

COPY

1 GARCIA RAINEY BLANK & BOWERBANK LLP
A Limited Liability Partnership
2 NORMA V. GARCIA, Cal. Bar No. 223512
ngarciaguillen@garciarainey.com
3 JEFFREY M. BLANK, Cal. Bar No. 217522
jblank@garciarainey.com
4 695 Town Center Drive, Suite 700
Costa Mesa, California 92626-1925
5 Telephone: 714-382-7000
Facsimile: 714-784-0031

6 Attorneys for Plaintiffs
7 HCT GROUP HOLDINGS LIMITED, et al.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 26 2017

Sherri R. Carter, Executive Officer/Clerk
By Jenny Chea, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

FAXED

10 HCT GROUP HOLDINGS LIMITED, a
11 Hong Kong Corporation, for itself and its
subsidiaries, HCT PACKAGING, INC. a
12 New Jersey Corporation, HCT ASIA
LIMITED, a Hong Kong Corporation and
13 HCT EUROPE LIMITED, an England and
Wales, Corporation, inclusive.

14 Plaintiffs,

15 v.

16 NICHOLAS GARDNER, an individual;
17 COGNISANT LLC, a New York Limited
Liability Company, COGNISANT REAL
18 ESTATE, LLC, a New York Limited
Liability Company; COGNISANT
19 LIMITED, a Hong Kong Limited
Company; DOE 1-DERRICK CHANG, an
20 individual; DOE 2-CINDY LIM, an
21 individual; and DOES 3 through 50,
inclusive,

22 Defendants.

Case No. BC645615
Judge: Hon. Monica Bachner
Dept.: 71

**SECOND AMENDED COMPLAINT
FOR DAMAGES AND INJUNCTIVE
RELIEF:**

- (1) BREACH OF DUTY OF LOYALTY (CALIFORNIA LABOR CODE SECTIONS 2854, 2859, 2860, 2861, 2863;
- (2) BREACH OF DUTY OF LOYALTY (FAITHLESS SERVANT CALIFORNIA COMMON LAW DOCTRINE);
- (3) BREACH OF FIDUCIARY DUTY;
- (4) MISAPPROPRIATION OF TRADE SECRETS (CALIFORNIA UNIFORM TRADE SECRETS ACT);
- (5) CONVERSION;
- (6) FRAUD (CONCEALMENT);
- (7) FRAUD (DECEIT);
- (8) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS;
- (9) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;
- (10) NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (11) INDUCING BREACH OF CONTRACT;**
- (12) THEFT BY FALSE PRETENSE (PENAL CODE SECTION 496(C));**
- (13) UNFAIR COMPETITION;**
- (14) CONSTRUCTIVE FRAUD;**
- (15) ACCOUNTING;**
- (16) UNJUST ENRICHMENT;**
- (17) INVESTMENT OF RACKETEERING INCOME (RICO ACT, 18 U.S.C. §§1961(5), 1962(A));**
- (18) ACQUISITION AND CONTROL OF ENTERPRISE (RICO ACT, 18 U.S.C. §§1961(5), 1962(b))**
- (19) RICO ENTERPRISE (RICO ACT, 18 U.S.C. §§1961(5), 1962(c));**
- (20) RICO CONSPIRACY (RICO ACT, 18 U.S.C. §§1961(5), 1962(d))**

REQUEST FOR JURY TRIAL

Complaint Filed: January 4, 2017

Trial Date: None Set

Plaintiff HCT Group Holdings Limited (“HCT Group”), on behalf of itself and its subsidiaries HCT Packaging, Inc. (“HCT Packaging”), HCT Asia Limited (“HCT Asia”), and HCT Europe Limited (“HCT Europe” and collectively with HCT Group, HCT Packaging, and HCT Asia, “HCT” or “Plaintiffs”), alleges the following causes of action against Defendants Nicholas Gardner (“Gardner”), Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited, DOE 1-Derrick Chang (“Chang”), DOE 2-Cindy Lim (“Lim”) and DOES 3 through 50 (“DOE Defendants”) (collectively, “Defendants”) as follows:

1 **BRIEF OVERVIEW**

2

3 1. This is an action that stems from brazen misconduct by HCT

4 Packaging’s Executive Vice President of Sales, Nicholas Gardner, and his cohorts, Derrick

5 Chang, HCT Packaging’s former Senior Director of Development and Manufacturing, and

6 Chang’s wife Cindy Lim, HCT Packaging’s former Senior Vice President, Global Brush

7 Division.¹ Beginning in or around 2010, Gardner, who held his position with HCT

8 Packaging since November 2004, became disloyal to HCT and began devising various

9 schemes to benefit himself and his co-conspirators at the expense of HCT. Among other

10 things, utilizing HCT’s customer lists and information, Gardner began to surreptitiously

11 provide consulting services, outside of HCT, to HCT’s customers. He recruited Chang and

12 Lim, who were complicit and even assisted with Gardner’s scheming. Gardner, Chang,

13 and Lim proceeded to form an association-in-fact enterprise to engage in wire fraud and

14 other criminal activities with the intent to harm HCT.

15

16 2. In or around 2010, Gardner and Chang began promoting Fortune

17 Fortune Plastic Packaging (Huizhou) Co., Ltd. (also known as Robust Industrial Co. and/or

18 Kinnho Plastic Products and Moulds Co., Ltd), a factory located in People’s Republic of

19 China (hereinafter, the “PRC Factory”), to HCT customers without consulting

20 management or requesting quotes from HCT owned and/or controlled factories.² HCT is

21

22 ¹ The original Complaint was filed on January 4, 2017. On January 5, 2017, HCT

23 terminated Gardner and suspended Chang pending investigation. Chang resigned

effective January 20, 2017. HCT terminated Lim on February 27, 2017.

24 ² In order to manufacture a new cosmetic component for a customer, the HCT team

25 would generally select a factory based on capability, capacity and pricing. HCT

26 would submit a 3D drawing and specification to a factory together with a request

27 for a price quote. HCT’s official policy is to obtain cross-quotes from at least two

28 separate factories, one that is an HCT controlled or owned factory, to ensure arms-

length transactions with all partner factories and pricing remains competitive

through market forces. With respect to component projects directed to the PRC

Factory by Gardner, Chang, and Lim, no cross-quotes were obtained because they

knew such cross-quotes would be lower.

1 informed and believes that Gardner, Chang, and Lim obtained control over the PRC
2 Factory and began to engage in self-dealing, thereby breaching their duties of loyalty and
3 fiduciary duties. Among other things, they would funnel purchase orders to the PRC
4 Factory, which provided each of them with kickbacks in the form of “commissions” on
5 those HCT purchase orders. Gardner, Chang, and Lim never disclosed their interest in the
6 PRC Factory or their relationship with the PRC Factory to HCT. Gardner, who was in
7 charge of obtaining cross-quotes and submitting invoices for his division, submitted the
8 fraudulent purchase orders for payment to HCT’s accounting division for tooling and for
9 the manufacturing of products, knowing that the payment amounts were inflated and
10 would subsequently be paid by the PRC Factory back to Gardner and Chang. Brushes
11 were included as part of the products diverted from HCT’s approved factories to the PRC
12 Factory. Lim, as head of the brush division, was aware that products were being
13 manufactured at the PRC Factory at inflated amounts, without any cross-quotes obtained in
14 violation of HCT policy. As part of the fraudulent scheme, however, Lim concealed all of
15 these facts from HCT.

16
17 3. Between 2010 and 2014 alone, Gardner, Chang, and Lim together
18 received at least \$5.4 million dollars in kickbacks from the PRC Factory on purchase
19 orders for products (total does not include kickbacks on tooling) and did not disclose their
20 receipt to HCT. In fact, Gardner, Chang, and Lim kept track of the kickbacks they
21 received from the PRC Factory for orders placed between 2010 and 2014 for the
22 manufacturing of products in a detailed spreadsheet titled “Special Items” (the “Special
23 Items Ledger”). The extremely incriminating Special Items Ledger ties each kickback to
24 the purchase order placed by HCT to the PRC Factory.

25
26 4. Due to the actions of Gardner, Chang and Lim, HCT’s profit margins
27 were severely impacted, because, among other things, Gardner and Chang caused HCT to
28

1 pay fraudulent invoices, which Gardner, Chang, and Lim knew contained inflated payment
2 amounts to funnel the kickbacks. Gardner, Chang, and Lim’s inflation of HCT’s prices led
3 HCT customers to believe HCT was an overpriced supplier, which caused HCT to lose
4 other business.

5
6 5. In or around July 2015, HCT is informed and believes that Gardner,
7 Chang, and Lim obtained control over JC Packaging Co., Ltd., a trading company located
8 in the People’s Republic of China (hereinafter referred to as the “Trading Company”).
9 Gardner and Chang proceeded to direct HCT’s engineers to send design renderings and
10 engineering specifications (collectively “Specifications”) for tools³ that had been
11 developed by HCT to the Trading Company. This was contrary to HCT policy, because
12 the Trading Company was not audited or approved for manufacturing. At HCT’s expense
13 and using the Specifications produced by HCT, the Trading Company produced the tools
14 and began manufacturing on HCT purchase orders again submitted by Gardner and Chang,
15 who submitted the fraudulent invoices to HCT’s accounting division for payment fully
16 knowing that such invoices contained inflated payment amounts to funnel the kickbacks.
17 Gardner and Chang proceeded to cause the Trading Company to pay Defendants millions
18 of dollars of kickbacks. HCT is informed and believes that Chang also assisted in the
19 scheme by, among other things, promoting the PRC Factory and the Trading Company to
20 specific HCT customers and concealing from HCT the fraudulent purchase orders and
21 kickbacks. Lim also assisted in the scheme by staying quiet and concealing from HCT the

22
23 ³ Once a factory has been approved by HCT and its customer to manufacture a
24 component, HCT’s engineering team will work with the factory team on final
25 drawings and specifications (the “Specifications”) which are used to create a set of
26 tools, specialized machinery capable of producing the item. Each subpart of the
27 component requires its own tool (i.e. a simple compact has three parts: Lid + Insert
28 + Base, which means there would be 3 tools). A set tools for one component costs
in the range of \$50,000-\$500,000 and is based upon extremely valuable intellectual
property. HCT is one of few packaging suppliers where nearly 100% of the
components supplied are actually designed by HCT, alone or in collaboration with
customers.

1 fraudulent purchase orders and kickbacks, even though she, as part of the scheme and as
2 part of her job duties, knew that the purchase orders contained inflated amounts and were
3 obtained without any cross-quotes. HCT is informed and believes that income directly and
4 indirectly derived from racketeering activity allowed Defendants, through investments and
5 through the fraudulent purchase orders they caused to be paid, to gain control over those
6 entities, making them part of the association-in-fact enterprise.

7
8 6. In or around November 2015, the association-in-fact enterprise
9 became even more daring with Gardner, while still employed by HCT, forming Cognisant
10 Limited in Hong Kong⁴ and subsequently, in 2016, forming two more companies in New
11 York (Cognisant, LLC and Cognisant Real Estate, LLC) (collectively with Cognisant
12 Limited, “the Cognisant Entities”). These entities were created to directly compete with
13 HCT and to divert business away from HCT.

14
15 7. Incredibly, after convincing HCT’s President to sign a letter of intent
16 with Applied Minerals, Inc. (“AM”), which provided for exclusive rights to develop
17 cosmetic products utilizing a trademarked raw material offered by AM (the “Trademarked
18 Material”), Gardner proceeded to make an investment of his own in AM and then diverted
19 away from HCT turnkey⁵ cosmetic projects involving the Trademarked Material. In fact,

20 _____
21 ⁴ Gardner is listed as Director of Cognisant LLC (HK) on the Hong Kong Companies
22 Registry and his UK address is listed as the address for notices. The listed owner is
Time Supreme International Ltd., BVI company formed 2005 with Mossak Fonseca
& Co., BVI, as registered agent.

23 ⁵ HCT offers both “empty packaging components” as well as “turnkey solutions” to
24 its customers. In the first case, HCT would design the tools necessary to produce
25 the empty packaging, manufacture and deliver the empty packaging to the
26 customer. Then the customer would be responsible for coordinating all of the other
27 steps required to bring the finished good to market, including identifying one or
28 more filled goods suppliers as follows: (i) a lab that has developed a formula; (ii) a
bulk manufacture who can mass produce the formula; and (iii) a filler who can
inject or press the actual makeup (i.e. liquid, crème or powder) into the component
and perform final assembly (e.g. screw on the lid apply labels, pack and ship). In
addition, the customer, rather than HCT, would be responsible for regulatory and
documentation compliance in each country where the goods will be distributed.

1 Gardner shared Specifications created by HCT engineers with AM, and then Gardner,
2 Chang, and Lim brought together all the various parties necessary for completing a turnkey
3 project, while utilizing HCT's customer and supplier information in the process, all under
4 the guise of performing services on behalf of their employer HCT!

5
6 8. Gardner, utilizing HCT's confidential pricing information, brazenly
7 emailed Bayport Laboratories Corp. ("Bayport"), a filled goods supplier that he was
8 introduced to by virtue of his position at HCT, without HCT's knowledge, with the
9 following proposal:

10
11 "What we are hopefully going to do is have an entity that I
12 control called Cognisant invest in your filling
13 machinery... Your proposal on the \$0.04 per piece is
14 accepted. Cognisant will quote the fill and assembly cost to
15 [Customer A] at \$.086 for the full size. Cognisant will own
16 the rights to the use of the [AM] trademark name [(hereafter
17 the "Trademark")] which are being granted by [AM]. The
18 rights to use the name and trademark will then be given to
19 [Customer A] by Cognisant. If we were to do this through
20 HCT I would have to apply HCT's markups on the filling and
21 then the project becomes a non-starter. I have therefore given
22 [Customer A] your direct quote at \$0.86."

23
24
25
26 On the other hand, when HCT is engaged by a customer for a "turnkey solution,"
27 HCT is responsible for all steps required to bring the finished good to market, as
28 described above, an extensive process. The good is supplied to the customer in the
form it is to be sold on the shelf. Given the additional steps involved in turnkey
solutions, there is generally a greater opportunity for profit.

1 Prior to sending the above email, HCT is informed and believes, Gardner, through
2 Cognisant Ltd., became a significant shareholder in AM, a publicly traded company,
3 without ever obtaining HCT's consent or even disclosing the conflict of interest to HCT.
4 Gardner's stock position and knowledge of HCT's pricing enabled him to beat HCT's
5 proposal, because Gardner would not only profit on the pricing through one of the
6 Cognisant Entities, but would also profit once the product is launched and further profit if
7 the product is successful through his stock interest in AM. Through this self-dealing, HCT
8 is informed and believes that Gardner could and did in fact manipulate the stock price of
9 AM, and engage in insider trading by buying and selling AM stock at the right time, since
10 Gardner knew tomorrow's news today.

11
12 9. HCT has obtained a preliminary injunction against Gardner and
13 anyone conspiring with him, which includes Chang and Lim, from utilizing certain of
14 HCT's information. To prevent HCT from suffering irreparable harm, additional
15 restraining orders and injunctive relief may be necessary to, among other things, prevent
16 Gardner, Chang, and Lim from engaging in the dissipation of assets to avoid satisfying a
17 judgment in this matter.

18 19 THE PARTIES

20 PLAINTIFFS

21 10. Plaintiff HCT Group sues on behalf of itself and its wholly-owned
22 subsidiaries, which include HCT Packaging, a New Jersey corporation, which is qualified
23 to do business in the State of California. HCT Packaging's principal place of business is
24 located at 2800 28th Street, Suite 240, Santa Monica, California 90405.

25
26 11. HCT Group also sues on behalf of its subsidiary HCT Asia, a Hong
27 Kong corporation with a principal place of business located in Hong Kong.

28

1 12. HCT Group also sues on behalf of its subsidiary HCT Europe, an
2 England and Wales corporation with a principal place of business located in London.

3
4 **NAMED DEFENDANTS**

5 13. On information and belief, Defendant Gardner is, and at all times
6 relevant herein was, an individual residing in Los Angeles, California and doing business
7 in Los Angeles, California.

8
9 14. On information and belief, Defendant Cognisant, LLC is a New York
10 Limited Liability Company controlled primarily by Gardner, and the address for service of
11 process is a New York property owned by Gardner.

12
13 15. On information and belief, Cognisant Real Estate, LLC is a New York
14 Limited Liability Company controlled primarily by Gardner, and the address for service of
15 process is a Los Angeles property owned by Gardner.

16
17 16. On information and belief, Cognisant Ltd. is a Hong Kong Limited
18 Company and Gardner is identified as its Director of Business with a United Kingdom
19 property Gardner inherited from his grandmother listed as the address for the property.

20
21 17. On information and belief, Defendant Chang is, and at all times
22 relevant herein was, an individual residing in Los Angeles, California and doing business
23 in Los Angeles, California. Chang is Lim's husband.

24
25 18. On information and belief, Defendant Lim is, and at all times relevant
26 herein was, an individual residing in Los Angeles, California and doing business in Los
27 Angeles, California. Lim is Chang's wife.

1 **ALTER EGOS**

2 19. On information and belief, Defendants Cognisant, LLC, Cognisant
3 Real Estate, LLC, and Cognisant Ltd. are shell companies being used as instrumentalities
4 and conduits for a single venture controlled by Gardner and his cohorts Chang and Lim,
5 and Does 3-50. On information and belief, the Cognisant Entities are the alter egos of
6 Gardner, by reason of the following:

7
8 a. HCT is informed and believes that there exists a unity of
9 interest and ownership between Gardner on the one hand, and Defendants Cognisant, LLC,
10 Cognisant Real Estate, LLC, and Cognisant Ltd. on the other hand, such that any
11 individuality and separateness between Gardner on the one hand and Defendants
12 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Ltd. on the other hand, does
13 not exist.

