants' vendor agreement and working relationship with Plaintiff was terminated due to Defendant, Nick Vertucci's repeated inappropriate relationships with various "clients" of Plaintiff. Shortly thereafter Defendant, Nick Vertucci, began operating a seminar business through Defendant The Nick Vertucci Companies, Inc., in direct competition with Plaintiff's business.

15. The Nick Vertucci Companies, Inc., seminar business provides the same and/or similar goods and services as Plaintiff's business. Specifically, the companies provide real estate education services and materials to students through nationwide seminars and "bus tours", including recent events in the State in Texas. Defendants, in the operation of its business, have used confidential and proprietary information owned by Plaintiff to the detriment of Plaintiff. Defendants have also posted malicious and slanderous comments about the Plaintiff on their websites and various social media sites in an effort to harm Plaintiff's business.

16. Specifically, Defendants have used to promote and operate its business, Plaintiff's student testimonials, photographs of Plaintiff's employees and/or owners, and various teaching materials and methods. These materials and testimonials are the sole and exclusive property of the Plaintiff, and were posted on Defendant's websites. In addition, Defendants are currently using Plaintiff's cash flow teaching methodology, market domination information, asset protection information, and other real estate techniques and materials that were learned and obtained by Defendants while performing their duties for Plaintiff's companies.

17. Additionally, in violation of the vendor agreement, Defendants have solicited, and continue to employ former contractors and/or employees of Plaintiff's in violation of the above referenced

vendor agreement. Specifically, Defendants currently employ and/or contract with former Plaintiff contractors and/or employees, Erik Slaikou, Siggie Ahrens, Nicole Marshall, Keith Yackey, and others. This information is displayed publicly by Defendants via their social media websites through use of written content and photographs.

18. In further violation of the vendor agreement, Defendants have contacted current and/or former “clients” of Plaintiff in an attempt to solicit their business, and are currently working with former “clients” of Plaintiff.

19. To date, Defendants continue to use Plaintiff's teaching materials and methods, former “clients”, former contractors and employees, and other confidential information in an attempt to successfully operate its business. These intentional, malicious, and fraudulent actions by Defendants are in direct violation of the contract between the parties, and have resulted in millions of dollars of lost revenue for Plaintiff.

IV. CONDITIONS PRECEDENT

20. All conditions precedent necessary to maintain this action have been performed, have been waived, or have occurred.

V. CAUSES OF ACTION

A. BREACH OF CONTRACT

21. On January 1, 2010, Defendants entered into an agreement with Plaintiff wherein Defendants agreed to certain terms as enumerated herein-above. Defendants have used to promote and operate

its business, Plaintiff's student testimonials, photographs of Plaintiff's employees and/or owners, and various teaching materials and methods. These materials and testimonials are the sole and exclusive property of the Plaintiff, and were posted on Defendant's websites. In addition, Defendants are currently using Plaintiff's cash flow teaching methodology, market domination information, asset protection information, and other real estate techniques and materials that were learned and obtained by Defendants while performing their duties for Plaintiff's companies. As a result of these actions, Defendants are in breach of their agreement with Plaintiff, which proximately caused Plaintiff's damages.

22. Defendants have solicited, and continue to employ former contractors and/or employees of Plaintiff's in violation of the above referenced vendor agreement. Specifically, Defendants currently employ and/or contract with former Plaintiff contractors and/or employees, Erik Slaikeu, Siggie Ahrens, Nicole Marshall, Keith Yackey, and others. This information is displayed publicly by Defendants via their social media websites through use of written content and photographs. As a result of these actions, Defendants are in breach of their agreement with Plaintiff, which proximately caused Plaintiff's damages.

23. In further violation of the vendor agreement, Defendants have contacted current and/or former "clients" of Plaintiff in an attempt to solicit their business, and are currently working with former "clients" of Plaintiff. As a result of these actions, Defendants are in breach of their agreement with Plaintiff, which proximately caused Plaintiff's damages.

B. BUSINESS DISPARAGEMENT

24. Defendants published disparaging written statements about Plaintiff's business and/or affiliates on multiple, well-respected websites. The statements were false.

25. Defendants published the statements with malice. Defendants knew the statements were false, and acted with reckless disregard for whether the statements were true, they acted with ill will, and/or Defendants intended to interfere with Plaintiff's economic interests. Additionally, Defendants published the statements without privilege.

26. Defendants' false statements caused injury to Plaintiff and Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

27. Plaintiff's injury resulted from Defendants' malice, which entitles Plaintiff to exemplary damages.

C. BREACH OF FIDUCIARY DUTY

28. Plaintiff incorporates the facts alleged above.

29. Defendants had a fiduciary relationship with Plaintiff by virtue of their working relationship with Plaintiff. As such, Defendants owed Plaintiff the following duties:

- a duty of loyalty and utmost good faith;
- a duty of candor;
- a duty to refrain from any self-dealing;
- a duty to act with integrity of the strictest kind;

- a duty of fair, honest dealing;
- a duty of full disclosure;
- a duty to refrain from competition with corporation; and
- a duty not to usurp Plaintiff's opportunities to obtain personal gain.

30. Defendants intentionally breached these duties. Specifically, Defendants breached the duty of loyalty and good faith when they put their own interests before Plaintiff's and implemented their scheme to divert customers, Plaintiff's proprietary information, and opportunities to various other companies and themselves personally. Moreover, Defendants had an affirmative and fiduciary duty to protect and manage the Plaintiff business, resources and property in such a manner as to prevent the decline of the business and of such property and resources to the detriment of the interests of the Plaintiff.