14
15 b. HCT is informed and believes that Gardner exercises complete
16 control and dominance over Defendants Cognisant, LLC, Cognisant Real Estate, LLC, and
17 Cognisant Ltd. and consequently, Cognisant, LLC, Cognisant Real Estate, LLC, and
18 Cognisant Ltd. are mere shells, instrumentalities, and conduits through which Gardner
19 carries on a single enterprise as part of the association-in-fact enterprise he formed with
20 Chang, and Lim. Indeed, Gardner admitted as such in an August 25, 2016 email to
21 Bayport, a cosmetic filling supplier located in Houston, Texas, wherein he stated: “What
22 we are hopefully going to do is having an entity that **I control** called Cognisant invest in
23 your filling machinery.” (Emphasis added.)

24
25 c. HCT is informed and believes and thereon alleges that
26 Gardner, at all times herein mentioned, dominated, influenced and controlled Defendants
27 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Ltd., and any officers or
28

1 directors other than Gardner that such entities may have, as well as the business, property,
2 and affairs of such entities.

3
4 d. HCT is informed and believes and thereon alleges that, at all
5 times herein mentioned, Defendants Cognisant, LLC, Cognisant Real Estate, LLC, and
6 Cognisant Ltd., were created and continued pursuant to a fraudulent plan, scheme and
7 device conceived and operated by an association-in-fact enterprise formed by Gardner,
8 Chang and Lim, whereby the income, revenue and profits of such entities was diverted by
9 Gardner to Defendants.

10
11 e. HCT is informed and believes and thereon alleges that, at all
12 times herein mentioned, Defendants Cognisant, LLC, Cognisant Real Estate, LLC, and
13 Cognisant Ltd. were organized by Gardner as a device to avoid individual liability and to
14 create tax advantages and to engage in tax fraud, and that such entities were formed with
15 capitalization totally inadequate for the business in which said company was engaged.

16
17 20. By virtue of the foregoing, adherence to the fiction of the separate
18 corporate existence of Defendants Cognisant, LLC, Cognisant Real Estate, LLC, and
19 Cognisant Ltd. would, under the circumstances, sanction a fraud and promote injustice in
20 that HCT may be unable to obtain effective relief and collect upon any judgment in its
21 favor. HCT is informed and believes and thereon alleges that, at all times relevant hereto,
22 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Ltd.
23 acted for each other in connection with the conduct herein alleged and that each of them
24 performed the acts complained of herein or breached the duties herein complained of as
25 agents of each other and each is therefore fully liable for the acts of the other.

1 successful implementation of any given project. HCT has not only cultivated such
2 relationships throughout the world but has learned invaluable information about its
3 customers and suppliers which enables HCT to engage in strategic planning and resource
4 allocation and choose the right partners for any given project. These capabilities are
5 pivotal because HCT's projects often necessitate bringing together multiple partners. All
6 of this has enabled HCT to build substantial goodwill with its customers and suppliers.

7
8 **GARDNER'S EMPLOYMENT WITH HCT**

9
10 27. On May 12, 2004, Gardner was hired by HCT as its Vice President of
11 Sales. Since that time, Gardner, until his termination, held a key position within HCT,
12 being trusted with tremendous responsibility and access to much of HCT's trade secret
13 information, proprietary information, and confidential information. On February 17, 2010,
14 Gardner signed an acknowledgement of receipt of HCT's employee handbook containing
15 policies regarding the protection of such trade secret, proprietary and confidential
16 information, in addition to policies addressing conflicts of interest and conduct with
17 suppliers, customers and competitors.

18
19 28. Gardner's job responsibilities included, but were not limited to:
20 developing and maintaining an effective sales department through the selection, training,
21 compensation, motivation, termination and review of direct staff; providing guidance and
22 direction to sales personnel to assist them in their professional development, developing,
23 implementing and analyzing sales programs, and making necessary adjustments as
24 required; establishing and implementing sales goals within management guidelines;
25 reviewing the general business climate and adjusting staffing as needed; understanding and
26 supporting established sales policies and procedures to ensure sales personnel provide
27 proper and effective treatment to customers; applying knowledge of company products and
28

1 services to assist sales representatives with providing quality customer service; reviewing
2 and approving expenses requested by sales staff; reviewing and resolving customer
3 complaints in a professional and timely manner as directed and/or required; establishing,
4 developing and monitoring internal sales representative organization; representing
5 company at trade organizations as required; traveling to customer locations to complete
6 sales calls as required, and overseeing daily office operations. Gardner oversaw the
7 accounts of various HCT customers, including Customer A.

8
9 29. On January 5, 2017, HCT terminated Gardner for misconduct in
10 connection with this instant lawsuit.

11
12 **CHANG’S EMPLOYMENT WITH HCT**

13
14 30. On June 27, 2007, HCT hired Chang as a Project Manager in the Sales
15 Department. On March 11, 2008, Chang signed an *Employee Confidentiality Agreement*
16 regarding the protection of HCT’s trade secret, proprietary and confidential information.
17 On February 12, 2010, Chang signed an acknowledgement of receipt of HCT’s employee
18 handbook containing policies regarding the protection of trade secret, proprietary and
19 confidential information, in addition to policies addressing conflicts of interest and conduct
20 with suppliers, customers and competitors.

21
22 31. In June 2010, Chang was promoted to the position of Director of
23 Development & Manufacturing. In June 2014, he was promoted to the position of Senior
24 Director of Development & Manufacturing, which he held throughout the rest of his tenure
25 at HCT.

1 32. During the majority of his HCT employment, Chang worked closely
2 with and reported directly to Gardner. He was heavily involved, along with Gardner, in
3 new product development and existing projects, supply chain, and manufacturing for
4 various HCT customers, including Customer A. Chang's job responsibilities as Director
5 and Senior Director of Development & Manufacturing included, but were not limited to,
6 meeting with development teams at customer brands, overseeing and coordinating the
7 HCT design process, selecting manufacturers and placing purchase orders, overseeing
8 supply chains and communicating with suppliers regarding manufacturing, and
9 coordinating sales efforts. Chang directly oversaw six HCT employees in his most recent
10 position. During his employment, he had access to HCT's trade secret, proprietary and
11 confidential information with respect to accounts he worked on with Gardner.

12
13 33. On January 5, 2017, the same date HCT terminated Gardner in
14 connection with the instant lawsuit, HCT placed Chang on suspension pending
15 investigation. Such suspension was lifted after Chang pled with HCT. Before the
16 investigation was completed, however, Chang, knowing what the investigation would and
17 did reveal, tendered his resignation on January 19, 2017, and his resignation became
18 effective the next day, January 20, 2017.

19
20 **LIM'S EMPLOYMENT WITH HCT**

21
22 34. On April 13, 2006, HCT hired Lim as a Project Manager. On
23 February 2, 2008, Lim signed an *Employee Confidentiality Agreement* regarding the
24 protection of HCT's trade secret, proprietary and confidential information. On February
25 10, 2014, Lim signed an acknowledgement of receipt of HCT's employee handbook
26 containing policies regarding the protection of trade secret, proprietary and confidential
27
28

1 information, in addition to policies addressing conflicts of interest and conduct with
2 suppliers, customers and competitors.

3
4 35. On June 25, 2009, Lim was promoted to the position of Brush Sales
5 Manager. On May 27, 2010, Lim was promoted to the position of Vice President, Brush
6 Sales. On June 27, 2013, she was promoted to the position of Senior Vice President,
7 Global Brush Division, which she held throughout the rest of her tenure at HCT. In that
8 position, Lim oversaw all sales and operations related to brush supply chain, including
9 monitoring of factories, in Asia and around the world, and obtaining cross-quotes from
10 various vendors.

11
12 36. Lim's job responsibilities as Senior Vice President, Global Brush
13 Division included, but were not limited to, developing and maintaining an effective sales
14 department through the selection, training, compensation, motivation, termination and
15 review of direct staff; providing guidance and direction to sales personnel to assist them in
16 their professional development, developing, implementing and analyzing sales programs,
17 and making necessary adjustments as required; establishing and implementing sales goals
18 within management guidelines; reviewing the general business climate and adjusting
19 staffing as needed; understanding and supporting established sales policies and procedures
20 to ensure sales personnel provide proper and effective treatment to customers; applying
21 knowledge of company products and services to assist sales representatives with providing
22 quality customer service; reviewing and approving expenses requested by sales staff;
23 reviewing and resolving customer complaints in a professional and timely manner as
24 directed and/or required; establishing, developing and monitoring internal sales
25 representative organization; representing company at trade organizations as required;
26 traveling to customer locations to complete sales calls as required, overseeing daily office
27 operations; managing customer accounts relating to brushes, selecting factories for
28

1 customer orders, and submitting purchase orders. Lim oversaw all brushes developed by
2 HCT, which were included in palettes designed for customers. Lim directly oversaw nine
3 (9) HCT employees in her most recent position. During her employment, she had access
4 to HCT's trade secret, proprietary and confidential information with respect to all brush
5 accounts and the vendors utilized by them. Lim was aware of HCT's policy of obtaining
6 cross-quotes for tooling and products.

7
8 37. On February 27, 2017, HCT terminated Lim.

9
10 **HCT'S POLICIES**

11 38. Throughout the employment of Gardner, Chang, and Lim, HCT had in
12 place policies prohibiting most outside employment, including any employment that would
13 conflict in any way with responsibilities held at HCT, and any employment for
14 competitors. HCT also had policies in place prohibiting any outside work while on
15 corporate time. Such policies, as set forth in HCT's employee handbook (February 2016),
16 provide, in pertinent part, as follows:

17
18 a. **Outside Employment:** We hope that you will
19 not find it necessary to seek additional outside employment.
20 However, if you are planning to accept an outside position,
21 you must notify your supervisor in writing. Outside
22 employment must not conflict in any way with your
23 responsibilities within our corporation. You may not work for
24 competitors nor may you take an ownership position with a
25 competitor. Employees may not conduct outside work or use
26 corporate property, equipment or facilities in connection with
27 outside work while on corporate time.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

b. **Conflict of Interest/Code of Ethics:** A corporation's reputation for integrity is its most valuable asset and is directly related to the conduct of its officers and other employees. Therefore, employees must never use their positions with the corporation, or any of its customers, for private financial gain, to advance personal financial interests, to obtain favors or benefits for themselves, members of their families or any other individuals, corporations or business entities, or engage in activities, investments or associations that compete with the corporation, interferes with an employee's business judgment concerning the corporation's best interests, or exploits an employee's position with the corporation for personal gain. The corporation adheres to the highest legal and ethical standards applicable in our business. The corporation's business is conducted in strict observance of both the letter and spirit of all applicable laws and the integrity of each employee is of utmost importance. Employees of the corporation shall conduct their personal affairs such that their duties and responsibilities to the corporation are not jeopardized and/or legal questions do not arise with respect to their association or work with the corporation. This policy will not be enforced to prevent employees from discussing their wages or other terms of employment.

39. Throughout the employment of Gardner, Chang, and Lim, HCT has also had policies in place prohibiting the use of HCT's proprietary information. Such

1 policies, as set forth in HCT's employee handbook (February 2016), provides, in pertinent
2 part as follows:

3
4 a. **Proprietary Information**: The corporation's
5 proprietary information is any information that is owned by
6 the corporation, including information in the corporation
7 databases. Much, but not all, of the corporation's proprietary
8 information is confidential. It may also be subject to
9 copyright, patent or other intellectual property or legal rights.
10 Proprietary information includes such things as: the
11 corporation's technical or scientific information relating to
12 current and future products, services, research or customer
13 engagements; business or marketing plans or projections;
14 earnings and other financial data; personnel information
15 including executive and organizational changes. The
16 corporation's proprietary information is the result of the ideas,
17 hard work, and innovation of many of your fellow employees
18 and of substantial investments by the corporation in planning,
19 research and development. This information, particularly the
20 corporation's confidential information, gives the corporation
21 a competitive advantage in the marketplace, and the
22 corporation would be damaged if its competitors discovered
23 it. The value of the corporation's proprietary information is
24 well known not only to the corporation's competitors but also
25 to others in the industry. The corporation would be harmed by
26 unauthorized disclosures of its proprietary information to, or
27 the unauthorized use of that information by, any of those
28

1 people. For example, unauthorized disclosure of an
2 unannounced new product can hurt the corporation by giving
3 competitors more time to match our product. Another
4 example is unauthorized disclosure of a proposal or an
5 unannounced executive or organizational change which can
6 adversely affect employee morale and can interfere with the
7 corporation's plans. As an HCT employee, you will have
8 access to information that the corporation considers
9 proprietary. Given the widespread interest in the corporation
10 and the increasingly competitive nature of the industry, you
11 will probably come into contact with someone who is
12 interested in acquiring the corporation's proprietary
13 information. It is critical that you do not disclose or distribute
14 that information except as authorized by the corporation and
15 that you follow all the corporation safeguards for protecting
16 that information.

17
18 b. **Using Proprietary Information:** Besides your
19 obligation to protect the corporation's proprietary information
20 from unauthorized disclosure or distribution, you are also
21 required as an employee to use such information only in
22 connection with the corporation's business. This obligation
23 applies whether or not you developed the information
24 yourself, and it applies by law in virtually all countries where
25 the corporation does business.

1 **GARDNER PROVIDES CONSULTING SERVICES, OUTSIDE OF HCT,**
2 **TO HCT’S CUSTOMERS**

3
4 40. HCT is informed and believes that in or around 2010, Gardner began
5 surreptitiously offering consulting services to certain of HCT’s customers and/or suppliers
6 and then directed such persons and/or entities to pay the monies to Gardner personally or
7 to one of the entities he established to compete with HCT. After forming an association-
8 in-fact enterprise with Chang and Lim, HCT is informed and believes that Gardner, Chang
9 and Lim utilized the PRC Factory to help perpetuate the fraud. Gardner never paid to HCT
10 any of the monies earned from any of the consulting services that he or any other members
11 of the association-in-fact enterprise provided. HCT is informed and believes that Gardner
12 created HSBC foreign currency bank accounts in Hong Kong (Account Number XXX-
13 XXX657-933) (“HSBC HK Account”) and Great Britain (Account Number XX-XX-XX-
14 XX381435) (“HSBC GB Account”), wherein funds earned from Gardner’s unauthorized
15 consulting and other unauthorized and disloyal actions, including the actions of the
16 association-in-fact enterprise, were deposited. HCT is informed and believes that between
17 November of 2012 and November of 2015, nineteen (19) deposits, totaling approximately
18 \$1.8 million were made into the HSBC HK Account. Gardner’s unauthorized consulting
19 includes, but is not limited to, the following:

20
21 a. \$313,000 in fees earned for consulting services provided by
22 Gardner to HCT Customers A, B, C, D, E, F and G, as evidenced by invoices from
23 Gardner, through Cognisant, to the PRC Factory.

24
25 b. \$37,554.94 in fees received by Gardner from one of HCT’s
26 suppliers located in California, Cosmetic Group USA, formerly The Color Factory,
27
28

1 (“CG”), as evidenced by a July 28, 2014 invoice entitled “Cosmetic Group and Customers
2 A-G” which shows commissions of \$37,554.94 due to Gardner.

3
4 c. \$5,000 in consulting services for CG, as evidenced by a
5 September 9, 2013 W9.

6
7 **GARDNER, CHANG, AND LIM RECEIVE KICKBACKS FROM THE PRC**
8 **FACTORY AND THE TRADING COMPANY**

9
10 41. Gardner, Chang, and Lim controlled the PRC Factory and the Trading
11 Company. HCT develops and purchases tools that are utilized to manufacture products for
12 its customers. HCT invests hundreds of thousands of dollars, if not millions, in developing
13 such tools and products so that it can readily fill any and all orders, of new and existing
14 components. Gardner, Chang, and Lim caused the PRC Factory and the Trading Company
15 to set artificially high prices for tooling and products, so that they could cause the PRC
16 Factory and the Trading Company to pay themselves the difference between the price they
17 would cause HCT to pay for such tooling and products and the market price for such
18 tooling and products. Gardner, as part of his job responsibilities, was required to obtain
19 cross-quotes for tooling and products falling under his division at HCT. Gardner, along
20 with Chang, who was Gardner’s No. 2 in command, deliberately chose not to obtain cross-
21 quotes for all orders sent through the PRC Factory and the Trading Company, knowing
22 that the cross-quotes would be lower or even absorbed by other factories in light of the
23 large volume which would enable the factories to profit from the manufacturing of the
24 actual product. Certain of the orders involved products containing brushes and Lim knew
25 that such orders were being placed with the PRC Factory, a non-approved factory, without
26 any cross-quotes obtained. Lim was well aware of HCT’s policy regarding obtaining
27 cross-quotes and of HCT’s desire to use facilities that it owned including Kent, where
28

1 certain of the products had been manufactured at before being diverted to the PRC Factory,
2 and she raised no questions and concealed all this wrongdoing from HCT.

3
4 42. Gardner submitted all the PRC Factory and the Trading Company
5 purchase orders for tooling and for the manufacturing of products to HCT's accounting
6 division for payment, concealing from HCT that the amounts listed included overpayments
7 which would be diverted from HCT to Gardner, Chang, and Lim following payment by
8 HCT.

9
10 43. In or about July 2015, Gardner and Chang directed HCT staff, namely
11 its design and engineering team, to develop a new tool for Customer A that would replicate
12 the same Specifications of a previously designed tool. The previous tool was already
13 produced for manufacturing of products at the PRC Factory. However, the purchase order
14 for the duplicate tool was to be submitted to the Trading Company formed in March 2015,
15 which is *not an HCT factory*, which Defendants referred to as their factory to a third party
16 and wanted to establish as the "supplier of choice."

17
18 44. HCT is informed and believes that Gardner, Chang, and Lim together
19 received in excess of \$5.4 million in kickbacks in the form of "commissions" between
20 2010 and 2014 alone, from the PRC Factory on purchase orders for products (total does
21 not include kickbacks on tooling) and did not disclose their receipt to HCT. For instance,
22 on or about August 29, 2013, Gardner and Chang each received \$120,000 from the PRC
23 Factory for HCT purchase orders and then messaged each other on the same day,
24 referencing Chang having "had a good day yesterday" and receiving "120 in the bank."
25 Defendants repeated the same scheme through the use of the Trading Company and
26 received millions of dollars in additional kickbacks.

1 45. Gardner and Chang’s receipt of kickbacks was not disclosed to HCT.
2 The supplier decisions by Gardner, Chang, and Lim to move away from HCT owned or
3 controlled suppliers and funnel purchase orders to the PRC Factory and the Trading
4 Company were to the financial detriment of HCT, as Defendants were able to submit
5 fraudulent purchase orders which contained grossly inflated amounts, and then funnel the
6 inflated amounts through the PRC Factory and the Trading Company before distributing
7 such payments to themselves individually.

8
9 **DEFENDANTS RECRUIT HCT EMPLOYEE TO JOIN ASSOCIATION-IN-**
10 **FACT ENTERPRISE**

11
12 46. Stephen Fisher (“Fisher”) joined HCT in its New York Office in or
13 about September 2012 as a Vice President of Sales after being introduced to HCT
14 employees Gardner and David Greco by Christopher Manenti in April 2012, who was at
15 that time Vice President, Business Development at Oxygen Development, LLC.

16
17 47. As Fisher and Gardner got to know each other, Gardner emailed his
18 non-HCT business partner, Neil McDonald, saying he liked Fisher because he “thinks like
19 us.” Gardner introduced Chang to Fisher, and they all begin working closely together,
20 often asking each other for advice and input on projects.

21
22 48. In January 2013, Gardner introduces Fisher to the PRC Factory’s lead
23 employee via email, stating Fisher “has a project he would like to introduce to you.”

24
25 49. On January 8, 2015, Fisher asks Gardner via their HCT email
26 accounts about a palette with an HCT Customer (“HCT Customer Palette”). During the
27 conversation, Gardner states that he “[doesn’t] mark up their filling but [has] made money
28

1 on the currency...” When Fisher starts to ask more questions about what Gardner is doing,
2 Gardner responds, “When you are here I will happily run you through it if you have the
3 time. Politically it might not be the best business to reference because it somewhat puts
4 everybody’s nose out of joint (none of it is in any factory even remotely associated with
5 HCT)[.]” Fisher then agrees it would be a good idea to “better understand the bigger
6 picture of what happens out there...”

7
8 50. On January 15, 2015, Fisher was terminated at HCT. Over the
9 following weeks, Gardner and Chang email with Fisher to keep their relationship going.
10 From January 30, 2015 through February 5, 2015, Chang conducts an email exchange with
11 Fisher in which they discuss business regarding the HCT Customer Palette.

12
13 51. On March 6, 2015, Fisher emails Gardner from his email account at
14 his new employer, another key player in the cosmetics industry, to discuss business in
15 Taiwan and China. Fisher’s email signature indicated he had become Vice President of
16 Product & Packaging, Business Development at his new employer.

17
18 52. On March 6, 2015, a third supplier (“Supplier X”) emails Gardner at
19 his HCT email account regarding the HCT Customer Palette and asks Gardner if he would
20 like to build in a “commission for Fisher” on the quote. Gardner responds that he will call
21 Supplier X to discuss.

22
23 **GARDNER, CHANG, AND LIM USURP BUSINESS FROM CUSTOMER A**

24
25 53. Prior to Gardner, Chang, and Lim joining HCT, HCT had already
26 secured accounts on the West Coast including, without limitation, Customer A. Gardner, a
27 former bond trader and citizen of England and Wales, joined HCT at the request of
28

1 Timothy Thorpe, current President of HCT. At all times during Gardner’s employment
2 with HCT, Gardner’s primary responsibility was to oversee and manage HCT’s business
3 with Customer A, among other customers. Chang was responsible for product
4 development, supply chains, and manufacturing, amongst other duties, for HCT’s business
5 with Customer A, and other customers. Lim was responsible for overseeing and managing
6 brush development and sales, which involved Customer A, among other customers.

7
8 54. HCT is informed and believes that Gardner, with the assistance of
9 Chang and Lim, began conducting business with Customer A independently of HCT and
10 without HCT’s involvement, while still using the resources and proprietary information of
11 HCT. As alleged above, Gardner provided consulting services to Customer A, and
12 directed the PRC Factory, the supplier/manufacturer for the project, to pay the Cognisant
13 Entities for such services. HCT alleges on information and belief that Chang and Lim also
14 received monies for their assistance. Moreover, HCT is informed and believes that
15 Gardner diverted other business opportunities with Customers A-G from HCT with the
16 help and assistance of Chang and Lim. One such opportunity is described below.

17
18 55. HCT’s revenues from Customers A-G significantly declined between
19 Fiscal Year (“FY”) 15/16 and FY 16/17.⁶

20
21 **GARDNER AND HIS COHORTS DEVISE ELABORATE SCHEME TO**
22 **DIVERT MAJOR BUSINESS OPPORTUNITY FROM HCT**

23
24 56. In or about November 2012, HCT and AM entered into a letter of
25 intent regarding a proposed joint venture between the companies with respect to the

26 _____
27 ⁶ HCT is continuing its investigation of its claims against Gardner, Chang, and Lim,
28 but is informed and believes that the accounts they managed declined in gross profit
by millions of dollars.

1 proposed development, manufacture, packaging, and marketing of cosmetic products
2 which utilize the Trademarked Material to be developed by HCT and produced by AM
3 (“AM LOI”). The Trademarked Material is proprietary to AM.
4

5 57. While no joint venture agreement was ever executed between HCT
6 and AM, HCT’s executives and engineers spent a considerable amount of time evaluating
7 the feasibility of using the Trademarked Material in cosmetics and developing product
8 concepts. In fact, such HCT employees were instrumental in preparing a joint presentation
9 by HCT and AM which allowed AM to obtain a deal with a HCT customer.
10

11 58. HCT is informed and believes that Gardner saw tremendous value in
12 the Trademarked Material and went to great lengths to obtain benefits from this product for
13 himself and the association-in-fact enterprise, without the inclusion of HCT.
14

15 a. From the time the AM LOI was executed, Gardner maintained
16 a friendship with Andre Zeitoun (“Zeitoun”), the CEO of AM. Zeitoun would inform
17 Gardner about new ventures that AM was pursuing, especially regarding the Trademarked
18 Material, and Gardner repeatedly expressed interest in participating in such ventures.
19 However, at no time did Gardner disclose such ventures as business opportunities to HCT.
20

21 b. Soon after the AM LOI was signed, Gardner began contacting
22 HCT Customers to discuss ventures that would include AM, to the exclusion of HCT, as
23 evidenced by a January 14, 2013 email to an HCT Customer in which he states “I do have
24 a slightly unusual business opportunity I would like to discuss with you separate from
25 packaging,” and then forwards to such HCT Customer a December 11, 2012 press release
26 that represents “HCT and AM form JV for natural skin care line.” Gardner then contacted
27
28

1 yet another HCT Customer on February 14, 2013, stating “want to talk to you about our
2 Applied Minerals deal sometime. It’s a little complicated :)”.

3
4 c. In or about October 2013, Zeitoun introduced Gardner to a
5 project utilizing iron oxide-based pigments trademarked as AMIRON™ that has
6 applications outside the cosmetics industry. Again, Gardner expressed interest in
7 participating in the venture. Subsequently, on April 1, 2014, Zeitoun sent Gardner
8 information on how AM has made AMIRON™ safe for use with cosmetics. Gardner
9 failed to disclose such business opportunity to HCT.

10
11 d. In or about 2015, AM started receiving press that the
12 Trademarked Material’s uses within cosmetics would be extremely profitable. HCT is
13 informed and believes that in or around 2015, Gardner and Zeitoun began discussing uses
14 of the Trademarked Material that could be marketed in luxury products. In September
15 2015, Gardner emailed an employee of Customer A (“Customer Employee A”)
16 information regarding the Trademarked Material that he received directly from Zeitoun.
17 On November 2, 2015, Zeitoun informed Gardner that AM entered a five-year supply
18 contract regarding AMIRON™ for technical grade oxides. Cognisant Limited was then
19 formed, enabling Gardner to invest in AM under a different name and divert cosmetic
20 business with AM to the association-in-fact enterprise, rather than honor the AM LOI
21 through HCT.

22
23 e. On November 20, 2015, Gardner formed Cognisant Limited.

24
25 f. In December 2015, Gardner was invited to a dinner for the
26 “board and management” of AM.

1 g. On December 16, 2015, Customer Employee A asked Zeitoun
2 for information regarding the Trademarked Material to begin the internal approval process
3 with Customer A. On February 8, 2016, an employee of an HCT Supplier asked about a
4 project for Customer A relating to a palette and brushes. Gardner, through his HCT email
5 account, replied that he was working out the “politics” and wants to see if the parties
6 involved would be comfortable signing a three-way non-disclosure agreement between the
7 HCT Supplier, a cosmetic consulting firm, and Cognisant, which Gardner describes as an
8 entity “that will be looking after the interests of the [trademarked material] people.” Yet
9 again, Gardner was giving preference to his own business at the expense of HCT and failed
10 to disclose any of these material facts to HCT, completely cutting HCT out of the picture.
11

12 h. On March 18, 2016, Gardner emailed Zeitoun saying that he
13 wants to speak on the phone regarding some “goodish news.” HCT is informed and
14 believes that at that time Gardner informed Zeitoun that he was ready and able to invest in
15 AM.
16

17 i. Incredibly, Gardner, through his entity Cognisant Ltd., became
18 a major shareholder in AM. A Registration Statement filed by AM with the SEC,
19 identifies Cognisant Ltd. as a “selling stockholder” that beneficially owned 866,867 shares
20 of stock in AM as of April 14, 2016 with Gardner, individually, having sole investment
21 and voting power over the shares. On June 24, 2016, Gardner executes an Investment
22 Agreement, Registration Rights Agreement, and Warrant with AM, as the Managing
23 Director of Cognisant Limited. At no point did Gardner disclose his investment in AM to
24 HCT.
25

26 59. HCT is informed and believes that Gardner, while utilizing
27 proprietary information from HCT, including but not limited to, one or more design
28

1 renderings developed by HCT’s engineers (the “Design Renderings”), information
2 regarding HCT’s pricing and information concerning HCT’s suppliers and customers,
3 brought together AM, Bayport and Customer A, and offered to use Cognisant Ltd. in place
4 of HCT at a lower cost. This way, Defendants could collect all fees earned through the
5 deal from Cognisant Ltd., and Gardner would also stand to benefit as a shareholder of AM,
6 as under the proposal, AM would be paying less to Cognisant Ltd. than to HCT.
7

8 60. Gardner approached Bayport regarding a project with AM under the
9 false pretense that he was acting as a representative of HCT and on HCT’s behalf or at
10 least acting with HCT’s consent. In fact, Gardner communicated with Bayport using his
11 HCT issued e-mail account and set up meetings with Bayport at HCT locations. Further,
12 Gardner bragged that Zeitoun is a “personal friend” of his to encourage the deal to go
13 forward.
14

15 61. Gardner’s correspondence demonstrates that Gardner, Bayport and
16 Customer Employee A developed the Trademarked Material product using HCT’s
17 resources.
18

19 62. On August 15, 2016, Gardner emails Customer Employee A seeking
20 input before sending it to another individual. The email from Gardner indicates that “we”
21 are in the middle of developing a cosmetic for Customer Employee A that uses
22 Trademarked Material, and that AM is providing the technology, and that both Gardner
23 and Customer Employee A have a relationship with AM’s CEO. The draft of the email
24 further provides that “we” brought the idea and concept to AM and have both put the
25 formulation together. Gardner further states that Cognisant would receive and grant rights
26 to the Trademark from AM. Gardner adds:
27
28

1 Applied Minerals markets their Trademarked Material from
2 as '[Trademark]' and there is some consideration from
3 [Customer A] that you might brand the product as the
4 [Trademarked Material product]. They are comfortable for us
5 to use their trademark but are suggesting that it is easier if
6 they give a license to use the name in cosmetics products to a
7 different entity which we control called Cognisant. Can you
8 foresee any issues with Cognisant then granting that right to
9 Customer A if it is apparent that Cognisant has those rights?
10

11 63. On August 16, 2016, the owner of Bayport, Angle Camacho
12 ("Angle") emailed Gardner and indicated that Bayport had evaluated the possibility of
13 Gardner's investment in the project, knowing that it serves a "common purpose, making
14 the project profitable to all of us." Angle states that a rough estimate of Gardner's
15 investment in the project is \$150,000.
16

17 64. On August 22, 2016, Angle wrote to Gardner about broadening their
18 collaboration to other applications: "Agreed that together we can incorporate [the
19 Trademarked Material] in other formulas to offer our customers with unique performance
20 applications."
21

22 65. In an August 25, 2016 email to Angle, Gardner wrote the following
23 email, which reveals several key aspects of the devious scheme and how Gardner sought to
24 undercut HCT by utilizing its pricing information to offer a better deal to Customer A:
25

26 I am going to try and capture all of the details in this email
27 and make it the ongoing one between the three of us... What
28

1 we are hopefully going to do is having an entity that I control
2 called Cognisant invest in your filling machinery. If you can
3 send me your bank details I will arrange a wire this weekend.
4 Your proposal on the \$0.04 per piece is accepted. Cognisant
5 will quote the fill and assembly cost to Customer A at \$.086
6 for the full size. Cognisant will own the rights to the use of
7 the [Trademark] which are being granted by Applied Mineral.
8 The rights to use the name and trademark will then be given
9 to [Customer A] by Cognisant. ***If we were to do this through***
10 ***HCT I would have to apply HCT's markups on the filling***
11 ***and then the project becomes a non-starter. I have therefore***
12 ***given [Customer A] your direct quote at \$0.86.*** (emphasis
13 added)

14
15 66. Between August 31, 2016 and September 9, 2016, Gardner set up the
16 Cognisant Entities as vendors with Customer A for a purchase order for a turnkey product
17 incorporating the Trademarked Material.

18
19 67. On or about September 9, 2016, HCT is informed and believes that
20 Gardner, as part of the association-in-fact enterprise, made an investment in Bayport
21 through a transfer of funds from Gardner's HSBC-UK foreign currency bank account and
22 that he met with Angle, at HCT's expense and under the guise of a sales meeting on behalf
23 of HCT or with HCT's consent.

24
25 68. On September 13, 2016, with regard to the Bayport project, Customer
26 Employee A asks Gardner "who does the full PO go to?" Gardner replies, "Is it
27
28

1 convenient to issue a packaging PO to HCT and then fill and assembly to Bayport?”

2 Customer Employee A then replies, “Yep.”

3
4 69. On September 20, 2016, Gardner forwards an email thread to Zeitoun,
5 where it is stated: “We have a deal as discussed. This could start to get exciting! [...] See,
6 I told you this shit worked[.]”

7
8 70. HCT is informed and believes that Chang and Lim assisted Gardner in
9 the development of the above-described business venture with AM, Bayport, and
10 Customer A including, but not limited to, Chang overseeing the supply chain and
11 manufacturing process and Lim providing insight and guidance with Chang and Lim
12 concealing all the wrongdoing from HCT.

13
14 **HCT’S DISCOVERY OF MISCONDUCT BY GARDNER, CHANG, AND LIM**

15
16 71. Due diligence pursuant to a corporate transaction that HCT was
17 pursuing led to the discovery of irregularities in December 2016 and a subsequent
18 investigation of Defendants, including retrieval of e-mails from the work computers of
19 Gardner, Chang, and Lim. HCT terminated Gardner on January 5, 2017 and placed Chang
20 on suspension on that same day pending investigation of Chang’s involvement in the
21 wrongdoing. Then, Chang tendered his resignation on January 19, 2017, which became
22 effective on January 20, 2017. In January 2017, during its further investigation, HCT
23 became aware of Chang’s misconduct. HCT was not aware of Defendants’ misconduct
24 before this time. The investigation subsequently revealed Lim’s involvement in the
25 fraudulent scheme. Lim was terminated on February 27, 2017.

1 **HCT SUFFERS DAMAGES**

2
3 72. Plaintiffs individually and collectively suffered damages as a result of
4 Defendants' actions including, but not limited to, the following:

5
6 73. **HCT Group:** HCT Group is the parent company. The profits and
7 losses of all subsidiaries are reflected cumulatively on consolidated financial statements
8 for HCT Group. The financial health of the subsidiaries impacts the distributions and/or
9 earnings for HCT Group shareholders. At the time that the misconduct was initially
10 discovered in or around December 2016, HCT Group's management team was evaluating
11 offers from at least five potential investors desiring to make a financial investment in HCT
12 Group. The discovery of the misconduct and fraudulent activities and the litigation that
13 ensued caused HCT Group to postpone any transaction indefinitely. The potential impact
14 of Defendants' actions on the valuation of HCT Group is significant.