31. Furthermore, Defendants have breached these duties by preventing the Plaintiff from maintaining and expanding its business.

32. Defendants' breach of fiduciary duty resulted in damages to Plaintiff for which Plaintiff seeks actual damages.

33. Plaintiff's injury resulted from Defendants' gross negligence, malice or actual fraud, which entitles Plaintiff to exemplary damages.

34. As an equitable remedy, Defendants should be required to disgorge to Plaintiff all profits realized from The Nick Vertucci Companies, Inc.

35. Plaintiff also seeks an order directing Defendants to render an accounting of all past and current accounts of Defendants to Plaintiff.

D. FRAUD

36. Defendants represented to Plaintiff that they were acting on the Plaintiff's behalf when under contract with the business Real Estate Training International, LLC, D/B/A Armando Montelongo Seminars.

37. Defendants' representations were material to Plaintiff.

38. Defendants' representations were false.

39. Defendants' made the false representations knowing they were false.

40. Defendants' intended that Plaintiff rely on the false representations.

41. Plaintiff relied on Defendants' false representations.

42. Moreover, Defendants committed fraud by nondisclosure.

43. The false representations and omissions directly and proximately caused injury to Plaintiff for which Plaintiff seeks actual damages.

44. Plaintiff's injuries resulted from Defendants' actual fraud or malice, which entitles Plaintiff to exemplary damages.

E. CONVERSION

45. The Plaintiff, Real Estate Training International, LLC, D/B/A Armando Montelongo Seminars is the owner of various proprietary information including teaching materials, student lists, photographs, testimonials, and business relationships threatened with irreparable injury by the conduct of the Defendants. More particularly, Defendant Nick Vertucci, has used the information and materials listed above to further promote his company, Defendant The Nick Vertucci Companies, Inc.

46. Defendants have wrongfully exercised dominion and control over Plaintiff's proprietary information and materials listed above. Defendants have taken this property for their own purpose and have caused detriment to Plaintiff.

47. Defendants' wrongful actions have proximately caused injury to Plaintiff, which has resulted in damages. Damages include, but are not limited to, the damage to Plaintiff's ability to generate income from educational seminar sales and service.

48. As a result, Plaintiff seeks the immediate return of all information and materials regarding Real Estate Training International, LLC, D/B/A Armando Montelongo Seminars.

49. Plaintiff's injury resulted from Defendants' malice or actual fraud, which entitles Plaintiffs to exemplary damages.

F. TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

50. Plaintiff had valid contracts and/or continuous business relations with various businesses, students, and/or customers.

51. Subsequently, Defendants intentionally disrupted the business arrangements between Plaintiff, and these various businesses and/or customers.

52. Defendants had knowledge of the relationships and Plaintiffs' interest in the relationships. Notwithstanding this knowledge, Defendants willfully and intentionally interfered with Plaintiff's business relationships.

53. Defendants' interference has proximately caused injury to Plaintiff, which has resulted in damages to Plaintiff. Plaintiff seeks damages within the jurisdictional limits of this court.

54. Moreover, Plaintiff's injury resulted from Defendant's malice or actual fraud, which entitles plaintiff to exemplary damages.

G. TORTIOUS INTERFERENCE WITH PROSPECTIVE RELATIONS

55. In addition to the prior counts, Defendants interfered with Plaintiff's prospective business relationships with various potential students, clients, contractors and/or customers.

56. Plaintiff has had an ongoing relationship with various business customers and/or students.

57. Defendant's knew of Plaintiff's prospective business and contractual relationships and intentionally interfered with them.

58. Plaintiff has suffered actual damages because Defendants' interference has prevented Plaintiff from entering into the prospective contracts and continuing Plaintiff's prior relationships with its various contractors and/or customers.

59. Defendants' interference has proximately caused injury to Plaintiff, which resulted in damages. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

60. Plaintiff's injury resulted from Defendants' malice or actual fraud, which entitles Plaintiff to exemplary damages.

VI. **DAMAGES**

61. As a result of Defendants' actions, Plaintiff has suffered losses of, and seeks damages for, amounts within the jurisdictional limits of this Court. Plaintiff prays:

- a. That Defendants are cited to appear and answer herein;
- b. That Plaintiff recovers actual damages and punitive damages in excess of the minimum jurisdictional amount of this Court;
- c. That Plaintiff recovers incidental damages;
- d. That Plaintiff recovers consequential damages;

- e. That Plaintiff recovers attorneys' fees;
- f. That Plaintiff recovers costs of suit; and
- g. That Plaintiff has whatever other and further relief at law or in equity to which Plaintiff may show it is justly entitled.

VII.
PRAYER

WHEREFORE, Plaintiff respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants for the following:

- a. Actual and Punitive damages;
- b. Incidental damages;
- c. Consequential damages;
- d. Costs of suit;
- e. Attorney's fees;
- f. Prejudgment and postjudgment interest;
- g. An accounting;
- h. Disgorgement of profits; and

- i. All other relief, in law and in equity, to which Plaintiff may be entitled.

Respectfully submitted,


By: 

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record pursuant to the Federal Rules of Civil Procedure on this the 7th day of March, 2014.

Clint Corrie
Akerman LLP
2001 Ross Avenue
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Via Facsimile No. 866-203-5835


J. Wes Huesser, II