15
16 74. **HCT Packaging:** Defendants Gardner, Chang, and Lim were
17 employed by HCT Packaging and received a salary and significant bonuses on the
18 condition they were working for and representing the best interests of HCT Packaging.
19 Instead, they engaged in surreptitious activity, including direct competition with HCT,
20 misappropriated HCT trade secrets and resources, and took action that was in direct
21 conflict with HCT's interests. Gardner and Chang diverted key projects away from HCT
22 Packaging to produce products for longtime HCT Packaging customers. They eroded
23 HCT Packaging's profit margins by causing HCT to overpay for tooling so that the
24 overpayments could be paid to Gardner and Chang personally in the form of kickbacks
25 from the PRC Factory and the Trading Company. Lim was well aware of what was
26 transpiring, not only because she was Chang's wife and a member of the association-in-
27 fact enterprise, but because she oversaw the brush division and was made aware of

1 to commit wrongful conduct, and all agreed to the shared common plan and were each
2 aware that each other planned to participate in the plan and that the plan was unlawful and
3 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
4 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
5 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
6 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
7 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
8 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
9 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.

10
11 78. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
12 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
13 wrongful conduct alleged in this Second Amended Complaint by DOE 1-Chang and DOE
14 2-Lim. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant
15 Limited knew that the conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of
16 duty and/or wrongful conduct and provided substantial assistance or encouragement to
17 DOE 1-Chang and DOE 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided
18 and abetted the commission of the wrongful conduct alleged in this Second Amended
19 Complaint by Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
20 Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-Lim knew that
21 the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
22 Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty and/or wrongful
23 conduct and provided substantial assistance or encouragement to Defendants Gardner,
24 Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and Doe Defendants 3-
25 50, to so act.

1 82. At all times since May 12, 2004, when Gardner was hired by HCT as
2 a Vice President of Sales for HCT, Gardner has owed a duty of loyalty to HCT.

3
4 83. At all times since June 27, 2007, when Chang was hired by HCT as a
5 Project Manager for HCT, Chang has owed a duty of loyalty to HCT.

6
7 84. At all times since April 13, 2006, when Lim was hired by HCT as a
8 Project Manager for HCT, Lim has owed a duty of loyalty HCT.

9
10 85. Pursuant to Labor Code Sections 2854, 2859, 2860, 2861, and 2863,
11 as employees of HCT, Gardner, Chang, and Lim have at all times owed a duty of care,
12 diligence, skill, and loyalty to HCT.

13
14 a. Labor Code Section 2854 provides that an employee must use
15 ordinary care and diligence while employed.

16
17 b. Labor Code Section 2859 provides that an employee is always
18 bound to use such skill as he possesses so far as the same is required for the service
19 specified.

20
21 c. Labor Code Section 2860 provides that everything which an
22 employee acquires by virtue of his employment belongs to the employer, whether acquired
23 lawfully or unlawfully, or during or after the expiration of the term of his employment.

24
25 d. Labor Code Section 2861 provides that an employee shall
26 render to his employer just accounts of all his transactions in the course of his service and
27
28

1 shall give prompt notice to his employer of everything which he receives for the account of
2 the employer.

3
4 e. Labor Code section 2863 provides that an employee who has
5 any business to transact on his account that is similar to that entrusted to him by his
6 employer, must give preference to the business of the employer.

7
8 86. By virtue of their acts and omissions as hereinabove alleged, Gardner
9 Chang, and Lim breached the duty of loyalty that they owed to HCT through a multitude
10 of actions and inactions with each such action and/or inaction serving as an independent
11 basis for the breach of the duty of loyalty. Among other things, Gardner, Chang, and Lim
12 placed their own personal interests above the interests of HCT by (1) failing to use
13 ordinary care and diligence while employed; (2) failing to use the skills they possess while
14 performing services for HCT; (3) failing to render to HCT accounts of all their transactions
15 in the course of their service and failing to provide notice to HCT of monies and business
16 that they obtained; (4) conducting business similar to that entrusted to them by HCT which
17 was a wrong in itself, and then failing to give preference to the business of HCT; (5)
18 providing personal consulting work, outside of HCT, to HCT's customers; (6) creating
19 and/or assisting Defendants Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant
20 Ltd. to compete with HCT and to injure HCT; (7) directing business away from HCT and
21 to Cognisant Ltd. with respect to Customers A-G, causing HCT's revenue from Customers
22 A-G to significantly decline; (8) failing to negotiate, on behalf of HCT, a joint venture
23 between HCT and AM, (9) selecting suppliers for personal financial gain, (10) failing to
24 obtain cross-quotes for orders submitted to the PRC Factory and the Trading Company;
25 (11) causing HCT to grossly overpay for tooling and for the manufacturing of products to
26 fund kickbacks received by Defendants once HCT paid such purchase orders and even
27 maintaining a Special Items Ledger to document the fraudulent kickbacks; (12) doing
28

1 business with a HCT supplier for a competitive, side deal on the pretense that it was for an
2 HCT project or approved by HCT, (13) concealing all of the above mentioned actions from
3 HCT; and (14) taking various other actions inimical to HCT's best interests.

4
5 87. Defendants Gardner, DOE-1 Chang, and DOE-2 Lim, later joined by
6 the Cognisant Entities and Doe Defendants 3-50 formed a plan to engage in a conspiracy
7 to commit wrongful conduct, and all agreed to the shared common plan and were each
8 aware that each other planned to participate in the plan and that the plan was unlawful and
9 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
10 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
11 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
12 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
13 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
14 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
15 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.

16
17 88. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
18 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
19 above wrongful conduct by DOE 1-Chang and DOE 2-Lim. Defendants Gardner,
20 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Limited knew that the
21 conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of duty and/or wrongful
22 conduct and provided substantial assistance or encouragement to DOE 1-Chang and DOE
23 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided and abetted the commission
24 of the above wrongful conduct by Defendants Gardner, Cognisant, LLC, Cognisant Real
25 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-
26 Lim knew that the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real
27 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty
28

1 and/or wrongful conduct and provided substantial assistance or encouragement to
2 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and
3 Doe Defendants 3-50, to so act.
4

5 89. As a direct proximate result of the wrongful conduct of Defendants,
6 HCT has suffered damages in an amount to be proven at time of trial.
7

8 90. By reason of the duty of loyalty owed by Gardner, Chang, and Lim to
9 HCT while they were employed by HCT, Defendants have no legal or equitable right,
10 claim or interest in any monies paid to Defendants by any entity other than HCT for
11 kickback or work performed by Gardner, Chang, and Lim while they were employed by
12 HCT. As such, Defendants are involuntary trustees, holding such property and profits
13 therefrom in constructive trust for HCT with the duty to convey the same to HCT
14 forthwith. Such monies include all monies collected by Defendants from the PRC Factory,
15 the Trading Company or other third parties for kickbacks or work performed by Gardner,
16 Chang, and or/Lim while they were employed by HCT, including, but not limited to, funds
17 deposited into HSBC foreign currency bank accounts in Hong Kong (Account Number
18 XXX-XXX657-833) and Great Britain (Account Number XX-XX-XX-XX381435).
19

20 91. In committing the acts herein, Defendants are guilty of oppression
21 (despicable conduct that subjected HCT to cruel and unjust hardship in conscious disregard
22 of HCT's rights), fraud (intentional misrepresentations, deceit, and concealment of
23 material facts known to HCT with the intention on the part of Defendants of thereby
24 depriving HCT of monies, business opportunities, and legal rights, including, and
25 otherwise causing injury), and malice (conduct intended by Defendants to cause injury to
26 HCT), and authorized ratified, or performed the acts, justifying an award of exemplary and
27 punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish
28

1 Defendants and to deter similar future misconduct and to make an example of them to the
2 community.

3
4 **SECOND CAUSE OF ACTION**

5 (Breach Of Duty Of Loyalty (Faithless Servant California Common Law Doctrine))
6 Against All Defendants)

7
8 92. HCT incorporates by reference and realleges the allegations as set
9 forth in paragraphs 1 through 91 above.

10
11 93. This cause of action is based on multiple acts of wrongdoing, each of
12 which is sufficient by itself to support the cause of action. Such actions or inactions
13 largely consist of those not involving the use or misappropriation of information. For
14 actions involving the use of information, HCT alleges the use of such information is an
15 independent basis for liability under this cause of action, not because the information at
16 issue qualifies as a trade secret, but because the information was used to benefit
17 Defendants, and not HCT, while Defendants were employed by HCT, thereby violating the
18 Defendants' duties of loyalty.

19
20 94. At all times since May 12, 2004, when Gardner was hired by HCT as
21 a Vice President of Sales for HCT, Gardner has owed a duty of loyalty to HCT.

22
23 95. At all times since June 27, 2007, when Chang was hired by HCT as a
24 Project Manager for HCT, Chang owed a duty of loyalty to HCT.

25
26 96. At all times since April 13, 2006, when Lim was hired by HCT as a
27 Project Manager for HCT, Lim has owed a duty of loyalty HCT.

1 97. At all times, Gardner, Chang, and Lim were required to act within the
2 terms of their authority, and not engage in any fraud, bad faith, gross misconduct, or gross
3 mismanagement. This includes a duty to disclose all material facts relating to the subject
4 matter of their employment. Moreover, they were required to act for the benefit of HCT at
5 all times and not for their own benefit or for the benefit of another in antagonism to or in
6 competition with HCT in a transaction. *See e.g. J.C. Peacock v. Hasko* (1961) 196 Cal.
7 App. 2d 353, 359-60. Any violation of these duties results in the forfeiture of unpaid
8 compensation to them and for past paid bonuses that were paid after they began engaging
9 in the alleged misconduct. *Id.*

10
11 98. Gardner, Chang, and Lim have failed to disclose all material facts
12 relating to the subject matter of their employment, including that since at least 2010,
13 Gardner provided consulting work, outside of HCT, to HCT's customers and that such
14 consulting work pertains to the same subject as the work he performed for HCT, that they
15 created and/or assisted Defendants Cognisant, LLC, Cognisant Real Estate, LLC, and
16 Cognisant Ltd. to compete with HCT; or that Gardner acquired a significant stake in AM
17 even though HCT and AM were pursuing a joint venture. Furthermore, Gardner and
18 Chang, acted for their own benefit and not for the benefit of HCT by diverting business
19 away from Customer A, and by Gardner sabotaging a potential joint venture between HCT
20 and AM. Gardner and Chang also acted for their own benefit and not for the benefit of
21 HCT by selecting suppliers for personal financial gain and taking kickbacks from purchase
22 orders for products created by tooling for which Defendants caused HCT to pay excessive
23 amounts. Gardner and Chang acted for their own benefit and not for the benefit of HCT by
24 not obtaining cross-quotes for orders submitted to the PRC Factory and the Trading
25 Company and by submitting invoices for payment to HCT's accounting division, knowing
26 that such invoices contained inflated amounts. Lim acted for her own benefit and not for
27 the benefit of HCT by failing to question Gardner and Chang about violating HCT policy
28

1 by not obtaining cross-quotes, failing to disclose such facts to HCT, collecting kickbacks,
2 concealing the inflated charges from HCT, and concealing other actions taken by Gardner,
3 Chang, and herself from HCT even though she knew what was transpiring and was in fact
4 an active participant in the wrongdoing as part of an association-in-fact enterprise with
5 Gardner and Chang.

6
7 99. Gardner was paid bonuses equal to approximately \$4.1 million dollars
8 during the years 2011 to 2017.

9
10 100. Chang was paid bonuses equal to \$377,068 during the years 2012-
11 2017.

12
13 101. Lim was paid bonuses equal to \$957,543 during the years 2010-2016.

14
15 102. Defendants Gardner, DOE-1 Chang, and DOE-2 Lim, later joined by
16 the Cognisant Entities and Doe Defendants 3-50 formed a plan to engage in a conspiracy
17 to commit wrongful conduct, and all agreed to the shared common plan and were each
18 aware that each other planned to participate in the plan and that the plan was unlawful and
19 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
20 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
21 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
22 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
23 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
24 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
25 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.

1 103. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
2 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
3 above wrongful conduct by DOE 1-Chang and DOE 2-Lim. Defendants Gardner,
4 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Limited knew that the
5 conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of duty and/or wrongful
6 conduct and provided substantial assistance or encouragement to DOE 1-Chang and DOE
7 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided and abetted the commission
8 of the above wrongful conduct by Defendants Gardner, Cognisant, LLC, Cognisant Real
9 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-
10 Lim knew that the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real
11 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty
12 and/or wrongful conduct and provided substantial assistance or encouragement to
13 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and
14 Doe Defendants 3-50, to so act.

15
16 104. By reason of the duty of loyalty owed by Gardner, Chang, and Lim to
17 HCT while they were employed by HCT, Defendants have no legal or equitable right,
18 claim or interest in any bonuses paid to Gardner, Chang, or Lim. As such, Defendants are
19 involuntary trustees, holding such monies in constructive trust for HCT with the duty to
20 reconvey the bonuses to HCT forthwith.

21
22 105. As a direct proximate result of the wrongful conduct of Defendants,
23 HCT has suffered damages in an amount to be proven at time of trial.

24
25
26
27
28

1 **THIRD CAUSE OF ACTION**

2 (Breach Of Fiduciary Duty Against All Defendants)

3 106. HCT incorporates by reference and realleges the allegations as set
4 forth in paragraphs 1 through 105 above.
5

6 107. This cause of action is based on multiple acts of wrongdoing, each of
7 which is sufficient by itself to support the cause of action. Such actions or inactions
8 largely consist of those not involving the use or misappropriation of information. For
9 actions involving the use of information, HCT alleges the use of such information is an
10 independent basis for liability under this cause of action, not because the information at
11 issue qualifies as a trade secret, but because the information was used to benefit
12 Defendants, and not HCT, while Defendants were employed by HCT, thereby violating the
13 Defendants' fiduciary duties.
14

15 108. Confidence was placed by HCT in the integrity of Gardner, Chang,
16 and Lim, all of whom voluntarily accepted and assumed this confidence. Gardner, Chang,
17 and Lim used HCT's resources, name, personnel, reputation, money, confidential
18 information and proprietary technology to conduct business in upper level positions with
19 HCT. Gardner was the Executive Vice President of Sales for HCT. Chang held Director
20 and Senior Director level positions in Development & Manufacturing. Lim was the Senior
21 Vice President, Global Brush Division. Gardner, Chang, and Lim were responsible for
22 managing the accounts of various HCT clients. Consequently, they owed HCT a fiduciary
23 duty of good faith, integrity and fair dealing.
24

25 109. Gardner, Chang, and Lim breached their fiduciary duties to HCT in
26 doing the things alleged, including but not limited to (1) conducting business similar to
27 that entrusted to them by HCT which was a wrong in itself, and then failing to give
28

1 preference to the business of HCT; (2) providing personal consulting work, outside of
2 HCT, to HCT's customers; (3) creating and/or assisting Defendants Cognisant, LLC,
3 Cognisant Real Estate, LLC, and Cognisant Ltd. to compete with HCT and to injure HCT;
4 (4) directing business away from HCT and to Cognisant Ltd. with respect to Customers A-
5 G, causing HCT's revenue from Customers A-G to significantly decline; (5) failing to
6 negotiate, on behalf of HCT, a joint venture between HCT and AM, (7) selecting suppliers
7 for personal financial gain, (8) failing to obtain cross-quotes for orders submitted to the
8 PRC Factory and the Trading Company; (9) causing HCT to grossly overpay for tooling
9 and for the manufacturing of products to fund kickbacks received by Defendants once
10 HCT paid such purchase orders and even maintaining a Special Items Ledger to document
11 the fraudulent kickbacks; (10) doing business with a HCT supplier for a competitive, side
12 deal on the pretense that it was for an HCT project or approved by HCT, (11) concealing
13 all of the above mentioned actions from HCT; and (12) taking various other actions
14 inimical to HCT's best interests.

15
16 110. Gardner, Chang and Lim further placed their own interests above the
17 interests of HCT by sabotaging the joint venture opportunity between HCT and AM by
18 giving preference to their own enterprise to injure HCT by, among other things, using
19 information, which belongs to HCT by virtue of Labor Code Section 2860, regardless of
20 whether such information constitutes trade secret information.

21
22 111. HCT is informed and believes that Gardner, Chang, and Lim, at all
23 times relevant, knew they owed a fiduciary duty to HCT, and that their actions constituted
24 a breach of these duties. Notwithstanding this knowledge, HCT is informed and believes
25 that Gardner, Chang, and Lim engaged in wrongful and improper conduct as described
26 above.

1 112. Defendants Gardner, DOE-1 Chang, and DOE-2 Lim, later joined by
2 the Cognisant Entities and Doe Defendants 3-50 formed a plan to engage in a conspiracy
3 to commit wrongful conduct, and all agreed to the shared common plan and were each
4 aware that each other planned to participate in the plan and that the plan was unlawful and
5 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
6 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
7 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
8 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
9 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
10 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
11 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.
12

13 113. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
14 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
15 above wrongful conduct by DOE 1-Chang and DOE 2-Lim. Defendants Gardner,
16 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Limited knew that the
17 conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of duty and/or wrongful
18 conduct and provided substantial assistance or encouragement to DOE 1-Chang and DOE
19 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided and abetted the commission
20 of the above wrongful conduct by Defendants Gardner, Cognisant, LLC, Cognisant Real
21 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-
22 Lim knew that the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real
23 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty
24 and/or wrongful conduct and provided substantial assistance or encouragement to
25 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and
26 Doe Defendants 3-50, to so act.
27
28

1 114. By reason of the fiduciary duties owed by Gardner, Chang, and Lim
2 to HCT by virtue of their high-level positions with HCT, Defendants have no legal or
3 equitable right, claim or interest in any monies paid to Defendants by any entity other than
4 HCT for kickbacks or work performed by Gardner, Chang, and Lim while they were
5 employed by HCT. As such, Defendants are involuntary trustees, holding such property
6 and profits therefrom in constructive trust for HCT with the duty to convey the same to
7 HCT forthwith. Such monies include all monies collected by Defendants from the PRC
8 Factory, the Trading Company or other third parties for kickbacks or work performed by
9 Gardner, Chang, and or/Lim while they were employed by HCT, including, but not limited
10 to, funds deposited into HSBC foreign currency bank accounts in Hong Kong (Account
11 Number XXX-XXX657-833) and Great Britain (Account Number XX-XX-XX-
12 XX381435).

13
14 115. As a direct proximate result of the wrongful conduct of said
15 Defendants above, HCT has suffered damages in an amount to be proven at time of trial.

16
17 116. In committing the acts herein, Defendants are guilty of oppression
18 (despicable conduct that subjected HCT to cruel and unjust hardship in conscious disregard
19 of HCT's rights), fraud (intentional misrepresentations, deceit, and concealment of
20 material facts known to HCT with the intention on the part of Defendants of thereby
21 depriving HCT of monies, business opportunities, and legal rights, including, and
22 otherwise causing injury), and malice (conduct intended by Defendants to cause injury to
23 HCT), and authorized ratified, or performed the acts, justifying an award of exemplary and
24 punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish
25 Defendants and to deter similar future misconduct and to make an example of them to the
26 community.

27
28

1 **FOURTH CAUSE OF ACTION**

2 (Misappropriation of Trade Secrets Against All Defendants)

3 117. HCT incorporates by reference and realleges the allegations as set
4 forth in paragraphs 1 through 79 above.
5

6 118. Through years of hard work, hundreds of thousands of hours of
7 innovation, and substantial monetary expenditures, HCT has cultivated a wide array of
8 trade secrets that all contribute to HCT’s confidential competitive intelligence. HCT’s
9 trade secrets include, but are not limited to, the following, which shall hereinafter be
10 referred to as “HCT’s Trade Secrets” and which are described more fully in an Attorneys’
11 Eyes Only Supplemental Trade Secret List which has/will be served on the parties under
12 the stipulated protective order that has been entered:
13

14 a. The portions of HCT’s customer lists, which contain the
15 identity of and contact information for the customer’s decisionmaker(s), corporate
16 structure, creditworthiness and customer financial analysis, past purchasing data (e.g.
17 quantities and types of products purchased from HCT and at what price, including HCT’s
18 profit margins per product), current projects and planned projects, suppliers used or
19 contemplated for each such project, and forecasts of future business as kept in project
20 briefs and other project files on HCT’s secured server.
21

22 b. Tools and Tooling Specifications applicable to each past,
23 pending and proposed customer project.
24

25 c. The portions of HCT’s supplier lists, which contain the identity
26 of and contact information for the supplier’s decisionmaker(s), corporate structure,
27 creditworthiness and supplier financial analysis, items supplied by each supplier (e.g. raw
28

1 materials, components and/or assembly and filling services), capabilities (e.g. capacity and
2 what projects each has been used for in the past), results of audits, whether a supplier has
3 been approved by particular customer and for what specific purpose, and what HCT
4 projects each such supplier has worked on in the past, the role such supplier played with
5 respect to each such project, and the price agreed to by the supplier for each such project.

6
7 d. HCT's financial statements, prices charged and profit margins
8 earned by HCT, breakdown of supply costs, analysis of financials of customers and
9 suppliers and history of receivables.

10
11 e. Drawings and renderings of product concepts, designs and
12 ideas created by or for HCT, which are maintained on a secure shared drive that is
13 accessible solely by HCT employees from an HCT IP address.

14
15 f. The percentage of each ingredient used in the non-stock
16 formulas to create HCT's products. The non-stock formulas are maintained on a secured
17 shared drive that is accessible only by certain HCT employees in the Product Development
18 department.

19
20 g. Product specifications used to manufacture products those
21 products set forth on the Product List, which are maintained on a secure shared drive that
22 is accessible only by certain HCT employees in the Product Development department.

23
24 h. Testing and research data relating to quality control inspections
25 and testing of products manufactured by HCT or its suppliers for HCT for those products
26 set forth on the Product List, which are maintained on a secure shared drive that is
27 accessible only by certain HCT employees in the Product Development department.

28

1 i. HCT's effective, successful and valuable integration and
2 combination of 3D printing machines, platforms, and technology, including 3D
3 characteristics and components, for prototyping cosmetics.

4
5 j. The specialized requirements of HCT's customers, the
6 satisfaction or dissatisfaction of HCT's customers with the quality of the supplier's
7 manufacturing services and the pricing for each specific project as kept in HCT's project
8 briefs and specific HCT customer project files kept on HCT's secured server.

9
10 k. Non-patented inventions, discoveries, and drawings of current
11 and former HCT employees or consultants identified within the course of employment or
12 engagement, respectively, which are kept in a separate in a separate secured engineering
13 folder that is accessible by only certain HCT employees.

14
15 l. New product concepts, prototypes, samples and models
16 developed by or for HCT that are not yet available to the public and are kept in a secured
17 folder entitled HCT Innovation that is accessible by only certain HCT employees.

18
19 m. HCT's internal employee data, including specific
20 responsibilities handled, customer and vendor relationships developed and/or maintained,
21 compensation information, skill set, strengths and weakness, and accomplishments.

22
23 n. Corporate structure of HCT globally and information about its
24 investments in the United States and overseas, as well as information about officers and
25 directors of each of its affiliates.

26
27
28

1 119. HCT has gone to great lengths to protect HCT's Trade Secrets, by,
2 among other things, including strict policies in its employee handbook as outlined above,
3 requiring customers, employees, and suppliers to sign non-disclosure agreements or agree
4 to non-disclosure provisions, and keeping information pertaining to HCT's Trade Secrets
5 on secured drives. HCT's Trade Secrets are not generally known in the industry or
6 publicly available which enables HCT to generate great economic benefit from such
7 information.

8
9 120. At all relevant times herein, HCT was in possession of HCT's Trade
10 Secrets, as set forth in Paragraph 118 above and defined by California's Uniform Trade
11 Secrets Act ("CUTSA").

12
13 121. Such information constitutes trade secrets of HCT under Civil Code
14 Section 3426.1(d) because HCT derives independent economic value from such
15 information, such information is not generally known nor readily ascertainable by proper
16 means by other persons or entities who can obtain economic value from the disclosure or
17 use of such information or by HCT's competitor in the industry, and such information is
18 the subject of reasonable efforts to maintain its secrecy.

19
20 122. As HCT's Executive Vice President of Sales, a high-level position
21 within HCT, Gardner was provided access to HCT's valuable trade secret information.

22
23 123. As a Project Manager and later as HCT's Director and Senior Director
24 of Development & Manufacturing, high-level positions within HCT, Chang was provided
25 access to HCT's valuable trade secret information.

1 124. As a Project Manager, and later as Brush Sales Manager, Vice
2 President, Brush Sales, and ultimately HCT's Senior Vice President, Global Brush
3 Division, Lim was provided access to HCT's valuable trade secret information.
4

5 125. HCT is informed and believes and on that basis alleges that Gardner
6 Chang, and Lim actually misappropriated HCT's Trade Secrets in violation of the CUTSA.
7 Gardner, Chang, and Lim have utilized such information, including confidential pricing
8 information (including margins), and customer and supplier relationship strengths and
9 weaknesses.
10

11 126. Based on the brazen misconduct of Gardner, Chang, and Lim, it is
12 clear that they have no regard for the law and will do anything whatsoever to make money
13 for themselves. In fact, Gardner and Chang have threatened future misappropriation. For
14 example, Gardner, shortly after he was terminated, was overheard telling Chang that he
15 needed HCT's client list. HCT is informed and believes that the utilization of HCT's
16 Trade Secrets by Defendants will continue which creates substantial risk of HCT losing
17 customers, its competitive advantage and its trade secrets and goodwill in amounts, which
18 will be difficult to ascertain unless Gardner, Chang, and Lim abide by the preliminary
19 injunction. Additional temporary restraining orders and injunctive relief may be
20 necessary.
21

22 127. In misappropriating HCT's Trade Secrets and in posing a substantial
23 threat to misappropriate additional trade secrets, the actions of Gardner, Chang, and Lim
24 have been willful and malicious. Gardner, Chang, and Lim have brazenly misappropriated
25 HCT's Trade Secrets for their own personal gain while still employed by HCT as one
26 component of a fraudulent scheme to eliminate HCT from projects and to divert business
27 opportunities from HCT to Gardner, Chang, Lim, and to the Cognisant Entities, which
28

1 Gardner surreptitiously formed to compete against HCT while still employed by HCT. As
2 such, pursuant to Civil Code Sections 3426.3(c) and 3426.4, HCT is entitled to an award of
3 punitive damages or treble damages and attorneys' fees.

4
5 128. The Cognisant Entities knew or had reason to know that HCT's Trade
6 Secrets were acquired by improper means and have utilized HCT's Trade Secrets in
7 soliciting business.

8
9 **FIFTH CAUSE OF ACTION**

10 (Conversion Against All Defendants)

11
12 129. HCT incorporates by reference and realleges the allegations as set
13 forth in paragraphs 1 through 116 above.

14
15 130. This cause of action is not based on the use of information; it is based
16 on the conversion of specific sums of money. To the extent any use of information
17 tangentially relates to this cause of action, it is not relevant whether such information
18 constitutes a trade secret or not.

19
20 131. Defendants converted specific sums of monies belonging to HCT to
21 their own use. Indeed, Defendants and the PRC Factory and the Trading Company
22 determined a specific markup amount for kickbacks for tooling and for the manufacturing
23 of products and then Defendants prepared fraudulent purchase orders that contained the
24 fraudulent markup amounts. Gardner, who was in charge of signing off on purchase orders
25 for HCT after obtaining at least two cross-quotes, signed off on the purchase orders and
26 caused HCT's accounting division to make the payments to the PRC Factory and the
27 Trading Company. Then, after HCT made payments, the PRC Factory and the Trading
28

1 Company paid the specific markup amounts to Gardner for distribution to Gardner, Chang,
2 and Lim. The kickbacks they received from the PRC Factory were recorded in the Special
3 Items Ledger, which tied each kickback to the purchase order placed by HCT to the
4 supplier. Through this scheme, Defendants converted specific sums of monies belonging
5 to HCT to themselves.

6
7 132. HCT alleges on information and belief that Defendants converted
8 additional sums of monies belonging to HCT after being asked by Supplier X whether they
9 would like to build in a “commission for Fisher” when quoting the HCT Customer Palette.

10
11 133. Moreover, all monies collected by Defendants relating to their job
12 responsibilities at HCT belonged to HCT. Defendants retained all monies they received
13 from the PRC Factory and the Trading Company even though they all owed duties of
14 loyalty and fiduciary duties to HCT which made them constructive trustees for any monies
15 received from the PRC Factory and the Trading Company. Defendants, however, retained
16 all sums paid to them by the PRC Factory and the Trading Company, thereby converting
17 all such monies to their own.

18
19 134. Defendants Gardner, DOE-1 Chang, and DOE-2 Lim, later joined by
20 the Cognisant Entities and Doe Defendants 3-50 formed a plan to engage in a conspiracy
21 to commit wrongful conduct, and all agreed to the shared common plan and were each
22 aware that each other planned to participate in the plan and that the plan was unlawful and
23 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
24 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
25 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
26 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
27 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
28

1 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
2 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.

3
4 135. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
5 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
6 above wrongful conduct by DOE 1-Chang and DOE 2-Lim. Defendants Gardner,
7 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Limited knew that the
8 conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of duty and/or wrongful
9 conduct and provided substantial assistance or encouragement to DOE 1-Chang and DOE
10 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided and abetted the commission
11 of the above wrongful conduct by Defendants Gardner, Cognisant, LLC, Cognisant Real
12 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-
13 Lim knew that the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real
14 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty
15 and/or wrongful conduct and provided substantial assistance or encouragement to
16 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and
17 Doe Defendants 3-50, to so act.

18
19 136. By reason of Gardner, Chang, and Lim's duty of loyalty owed to HCT
20 while they were employed by HCT, Defendants have no legal or equitable right, claim or
21 interest in any monies paid to Defendants by any entity other than HCT for kickbacks or
22 work performed by Gardner, Chang, and Lim while they were employed by HCT or in any
23 accounts that they converted to their own while they were employed by HCT and thus
24 have wrongfully converted such monies and accounts into their own. As such, Defendants
25 are involuntary trustees, holding such property, accounts, and profits therefrom in
26 constructive trust for HCT with the duty to convey the same to HCT forthwith. Such
27 monies include all monies collected by Defendants from the PRC Factory, the Trading
28

1 Company or other third parties for kickbacks or work performed by Gardner, Chang, and
2 or/Lim while they were employed by HCT, including, but not limited to, funds deposited
3 into HSBC foreign currency bank accounts in Hong Kong (Account Number XXX-
4 XXX657-833) and Great Britain (Account Number XX-XX-XX-XX381435).

5
6 137. As a proximate result of Defendant's utilization of non-trade secret
7 but still proprietary and confidential information and property of HCT's, Defendants have
8 caused HCT to suffer damages in an amount to be proven at trial.

9
10 138. In committing the acts herein, Defendants are guilty of oppression
11 (despicable conduct that subjected HCT to cruel and unjust hardship in conscious disregard
12 of HCT's rights), fraud (intentional misrepresentations, deceit, and concealment of
13 material facts known to HCT with the intention on the part of Defendants of thereby
14 depriving HCT of monies, business opportunities, and legal rights, including, and
15 otherwise causing injury), and malice (conduct intended by Defendants to cause injury to
16 HCT), and authorized ratified, or performed the acts, justifying an award of exemplary and
17 punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish
18 Defendants and to deter similar future misconduct and to make an example of them to the
19 community.

20
21 **SIXTH CAUSE OF ACTION**

22 (Fraud By Concealment Against All Defendants)

23
24 139. HCT incorporates by reference and realleges the allegations as set
25 forth in paragraphs 1 through 116 and 129 through 138 above.

1 140. This cause of action is based on multiple acts of wrongdoing, each of
2 which is sufficient by itself to support the cause of action. Such actions or inactions
3 largely consist of those not involving the use or misappropriation of information. For
4 actions involving the use of information, HCT alleges the use of such information is an
5 independent basis for liability under this cause of action, not because the information at
6 issue qualifies as a trade secret, but because the information was used to benefit
7 Defendants, and not HCT, while Defendants were employed by HCT, thereby violating the
8 Defendants' duties of loyalty and fiduciary duties.

9
10 141. Gardner, Chang, and Lim failed to disclose important facts of which
11 they were all aware, including but not limited to the following: (1) that since at least 2010,
12 Gardner provided consulting work, outside of HCT, to HCT's customers and that such
13 consulting work pertains to the same subject as the work he performed for HCT; (2) they
14 created and/or assisted Defendants Cognisant, LLC, Cognisant Real Estate, LLC, and
15 Cognisant Ltd. and that such entities compete with HCT; (3) Gardner acquired a
16 significant stake in AM even though HCT and AM were pursuing a joint venture; (4) that
17 no cross-quotes from other factories were obtained for tooling and products being
18 manufactured at the PRC Factory and the Trading Company; (5) they worked out markup
19 rates with the PRC Factory and the Trading Company which were added to the prices in
20 the purchase orders; (6) they received kickbacks from the PRC Factory; (7) they received
21 kickbacks from the Trading Company; and (8) they invested and/or engaged in business
22 with a HCT supplier for a competitive, side deal.

23
24 142. HCT did not know of the concealed important facts.

25
26 143. Gardner, Chang, and Lim owed duties of loyalty and fiduciary duties
27 to HCT as described above.

1 144. Gardner, Chang, and Lim intended to deceive HCT by actively
2 concealing the important facts from HCT.

3
4 145. HCT reasonably and actually relied on the deceptions of Gardner,
5 Chang, and Lim.

6
7 146. Defendants Gardner, DOE-1 Chang, and DOE-2 Lim, later joined by
8 the Cognisant Entities and Doe Defendants 3-50 formed a plan to engage in a conspiracy
9 to commit wrongful conduct, and all agreed to the shared common plan and were each
10 aware that each other planned to participate in the plan and that the plan was unlawful and
11 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
12 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
13 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
14 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
15 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
16 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
17 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.

18
19 147. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
20 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
21 above wrongful conduct by DOE 1-Chang and DOE 2-Lim. Defendants Gardner,
22 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Limited knew that the
23 conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of duty and/or wrongful
24 conduct and provided substantial assistance or encouragement to DOE 1-Chang and DOE
25 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided and abetted the commission
26 of the above wrongful conduct by Defendants Gardner, Cognisant, LLC, Cognisant Real
27 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-

1 Lim knew that the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real
2 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty
3 and/or wrongful conduct and provided substantial assistance or encouragement to
4 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and
5 Doe Defendants 3-50, to so act.

6
7 148. HCT was harmed by Defendants' concealment in that:

8
9 a. had the important facts been disclosed, HCT would have
10 terminated Gardner, Chang, and Lim for cause and not allowed them to access HCT's
11 proprietary information, which was enabling them to undercut HCT and divert business
12 away from HCT and to themselves and the three entities (Defendants Cognisant, LLC,
13 Cognisant Real Estate, LLC, and Cognisant Ltd.) that were created to compete with HCT,
14 or to manage customer accounts, which enabled them to divert such customers away from
15 HCT and to themselves and the three Cognisant entities.

16
17 b. HCT would have hired someone who would be protective of
18 HCT's best interests to replace Gardner, Chang, and Lim on the various projects in which
19 they were working and with respect to managing customer accounts.

20
21 149. By reason of the duty of loyalty owed by Gardner, Chang, and Lim to
22 HCT while they were employed by HCT, Defendants have no legal or equitable right,
23 claim or interest in any monies paid to Defendants by any entity other than HCT for
24 kickbacks or work performed by Gardner, Chang, and Lim while they were employed by
25 HCT. As such, Defendants are involuntary trustees, holding such property and profits
26 therefrom in constructive trust for HCT with the duty to convey the same to HCT
27 forthwith. Such monies include all monies collected by Defendants from the PRC Factory,
28

1 the Trading Company or other third parties for kickbacks or work performed by Gardner,
2 Chang, and or/Lim while they were employed by HCT, including, but not limited to, funds
3 deposited into HSBC foreign currency bank accounts in Hong Kong (Account Number
4 XXX-XXX657-833) and Great Britain (Account Number XX-XX-XX-XX381435).

5
6 150. Defendants' concealment was a substantial factor in causing HCT's
7 harm.

8
9 151. In committing the acts herein, Defendants are guilty of oppression
10 (despicable conduct that subjected HCT to cruel and unjust hardship in conscious disregard
11 of HCT's rights), fraud (intentional misrepresentations, deceit, and concealment of
12 material facts known to HCT with the intention on the part of Defendants of thereby
13 depriving HCT of monies, business opportunities, and legal rights, including, and
14 otherwise causing injury), malice (conduct intended by Defendants to cause injury to
15 HCT), and authorized ratified, or performed the acts, justifying an award of exemplary and
16 punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish
17 Defendants and to deter similar future misconduct and to make an example of them to the
18 community.

19
20 **SEVENTH CAUSE OF ACTION**

21 (Fraud By Deceit Against All Defendants)

22
23 152. HCT incorporates by reference and realleges the allegations as set
24 forth in paragraphs 1 through 116 and 129 through 151 above.

25
26 153. This cause of action is based on multiple acts of wrongdoing, each of
27 which is sufficient by itself to support the cause of action. Such actions or inactions
28

1 largely consist of those not involving the use or misappropriation of information. For
2 actions involving the use of information, HCT alleges the use of such information is an
3 independent basis for liability under this cause of action, not because the information at
4 issue qualifies as a trade secret, but because the information was used to benefit
5 Defendants, and not HCT, while Defendants were employed by HCT, thereby violating the
6 Defendants' duties of loyalty and fiduciary duties.

7
8 154. Gardner, Chang, and Lim suppressed several important facts they
9 were under a duty to disclose to HCT based on their employment by HCT and the policies
10 set forth in HCT's employee handbook. Such facts include, but are not limited to, the
11 following: (1) that since at least 2010, Gardner provided consulting work, outside of HCT,
12 to HCT's customers and that such consulting work pertains to the same subject as the work
13 he performed for HCT; (2) they created and/or assisted Defendants Cognisant, LLC,
14 Cognisant Real Estate, LLC, and Cognisant Ltd. and that such entities compete with HCT;
15 (3) Gardner acquired a significant stake in AM even though HCT and AM were pursuing a
16 joint venture; (4) that no cross-quotes from other factories were obtained for tooling and
17 products being manufactured at the PRC Factory and the Trading Company; (5) they
18 worked out markup rates with the PRC Factory and the Trading Company which were
19 added to the prices in the purchase orders; (6) they received kickbacks from the PRC
20 Factory; (7) they received kickbacks from the Trading Company; and (8) they invested
21 and/or engaged in business with a HCT supplier for a competitive, side deal.

22
23 155. Further, Gardner provided information of facts likely to mislead for
24 want of communication of suppressed facts. Such suppressed information included:

25
26 a. While promoting Trademarked Material to HCT and asking
27 HCT's engineers to create renderings for cosmetic products, Gardner misled HCT into
28

1 believing that he was intending to act in HCT's best interests and not to use such
2 renderings and HCT's customer and supplier names and information and HCT's pricing
3 information, including margins, to benefit Gardner, Chang, Lim, and the Cognisant
4 Entities.

5
6 b. Gardner never revealed that he acquired a significant stake in
7 AM, which created a conflict of interest because, among other things, the higher the
8 pricing, the more the profits for AM.

9
10 156. HCT did not know of the suppressed facts or deceit.

11
12 157. Gardner, Chang, and Lim intended to deceive HCT by suppressing the
13 important facts.

14
15 158. HCT reasonably and actually relied on the deceit of Gardner, Chang,
16 and Lim.

17
18 159. Defendants Gardner, DOE-1 Chang, and DOE-2 Lim, later joined by
19 the Cognisant Entities and Doe Defendants 3-50 formed a plan to engage in a conspiracy
20 to commit wrongful conduct, and all agreed to the shared common plan and were each
21 aware that each other planned to participate in the plan and that the plan was unlawful and
22 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
23 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
24 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
25 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
26 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
27
28

1 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
2 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.

3
4 160. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
5 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
6 above wrongful conduct by DOE 1-Chang and DOE 2-Lim. Defendants Gardner,
7 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Limited knew that the
8 conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of duty and/or wrongful
9 conduct and provided substantial assistance or encouragement to DOE 1-Chang and DOE
10 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided and abetted the commission
11 of the above wrongful conduct by Defendants Gardner, Cognisant, LLC, Cognisant Real
12 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-
13 Lim knew that the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real
14 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty
15 and/or wrongful conduct and provided substantial assistance or encouragement to
16 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and
17 Doe Defendants 3-50, to so act.

18
19 161. By reason of Gardner, Chang, and Lim's duty of loyalty and fiduciary
20 duty owed to HCT by virtue of their employment with HCT, Defendants have no legal or
21 equitable right, claim or interest in any monies paid to Defendants by any entity other than
22 HCT for kickbacks or work performed by Gardner, Chang, and Lim while they were
23 employed by HCT. As such, Defendants are involuntary trustees, holding such property
24 and profits therefrom in constructive trust for HCT with the duty to convey the same to
25 HCT forthwith. Such monies include all monies collected by Defendants from the PRC
26 Factory, the Trading Company or other third parties for kickbacks or work performed by
27 Gardner, Chang, and or/Lim while they were employed by HCT, including, but not limited
28

1 to, funds deposited into HSBC foreign currency bank accounts in Hong Kong (Account
2 Number XXX-XXX657-833) and Great Britain (Account Number XX-XX-XX-
3 XX381435).

4
5 162. HCT was harmed by Defendants' deceit in that:

6
7 a. had the important facts not been suppressed, HCT would have
8 terminated Gardner, Chang, and Lim for cause and not allowed them to access HCT's
9 proprietary information, which was enabling them to undercut HCT and divert business
10 away from HCT and to themselves and the three entities (Defendants Cognisant, LLC,
11 Cognisant Real Estate, LLC, and Cognisant Ltd.) created to compete with HCT, or to
12 manage customer accounts, which enabled them to divert such customers away from HCT
13 and to themselves and the three entities

14
15 b. HCT would have hired someone who would be looking out for
16 HCT's best interests to replace Gardner, Chang, and Lim on the various projects in which
17 they were working and with respect to managing customer accounts.

18
19 163. Defendants' deceit was a substantial factor in causing HCT's harm.

20
21 164. In committing the acts herein, Defendants are guilty of oppression
22 (despicable conduct that subjected HCT to cruel and unjust hardship in conscious disregard
23 of HCT's rights), fraud (intentional misrepresentations, deceit, and concealment of
24 material facts known to HCT with the intention on the part of Defendants of thereby
25 depriving HCT of monies, business opportunities, and legal rights, including, and
26 otherwise causing injury), and malice (conduct intended by Defendants to cause injury to
27 HCT), and authorized ratified, or performed the acts, justifying an award of exemplary and
28

1 punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish
2 Defendants and to deter similar future misconduct and to make an example of them to the
3 community.

4
5 **EIGHTH CAUSE OF ACTION**

6 (Intentional Interference With Contractual Relations Against All Defendants)

7
8 165. HCT incorporates by reference and realleges the allegations as set
9 forth in paragraphs 1 through 116 and 129 through 164 above.

10
11 166. This cause of action is not based on the use of information; it is based
12 on the interference with contractual relations. To the extent any use of information
13 tangentially relates to this cause of action, it is not relevant whether such information
14 constitutes a trade secret or not.

15
16 167. At all times during the employment of Gardner, Chang, and Lim with
17 HCT, Bayport has been a supplier of HCT's. HCT has always had in place exclusivity
18 agreements with Bayport, which, among other things, provide that Bayport may not solicit,
19 approach, or contract HCT's customers directly. The most recent contract was executed in
20 February 2016, and provides, in part, that:

21
22 Contractor and HCT agree that Contractor will supply to
23 HCT the Products identified on **Exhibit A**, which Products
24 contain a formula supplied exclusively to HCT (the
25 "Exclusive Formula") for resale to HCT's customer
26 identified on **Exhibit A** (the "Exclusive Customer"). In
27 connection therewith, Contractor agrees that neither
28

1 Contractor, nor any of its employees, contractors or agents,
2 will directly or indirectly, (a) solicit, approach, or
3 otherwise contact the Exclusive Customer with respect to
4 the Exclusive Formula; or (b) offer, promote, sell or supply
5 the Exclusive Formula to the Exclusive Customer, or any
6 brokers agents or any third party intending to sell the
7 Exclusive Formula to the Exclusive Customer.”
8

9 168. One of the customers listed on Exhibit A to the contract between
10 HCT and Bayport is Customer A.
11

12 169. HCT is informed and believes that Gardner, Chang and Lim were
13 at all times aware of HCT’s contractual relationship with Bayport.
14

15 170. Gardner, Chang, and Lim knew that interference with Bayport’s
16 contract was certain or substantially certain to occur as a result of diverting business
17 away from HCT and to themselves and the Cognisant Entities, and by connecting
18 Bayport with Customer A in the project involving the proposed development, manufacture,
19 packaging, and marketing of cosmetic products which utilize Trademarked Material
20 produced by AM while excluding HCT from the deal.
21

22 171. Defendants Gardner, DOE-1 Chang, and DOE-2 Lim, later joined by
23 the Cognisant Entities and Doe Defendants 3-50 formed a plan to engage in a conspiracy
24 to commit wrongful conduct, and all agreed to the shared common plan and were each
25 aware that each other planned to participate in the plan and that the plan was unlawful and
26 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
27 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
28

1 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
2 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
3 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
4 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
5 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.

6
7 172. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
8 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
9 above wrongful conduct by DOE 1-Chang and DOE 2-Lim. Defendants Gardner,
10 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Limited knew that the
11 conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of duty and/or wrongful
12 conduct and provided substantial assistance or encouragement to DOE 1-Chang and DOE
13 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided and abetted the commission
14 of the above wrongful conduct by Defendants Gardner, Cognisant, LLC, Cognisant Real
15 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-
16 Lim knew that the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real
17 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty
18 and/or wrongful conduct and provided substantial assistance or encouragement to
19 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and
20 Doe Defendants 3-50, to so act.

21
22 173. HCT has been harmed by Defendants conduct because, among other
23 things, Bayport now has a direct connection with Customer A.

24
25 174. By reason of the interference by Gardner, Chang, and Lim with
26 HCT's contract with Bayport, Defendants have no legal or equitable right, claim or interest
27 in any monies earned by Defendants as a result of such interference. As such, Defendants
28

1 177. This cause of action is not based on the use of information; it is based
2 on the interference with prospective economic advantage. To the extent any use of
3 information tangentially relates to this cause of action, it is not relevant whether such
4 information constitutes a trade secret or not.

5
6 178. HCT's relationship with Bayport created an economic relationship
7 that probably would have resulted in an economic benefit to HCT or a greater economic
8 benefit to HCT than it is currently receiving but for the conduct of Gardner, Chang, and
9 Lim.

10 179. HCT's relationship with AM, Bayport, and Customer A probably
11 would have resulted in an economic benefit to HCT with respect to the development,
12 manufacture, packaging, and marketing of a turnkey cosmetic solution utilizing the
13 Trademarked Material produced by AM. Indeed, HCT had signed a letter of intent with
14 AM and had performed work in relation to the project.

15
16 180. Gardner, Chang, and Lim were aware of the economic relationship
17 between HCT and Bayport. Further, Gardner, Chang, and Lim were aware of the
18 economic relationship between HCT and AM, and how HCT had relationships with
19 Bayport and Customer A that could create a very beneficial economic relationship for
20 HCT with respect to a turnkey solution which utilized the Trademarked Material produced
21 by AM.

22
23 181. Gardner, Chang, and Lim knew that interference with the economic
24 relationships between HCT and Bayport, and between HCT and AM, and between HCT,
25 AM, Bayport, and Customer A as a whole with respect to the development, manufacture,
26 packaging, and marketing of a turnkey solution utilizing the Trademarked Material
27
28

1 produced by AM was certain or substantially certain to occur as a result of Gardner's
2 conduct described above.

3
4 182. The conduct of Gardner, Chang, and Lim was wrongful, because
5 among other things, it constituted a breach of their duty of loyalty, fraud by concealment,
6 fraud by deceit, a breach of fiduciary duty, conversion, and unfair competition.

7
8 183. The economic relationship between HCT and Bayport has been
9 disrupted because, among other things, Bayport now has a direct relationship with one of
10 HCT's customers, Customer A. The economic relationship between HCT and Bayport has
11 been disrupted because, among other things, AM is now using one of the Cognisant
12 Entities in place of HCT with respect to the development, manufacture, packaging, and
13 marketing of a turnkey cosmetic product utilizing Trademarked Material produced by AM
14 was certain or substantially certain to occur as a result of Gardner's conduct described
15 above.

16
17 184. Defendants Gardner, DOE-1 Chang, and DOE-2 Lim, later joined by
18 the Cognisant Entities and Doe Defendants 3-50 formed a plan to engage in a conspiracy
19 to commit wrongful conduct, and all agreed to the shared common plan and were each
20 aware that each other planned to participate in the plan and that the plan was unlawful and
21 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
22 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
23 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
24 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
25 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
26 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
27 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.

28

1 185. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
2 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
3 above wrongful conduct by DOE 1-Chang and DOE 2-Lim. Defendants Gardner,
4 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Limited knew that the
5 conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of duty and/or wrongful
6 conduct and provided substantial assistance or encouragement to DOE 1-Chang and DOE
7 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided and abetted the commission
8 of the above wrongful conduct by Defendants Gardner, Cognisant, LLC, Cognisant Real
9 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-
10 Lim knew that the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real
11 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty
12 and/or wrongful conduct and provided substantial assistance or encouragement to
13 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and
14 Doe Defendants 3-50, to so act.

15
16 186. HCT has been harmed by Defendants’ conduct because, among other
17 things, HCT has been pushed out of a deal in favor of one of the Cognisant Entities, and
18 thus losing all revenue that would have been generated under a joint venture agreement
19 between HCT and AM concerning the development, manufacture, packaging, and
20 marketing of turnkey cosmetic product utilizing the Trademarked Material produced by
21 AM.

22
23 187. Defendants’ wrongful conduct was and is a substantial factor in
24 causing HCT’s harm.

25
26 188. By reason of the interference by Gardner, Chang and Lim with HCT’s
27 prospective economic advantage with Bayport and AM, Defendants have no legal or
28

1 191. This cause of action is not based on the use of information; it is based
2 on the interference with prospective economic advantage. To the extent any use of
3 information tangentially relates to this cause of action, it is not relevant whether such
4 information constitutes a trade secret or not.

5
6 192. HCT's relationship with Bayport created an economic relationship
7 that probably would have resulted in an economic benefit to HCT or a greater economic
8 benefit to HCT than it is currently receiving but for the conduct of Gardner, Chang, and
9 Lim.

10
11 193. HCT's relationship with AM, Bayport, and Customer A probably
12 would have resulted in an economic benefit to HCT with respect to the development,
13 manufacture, packaging, and marketing of a turnkey cosmetic product which utilizes
14 Trademarked Material produced by AM. Indeed, HCT had signed a letter of intent with
15 AM in 2012 relating to the exact same endeavor.

16
17 194. Gardner, Chang and Lim knew of the economic relationship between
18 HCT and Bayport. Further, Gardner, Chang, and Lim knew of the economic relationship
19 between HCT and AM, and how HCT had relationships with Bayport and Customer A that
20 could create a very beneficial economic relationship for HCT with respect to the
21 development, manufacture, packaging, and marketing of a turnkey cosmetic product which
22 utilizes Trademarked Material produced by AM.

23
24 195. Gardner, Chang, and Lim knew or should have known that the
25 economic relationships between HCT and Bayport, and between HCT and AM, and among
26 HCT, AM, Bayport, and Customer A as a whole with respect to the development,
27 manufacture, packaging, and marketing of a turnkey cosmetic product which utilizes the
28

1 Trademarked Material produced by AM, would be disrupted if Gardner failed to act with
2 reasonable care.

3
4 196. The conduct of Gardner, Chang, and Lim was wrongful, because
5 among other things, it constituted a breach of his duty of loyalty, fraud by concealment,
6 fraud by deceit, a breach of fiduciary duty, conversion, and unfair competition.

7
8 197. The economic relationship between HCT and Bayport has been
9 disrupted because, among other things, Bayport now has a direct relationship with one of
10 HCT's customers, Customer A. The economic relationship between HCT and Bayport has
11 been disrupted because, among other things, AM is now using one of the Cognisant
12 Entities in place of HCT with respect to the development, manufacture, packaging, and
13 marketing of a turnkey cosmetic product which utilizes Trademarked Material produced by
14 AM was certain or substantially certain to occur as a result of the conduct by Gardner,
15 Chang, and Lim as described above.

16
17 198. Defendants Gardner, DOE-1 Chang, and DOE-2 Lim, later joined by
18 the Cognisant Entities and Doe Defendants 3-50 formed a plan to engage in a conspiracy
19 to commit wrongful conduct, and all agreed to the shared common plan and were each
20 aware that each other planned to participate in the plan and that the plan was unlawful and
21 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
22 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
23 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
24 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
25 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
26 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
27 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.

28

1 199. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
2 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
3 above wrongful conduct by DOE 1-Chang and DOE 2-Lim. Defendants Gardner,
4 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Limited knew that the
5 conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of duty and/or wrongful
6 conduct and provided substantial assistance or encouragement to DOE 1-Chang and DOE
7 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided and abetted the commission
8 of the above wrongful conduct by Defendants Gardner, Cognisant, LLC, Cognisant Real
9 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-
10 Lim knew that the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real
11 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty
12 and/or wrongful conduct and provided substantial assistance or encouragement to
13 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and
14 Doe Defendants 3-50, to so act.

15
16 200. HCT has been harmed by Defendants conduct because, among other
17 things, HCT has been pushed out of a deal in favor of one of the Cognisant Entities, and
18 thus losing all revenue that would have been generated under a joint venture agreement
19 between HCT and AM concerning the development, manufacture, packaging, and
20 marketing of a turnkey cosmetic product which utilizes Trademarked Material produced by
21 AM.

22
23 201. Defendants' wrongful conduct was and is a substantial factor in
24 causing HCT's harm.

25
26 202. By reason of the interference by Gardner, Chang, and Lim with
27 HCT's prospective economic advantage with Bayport and AM, Defendants have no legal
28

1 or equitable right, claim or interest in any monies earned by Defendants as a result of such
2 interference. As such, Defendants are involuntary trustees, holding profits earned as a
3 result of causing Bayport to conduct business with Defendants in constructive trust for
4 HCT with the duty to convey the same to HCT forthwith. Such monies include all monies
5 collected by Defendants from the PRC Factory, the Trading Company or other third parties
6 for kickbacks or work performed by Gardner, Chang, and or/Lim while they were
7 employed by HCT, including, but not limited to, funds deposited into HSBC foreign
8 currency bank accounts in Hong Kong (Account Number XXX-XXX657-833) and Great
9 Britain (Account Number XX-XX-XX-XX381435).

10
11 203. In committing the acts herein, Defendants are guilty of oppression
12 (despicable conduct that subjected HCT to cruel and unjust hardship in conscious disregard
13 of HCT's rights), fraud (intentional misrepresentations, deceit, and concealment of
14 material facts known to HCT with the intention on the part of Defendants of thereby
15 depriving HCT of monies, business opportunities, and legal rights, including, and
16 otherwise causing injury), and malice (conduct intended by Defendants to cause injury to
17 HCT), and authorized ratified, or performed the acts, justifying an award of exemplary and
18 punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish
19 Defendants and to deter similar future misconduct and to make an example of them to the
20 community.

21
22 **ELEVENTH CAUSE OF ACTION**

23 (Inducing Breach Of Contract Against All Defendants)

24
25 204. HCT incorporates by reference and realleges the allegations as set
26 forth in paragraphs 1 through 116 and 129 through 203 above.

1 205. This cause of action is not based on the use of information; it is based
2 on inducing breach of contract. To the extent any use of information tangentially relates to
3 this cause of action, it is not relevant whether such information constitutes a trade secret or
4 not.

5
6 206. There is a contract between HCT and Bayport. Paragraph 1 of the
7 contract is entitled “Exclusivity” and provides, in part, that:

8
9 “Contractor and HCT agree that Contractor will supply to HCT the
10 Products identified on **Exhibit A**, which Products contain a formula
11 supplied exclusively to HCT (the "Exclusive Formula") for resale to
12 HCT's customer identified on **Exhibit A** (the "Exclusive Customer"). In
13 connection therewith, Contractor agrees that neither Contractor, nor any
14 of its employees, contractors or agents, will directly or indirectly, (a)
15 solicit, approach, or otherwise contact the Exclusive Customer with
16 respect to the Exclusive Formula; or (b) offer, promote, sell or supply the
17 Exclusive Formula to the Exclusive Customer, or any brokers agents or
18 any third party intending to sell the Exclusive Formula to the Exclusive
19 Customer.”

20
21 207. HCT is informed and believes that Gardner, Chang, and Lim knew of
22 HCT’s contract with Bayport.

23
24 208. Gardner, Chang, and Lim intended to cause Bayport to breach the
25 contract because Gardner, Chang, and Lim wanted Bayport to work with Customer A with
26 respect to the development, manufacture, packaging, and marketing of a turnkey cosmetic
27 product which utilizes Trademarked Material produced by AM, but wanted to exclude
28

1 HCT from the project and replace HCT with one of the Cognisant Entities, so that the
2 Cognisant Entities could benefit from HCT's relationships with Bayport and Customer A.
3 Gardner knew that Bayport would be breaching its contract with HCT regarding Bayport
4 not contacting or contracting with Customer A.
5

6 209. Gardner's conduct caused Bayport to breach the contract by doing
7 business with Customer A without HCT's involvement.
8

9 210. Defendants Gardner, DOE-1 Chang, and DOE-2 Lim, later joined by
10 the Cognisant Entities and Doe Defendants 3-50 formed a plan to engage in a conspiracy
11 to commit wrongful conduct, and all agreed to the shared common plan and were each
12 aware that each other planned to participate in the plan and that the plan was unlawful and
13 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
14 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
15 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
16 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
17 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
18 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
19 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.
20

21 211. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
22 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
23 above wrongful conduct by DOE 1-Chang and DOE 2-Lim. Defendants Gardner,
24 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Limited knew that the
25 conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of duty and/or wrongful
26 conduct and provided substantial assistance or encouragement to DOE 1-Chang and DOE
27 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided and abetted the commission
28

1 of the above wrongful conduct by Defendants Gardner, Cognisant, LLC, Cognisant Real
2 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-
3 Lim knew that the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real
4 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty
5 and/or wrongful conduct and provided substantial assistance or encouragement to
6 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and
7 Doe Defendants 3-50, to so act.

8
9 212. HCT has been harmed by Defendants' conduct because, among other
10 things, Bayport and Customer A now have a direct relationship and Cognisant is obtaining
11 economic benefits from such relationships, and not HCT.

12
13 213. Defendants' wrongful conduct was and is a substantial factor in
14 causing HCT's harm.

15
16 214. By reason of Gardner, Chang, and Lim's inducement to cause Bayport
17 to breach its contract with HCT, Defendants have no legal or equitable right, claim or
18 interest in any monies earned by Defendants as a result of such inducement. As such,
19 Defendants are involuntary trustees, holding profits earned as a result of causing Bayport
20 to breach its contract with HCT in constructive trust for HCT with the duty to convey the
21 same to HCT forthwith. Such monies include all monies collected by Defendants from the
22 PRC Factory, the Trading Company or other third parties for kickbacks or work performed
23 by Gardner, Chang, and or/Lim while they were employed by HCT, including, but not
24 limited to, funds deposited into HSBC foreign currency bank accounts in Hong Kong
25 (Account Number XXX-XXX657-833) and Great Britain (Account Number XX-XX-XX-
26 XX381435).

1 218. Under false pretenses, which were unbeknownst to HCT at the time,
2 HCT paid the PRC Factory and the Trading Company for tooling and for the
3 manufacturing of products. Further, under false pretenses, which were unbeknownst to
4 HCT at the time, HCT provided the Design Renderings to Gardner, and Defendants
5 accessed HCT's customer and supplier lists and information and its pricing information
6 (including margins).

7
8 219. Defendants stole various property from HCT, including
9 approximately \$5.4 million dollars in payments they marked up that went to the PRC
10 Factory between 2010 and 2014 for the manufacturing of products. HCT is informed and
11 believes that Defendants stole millions more in payments they marked up that went to the
12 PRC Factory for tooling, payments that they marked up that went to the PRC Factory after
13 2014 for the manufacturing of products, and in payments that they marked up that went to
14 the Trading Company for tooling and the manufacturing of products.

15
16 220. Moreover, as an independent basis for this cause of action,
17 Defendants stole HCT's customer and supplier lists and information, its pricing
18 information (including margin), and the Design Renderings and used such information
19 while still employed by HCT. All information, regardless of whether such information
20 constitutes trade secret information, belonged to HCT by virtue of Labor Code Section
21 2860. Hence, this specific independent basis for this cause of action is not based on
22 whether the information at issue qualifies as a trade secret.

23
24 221. Defendants stole all property referenced above under false pretenses.
25 Regarding the kickbacks, Defendants caused HCT to believe that they chose to use the
26 PRC Factory and the Trading Company, instead of HCT's controlled and/or preferred
27 suppliers, for strategic business purposes. However, it turns out that Defendants chose to
28

1 use the PRC Factory and the Trading Company because Defendants, who gained control
2 over such entities, included a markup rate in the purchase orders so that the markup
3 amounts could be sent to Defendants without HCT knowing that such monies had been
4 stolen. Had Defendants obtained cross-quotes, they would have obtained market rates,
5 without the markup amounts, and even would have received tooling for free in some cases
6 because of the volume. Regarding the Design Renderings, Defendants made it appear that
7 they were obtaining the property for use *solely* for the benefit of HCT in conjunction with
8 the manufacturing a component for a cosmetic but, in reality, Defendants obtained and
9 used such property in connection with a turnkey cosmetic product without HCT's
10 knowledge, benefitting themselves and the association-in-fact enterprise they created to
11 injure HCT and benefit themselves. Regarding HCT's customer and supplier lists and
12 information and its pricing information (including margin), Defendants accessed such
13 information under the guise of accessing such information as part of their job duties with
14 HCT and for the benefit of HCT.

15
16 222. Defendants intended for HCT to believe that Gardner, Chang, and
17 Lim were working solely for HCT, always acting in HCT's best interests, and that they had
18 not set up or assisted any competitor entities or that they were intending to benefit
19 themselves personally.

20
21 223. Defendants Gardner, DOE-1 Chang, and DOE-2 Lim, later joined by
22 the Cognisant Entities and Doe Defendants 3-50 formed a plan to engage in a conspiracy
23 to commit wrongful conduct, and all agreed to the shared common plan and were each
24 aware that each other planned to participate in the plan and that the plan was unlawful and
25 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
26 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
27 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
28

1 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
2 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
3 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
4 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.

5
6 224. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
7 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
8 above wrongful conduct by DOE 1-Chang and DOE 2-Lim. Defendants Gardner,
9 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Limited knew that the
10 conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of duty and/or wrongful
11 conduct and provided substantial assistance or encouragement to DOE 1-Chang and DOE
12 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided and abetted the commission
13 of the above wrongful conduct by Defendants Gardner, Cognisant, LLC, Cognisant Real
14 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-
15 Lim knew that the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real
16 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty
17 and/or wrongful conduct and provided substantial assistance or encouragement to
18 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and
19 Doe Defendants 3-50, to so act.

20
21 225. HCT was damaged in an amount to be determined at trial. Under
22 Penal Code Section 496(c), HCT is entitled to three times the amount of actual damages,
23 costs of suit, and its reasonable attorneys' fees.

24
25 **THIRTEENTH CAUSE OF ACTION**
26 (Unfair Competition Against All Defendants)

1 226. HCT incorporates by reference and realleges the allegations as set
2 forth in paragraphs 1 through 116 and 129 through 225 above and the allegations set forth
3 in paragraphs 231 through 300 below.

4
5 227. By virtue of Defendants’ ongoing unlawful, unfair and fraudulent acts
6 and business practices alleged herein, Defendants have engaged in unfair competition and
7 violated California Business & Professions Code §§ 17200, *et seq.* and the common law of
8 the State of California. HCT is informed and believes that Defendants engaged in unfair,
9 unlawful, and fraudulent business practices. Defendants Gardner, Cognisant, LLC,
10 Cognisant Real Estate, LLC, and Cognisant Ltd. have contended that this cause of action is
11 based on facts substantially similar to or identical HCT’s cause of action for trade secret
12 misappropriation. This is untrue. While Defendants have engaged in trade secret
13 misappropriation to unfairly compete with HCT, Defendants have engaged in a wide
14 variety of other business practices, independent of their trade secret misappropriation, that
15 constitute unfair competition and form the basis of this cause of action, as outlined below.

16
17 a. **Unfair Business Practices:** Defendants’ actions threaten an
18 incipient violation of an antitrust law, or violate the policy or spirit of one of those laws
19 because its effects are comparable to or the same as a violation of the law, or otherwise
20 significantly threatens or harms competition. More specifically, a Registration Statement
21 filed by AM with the SEC on September 22, 2016, identifies Defendant Cognisant Ltd. As
22 a “selling stockholder” that beneficially owned 866,867 shares of stock in AM as of
23 April 14, 2016 with Defendant Gardner, individually, having sole investment and voting
24 power over the shares. This stock ownership has enabled Defendants to offer extremely
25 low prices through Cognisant Ltd. in connection with the proposed development,
26 manufacture, packaging, and marketing of cosmetic products which utilize AM’s

1 Trademarked Material, because Defendants will profit through their stock ownership and
2 do not need to profit through Cognisant Ltd.

3
4 b. **Unlawful Business Practices**: Defendants have violated
5 various laws, statutes, and torts as alleged above and below, including but not limited to
6 violations of Labor Code Sections 2854, 2859, 2860, 2861, and 2863 through actions
7 including, but not limited to, forming competitor entities, not giving preference to HCT's
8 business, not acting diligently and using their skills in providing services for HCT,
9 converting money and intangible property from HCT, defrauding HCT, intentionally
10 interfering with HCT's contractual relations, intentionally interfering with HCT's
11 prospective economic advantage, and negligently interfering with HCT's prospective
12 economic advantage, among others. Moreover, HCT is informed and believes that
13 Gardner and Cognisant Ltd. have engaged in insider trading, knowing when to buy and sell
14 shares of AM based on insider knowledge they obtained through their pre-existing
15 relationship with AM. Further, HCT is informed and believes that Defendants have
16 engaged in multiple acts of wire fraud and other RICO predicate acts in violation of RICO
17 as described below.

18
19 c. **Fraudulent Business Practices**: Defendants have engaged in
20 various fraudulent practices. Among other things, Defendant Gardner caused Bayport to
21 believe that Gardner was acting as an agent of HCT and/or with HCT's approval when in
22 fact Gardner was acting with the intention of injuring HCT. Further, Defendants Gardner,
23 Chang, and Lim failed to disclose key facts to HCT which they were under a duty to
24 disclose or which information of facts provided was likely to mislead for want of
25 communication of suppressed fact; such facts include that since at least 2010, Gardner was
26 providing consulting work, outside of HCT, to HCT's customers and that such consulting
27 work pertains to the same subject as the work he performed for HCT, that Gardner, Chang,
28

1 and Lim created fraudulent purchase orders that contained inflated prices which were then
2 converted into Defendants' own funds; that Gardner created Defendants Cognisant, LLC,
3 Cognisant Real Estate, LLC, and Cognisant Ltd. and Gardner, Chang, and Lim assisted
4 those entities in competing with HCT; that Gardner, Chang, and Lim were aiding and
5 abetting each other in breaching the duties of loyalty and fiduciary duties they owed to
6 HCT, or that Gardner acquired a significant stake in AM (a Registration Statement filed by
7 AM with the SEC on September 22, 2016 identifies Cognisant Ltd. as a "selling
8 stockholder" that beneficially owned 866,867 shares of stock in AM as of April 14, 2016
9 with Gardner, individually, having sole investment and voting power over the shares) even
10 though HCT and AM were pursuing a joint venture.

11
12 228. HCT has been and is likely to be injured as a result of Defendants'
13 unlawful, unfair and fraudulent business acts or practices designed to deprive HCT of
14 substantial sums of money and unlawfully acquire for Defendants' certain business
15 relationships and business opportunities, in addition to HCT's proprietary information and
16 confidential information.

17
18 229. By virtue of the aforesaid unlawful, misleading, fraudulent and/or
19 unfair business acts or practices, Defendants caused and will continue to cause substantial
20 and irreparable harm to HCT and to the public.

21
22 230. In committing the acts herein, Defendants are guilty of oppression
23 (despicable conduct that subjected HCT to cruel and unjust hardship in conscious disregard
24 of HCT's rights), fraud (intentional misrepresentations, deceit, and concealment of
25 material facts known to HCT with the intention on the part of Defendants of thereby
26 depriving HCT of monies, business opportunities, and legal rights, including, and
27 otherwise causing injury), and malice (conduct intended by Defendants to cause injury to
28

1 HCT), and authorized ratified, or performed the acts, justifying an award of exemplary and
2 punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish
3 Defendants and to deter similar future misconduct and to make an example of them to the
4 community.

5
6 **FOURTEENTH CAUSE OF ACTION**

7 (Constructive Fraud Against All Defendants)

8
9 231. HCT incorporates by reference and realleges the allegations as set
10 forth in paragraphs 1 through 116 and 129 through 230 above.

11
12 232. This cause of action is based on multiple acts of wrongdoing, each of
13 which is sufficient by itself to support the cause of action. Such actions or inactions
14 largely consist of those not involving the use or misappropriation of information. For
15 actions involving the use of information, HCT alleges the use of such information is an
16 independent basis for liability under this cause of action, not because the information at
17 issue qualifies as a trade secret, but because the information was used to benefit
18 Defendants, and not HCT, while Defendants were employed by HCT, thereby violating the
19 Defendants' duties of loyalty and fiduciary duties.

20
21 233. A relation of trust and confidence existed between Gardner, Chang,
22 Lim, and HCT. Further, Gardner, Chang, and Lim owed HCT a fiduciary duty.

23
24 234. Gardner, Chang, and Lim failed to disclose important facts to HCT,
25 including that since at least 2010, Gardner provided consulting work, outside of HCT, to
26 HCT's customers and that such consulting work pertains to the same subject as the work
27 he performed for HCT, that Gardner created Defendants Cognisant, LLC, Cognisant Real
28

1 Estate, LLC, and Cognisant Ltd. and Gardner, Chang, and Lim assisted such entities in
2 competing with HCT; Gardner acquired a significant stake in AM even though HCT and
3 AM were pursuing a joint venture; or that Gardner, Chang, and Lim received kickbacks
4 from the PRC Factory and the Trading Company, some of which are detailed in the Special
5 Items Ledger; or that Gardner and Chang caused HCT to overpay for tooling developed by
6 the PRC Factory and the Trading Company to support the kickbacks with Lim concealing
7 such activity from HCT.

8
9 235. HCT did not know of the concealed facts.

10
11 236. HCT reasonably and actually relied on the deceptions of Gardner,
12 Chang, and Lim.

13
14 237. Defendants Gardner, DOE-1 Chang, and DOE-2 Lim, later joined by
15 the Cognisant Entities and Doe Defendants 3-50 formed a plan to engage in a conspiracy
16 to commit wrongful conduct, and all agreed to the shared common plan and were each
17 aware that each other planned to participate in the plan and that the plan was unlawful and
18 fraudulent. HCT is alleging that to the extent Defendants Gardner, Cognisant, LLC,
19 Cognisant Real Estate, LLC, and Cognisant Limited are found to be alter egos of each
20 other, then they acted together as one in conspiring with DOE 1-Chang, DOE 2-Lim, and
21 Doe Defendants 3-50; as an alternative theory of liability in the event that any or all of the
22 Cognisant Entities are not found to be alter egos of Gardner, then HCT is alleging that any
23 such non-alter ego Cognisant Entities were separate co-conspirators, *see Webber v. Inland*
24 *Empire Investments* (1999) 74 Cal. App. 4th 884, 900-01.

25
26 238. Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC,
27 Cognisant Limited, and Doe Defendants 3-50 aided and abetted the commission of the
28

1 above wrongful conduct by DOE 1-Chang and DOE 2-Lim. Defendants Gardner,
2 Cognisant, LLC, Cognisant Real Estate, LLC, and Cognisant Limited knew that the
3 conduct of DOE 1-Chang and DOE 2-Lim constitutes a breach of duty and/or wrongful
4 conduct and provided substantial assistance or encouragement to DOE 1-Chang and DOE
5 2-Lim to so act. Further, DOE 1-Chang and DOE 2-Lim aided and abetted the commission
6 of the above wrongful conduct by Defendants Gardner, Cognisant, LLC, Cognisant Real
7 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50. DOE 1-Chang and DOE 2-
8 Lim knew that the conduct of Defendants Gardner, Cognisant, LLC, Cognisant Real
9 Estate, LLC, Cognisant Limited, and Doe Defendants 3-50 constitutes a breach of duty
10 and/or wrongful conduct and provided substantial assistance or encouragement to
11 Defendants Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Limited and
12 Doe Defendants 3-50, to so act.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

239. HCT was harmed by Defendants' concealment in that:

a. had the important facts been disclosed, HCT would have terminated Gardner, Chang, and Lim for cause and not allowed them to access HCT's proprietary information, which was enabling them to undercut HCT and divert business away from HCT and to Gardner, Chang, Lim, and the Cognisant Entities created to compete with HCT, or to manage customer accounts, which enabled him to divert such customers away from HCT and to Defendants.

b. HCT would have hired someone who would be protective of HCT's best interests to replace Gardner, Chang, and Lim on the various projects in which they were working and with respect to managing customer accounts.

1 240. Defendants' concealment was a substantial factor in causing HCT's
2 harm.

3 241. By reason of the duty of loyalty and fiduciary duty owed by Gardner,
4 Chang, and Lim, to HCT by virtue of their employment with HCT, Defendants have no
5 legal or equitable right, claim or interest in any monies paid to Defendants by any entity
6 other than HCT for kickbacks or work performed by Gardner, Chang, and Lim while they
7 were employed by HCT. As such, Defendants are involuntary trustees, holding such
8 property and profits therefrom in constructive trust for HCT with the duty to convey the
9 same to HCT forthwith. Such monies include all monies collected by Defendants from the
10 PRC Factory, the Trading Company or other third parties for kickbacks or work performed
11 by Gardner, Chang, and or/Lim while they were employed by HCT, including, but not
12 limited to, funds deposited into HSBC foreign currency bank accounts in Hong Kong
13 (Account Number XXX-XXX657-833) and Great Britain (Account Number XX-XX-XX-
14 XX381435).

15 242. In committing the acts herein, Defendants are guilty of oppression
16 (despicable conduct that subjected HCT to cruel and unjust hardship in conscious disregard
17 of HCT's rights), fraud (intentional misrepresentations, deceit, and concealment of
18 material facts known to HCT with the intention on the part of Defendants of thereby
19 depriving HCT of monies, business opportunities, and legal rights, including, and
20 otherwise causing injury), malice (conduct intended by Defendants to cause injury to
21 HCT), and authorized ratified, or performed the acts, justifying an award of exemplary and
22 punitive damages, pursuant to Civil Code Section 3294, in a sum appropriate to punish
23 Defendants and to deter similar future misconduct and to make an example of them to the
24 community.
25
26
27
28

1 **FIFTEENTH CAUSE OF ACTION**

2 (Accounting Against All Defendants)

3
4 243. HCT incorporates by reference and realleges the allegations as set
5 forth in paragraphs 1 through 116 and 129 through 242 above.

6
7 244. This cause of action is based on HCT's right to an accounting and
8 does not pertain to the use of the any information. To the extent any use of information
9 tangentially relates to this cause of action, it is not relevant whether such information
10 constitutes a trade secret or not.

11
12 245. HCT and Gardner have been in an employment relationship since
13 May of 2004.

14
15 246. HCT and Chang have been in an employment relationship since June
16 of 2007.

17
18 247. HCT and Lim have been in an employment relationship since April of
19 2006.

20
21 248. Labor Code Section 2861 provides that an employee shall render to
22 his employer just accounts of all his transactions in the course of his service and shall give
23 prompt notice to his employer of everything which he receives for the account of the
24 employer. Labor Code section 2863 provides that an employee who has any business to
25 transact on his account that is similar to that entrusted to him by his employer, must give
26 preference to the business of the employer.
27
28

1 253. By virtue of their employment with HCT, Gardner, Chang, and Lim
2 were required to provide to HCT all sums they collected relating to HCT's business
3 operations.
4

5 254. Defendants received \$5.4 million alone from the PRC Factory for
6 orders placed by HCT for the manufacturing of products between 2010 and 2014. HCT is
7 informed and believes that Defendants received millions more from the PRC Factory on
8 orders placed by HCT for the manufacturing of products after 2014 and for orders placed
9 by HCT with the PRC Factory for tooling, and for orders placed by HCT with the PRC
10 Factory and the Trading Company for tooling and for the manufacturing of products.
11 Defendants obtained these benefits by virtue of their employment with HCT, in violation
12 of their duty of loyalties and fiduciary duties and in violation of HCT's employee
13 handbook. See e.g. *Kosta v. Del Monte Corp.*, No. 12-CV-01722-YGR, 2013 WL
14 2147413, at *15, f.n. 8 (N.D. Cal. May 15, 2013)(discussing various California cases and
15 holding that “[r]egardless of whether the claim is labeled one for unjust enrichment,
16 restitution, or some other equitable theory such as quasi-contract or constructive trust, the
17 legal basis for relief is recognized in California law[.]” and noting that the Restatement
18 (Third) of Restitution and Unjust Enrichment states that the confused view that restitution
19 is merely a remedy appears to result from a historical accident in the American law school
20 curriculum).
21

22 255. Further, Defendants have unjustly retained all monies received by
23 them from third parties for work performed by Gardner, Chang, and Lim while employed
24 by HCT. The law imposes on Defendants the obligation to return such unjust enrichment.
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SEVENTEENTH CAUSE OF ACTION

(Use Of Income Derived From A Pattern Of Racketeering Activity To Invest In, Establish, Or Operate An Enterprise Which Is Engaged In Or Affects Interstate Commerce (18 U.S.C. §§1961(5), 1962(a) Against All Defendants)

256. HCT incorporates by reference and realleges the allegations as set forth in paragraphs 1 through 116 and 129 through 255 above.

257. Defendants used income derived from a pattern of racketeering activity to invest in, establish, or operate an enterprise which is engaged in or affects interstate and foreign commerce, in violation of 18 U.S.C. §§1961(4), (5), (9), and 1962(a).

RACKETEERING ACTIVITY

258. Racketeering activity includes any act indictable under 18 U.S.C. §1341(mail fraud), 18 U.S.C. §1343(wire fraud), 18 U.S.C. §1832 (theft of trade secrets), and 18 U.S.C. §1956 (laundering of monetary instruments). As described more fully below, Defendants have committed various predicate acts under each of these statutes (“Predicate Acts”).

WIRE FRAUD

259. Defendants, with the specific intent to defraud HCT, regularly utilized and regularly caused HCT to utilize wire transfers to further Defendants’ scheme to defraud HCT. Further, Defendants sent various emails through interstate and foreign commerce. All of the wire transfers and emails were steps in the plot to defraud HCT.

Wire Transfers By HCT

1 a. Gardner, Chang, and Lim controlled the PRC Factory and the
2 Trading Company. In fact, in an email dated December 2, 2014, Gardner, in reference to
3 the Trading Company, states to a third party “If you receive emails or contact from
4 [employee at the Trading Company] *that is actually me and Derrick.*” (Emphasis added.)
5 Gardner also on separate occasions wrote to his real estate lending broker that the Trading
6 Company was “his” company and the funds, \$200,000, were coming from the Trading
7 Company’s HSBC bank account directly to escrow. When the real estate deal fell through
8 in or about September 2015, Gardner instructed escrow to return the \$200,000 to the
9 Trading Company’s account in Hong Kong. Defendants caused the PRC Factory and the
10 Trading Company to inflate their prices for tooling and for the manufacturing of products,
11 so that they could cause the PRC Factory and the Trading Company to pay Defendants the
12 inflated amount. Gardner, as part of his job responsibilities was required to obtain cross-
13 quotes for tooling and products falling under his division at HCT. Gardner, however,
14 deliberately chose not to obtain cross-quotes for all orders sent through PRC Factory and
15 the Trading Company, knowing that the cross-quotes would be lower or even absorbed by
16 other factories in light of the large volume which would enable the factories to profit from
17 the manufacturing of the actual product. Chang, as Gardner’s No. 2 in command, assisted
18 Gardner with this process. Lim’s job responsibilities including overseeing HCT’s Asia
19 sales and operations and running the brush division and aside from her knowledge of the
20 wrongdoing gained while the association-in-fact enterprise was devising the scheme, Lim
21 independently acquired knowledge that certain products were being manufactured at the
22 PRC Factory or the Trading Company even though no cross-quotes had been obtained, in
23 violation of HCT’s policies, and that HCT was paying an inflated amount for such
24 products, but Lim concealed such facts.

25
26 b. Gardner submitted all the fraudulent PRC Factory and Trading
27 Company purchase orders for tooling and for the manufacturing of products to HCT’s
28

1 accounting division for payment, concealing from HCT that the amounts listed included
2 inflated amounts which would be diverted from HCT to Gardner, Chang, and Lim
3 following payment by HCT. HCT proceeded to make the wire transfers from its New
4 Jersey office to China for the PRC Factory and to Taiwan for the Trading Company. From
5 October 26, 2010 through the date of filing the Original Complaint on January 4, 2017,
6 HCT made 318 international wire transfers to the PRC Factory having an aggregate value
7 of over USD \$131 million, and 99 international wire transfers to the Trading Company
8 having an aggregate value of over USD \$20 million.

9
10 c. The following is an example of how multiple acts of wire fraud
11 occurred with respect to just one purchase order. First, the co-conspirators liaised with
12 HCT engineers and the HCT customer to design the external packaging component for a
13 cosmetic product. Second, consistent with HCT policy, an Italian subsidiary majority-
14 owned by HCT named Ginevra was selected as the filler for the cosmetic who would place
15 the purchase order to the designated factory for the component and once received at
16 Ginevra's facility in Italy, it would inject the component with the liquid or powder
17 makeup. Third, without obtaining cross-quotes and in violation of HCT policy, the
18 defendants selected the PRC Factory to manufacture the component and instructed Ginevra
19 to submit the purchase order for several thousand pieces to the PRC Factory.

20
21 d. For demonstrative purposes, pursuant to a purchase order
22 submitted by Ginevra on March 21, 2014, the PRC Factory proceeded to manufacture and
23 deliver to Ginevra (in 12 separate shipments) large quantities of the cosmetic component
24 ordered. With each shipment, the PRC Factory included an invoice requesting payment of
25 the purchase price for the applicable quantities shipped. These invoices were sent by
26 Ginevra to HCT's accounting department in New Jersey for payment. Upon receipt of the
27
28

1 invoices, HCT accounting paid the balance owed by wire transfer. Each wire transfer
 2 corresponded to one or several invoices submitted by the PRC Factory, as follows:

<u>Shipment Number</u>	<u>PRC Invoice Number (Date)</u>	<u>HCT Wire Number, Accounts Payable Number (Date)</u>
1	Invoice #KH20140513H (5/13/2014)	Wire #30013685; A/P #20033659 (6/18/2014)
2	Invoice #KH20140520G (5/20/2014)	Wire #30013848; A/P #20033660, A/P #20033661 (7/2/2014)
3	Invoice #KH20140520GH (5/20/2014)	
4	Invoice #KH20140530C (6/1/2014)	Wire #30014046; A/P #20034170, A/P #20033047 (7/15/2014)
5	Invoice #KH20140513A (5/28/2014)	
6	Invoice #KH20140619A (6/19/2014)	Wire #30014510; A/P #20034380 (8/22/2014)
7	Invoice #KH20140626G (7/1/2014)	Wire #30014612; A/P #20035605 (8/28/2014)
8	Invoice #KH20140716N	Wire #30015140; A/P #20036465
9	Invoice #KH20140807B (9/22/2014)	Wire #30015198; A/P #20036802 (10/21/2014)
10	Invoice #KH20140918C (10/20/2014)	Wire #30015444; A/P #20037612, A/P #20037611, A/P #20037610 (11/12/2014)
11	Invoice #KH20140903B (10/20/2014)	
12	Invoice #KH20140818A (10/20/2014)	

Wire Transfers By Defendants

25 e. HCT is informed and believes that Defendants, without
 26 disclosure to HCT, caused the PRC Factory in China and the Trading Company in Taiwan
 27 to make over fifty (50) wire transfers to Gardner’s HSBC bank account in Hong Kong.

1 The wire transfers were in the amounts of the overpayments that Defendants caused HCT
2 to make. The Special Items Ledger shows \$5.4 million alone in payments to Defendants
3 between 2010 and 2014 pertaining to purchase orders submitted to the PRC Factory for the
4 manufacturing of products.

5
6 f. HCT is informed and believes that Defendants, without
7 disclosure to HCT, caused various wire transfers totaling at least \$313,000 to be made
8 from the PRC Factory in China to Gardner's HSBC bank account in Hong Kong.
9 Defendants, in or about July and August 2015, submitted at least three (3) invoices to the
10 PRC Factory, through the Cognisant Entities, for at least \$313,000 in fees earned for
11 consulting services provided by Gardner to HCT Customers A, B, C, D, E, F and G. For
12 example, Gardner, through the Cognisant Entities, submitted an invoice for \$71,319 on
13 July 15, 2015, requesting PRC Factory to remit payment in U.S. dollars to Hong Kong
14 HSBC bank account number XXX-XXX657-833. Gardner's October 19, 2015 HSBC
15 bank statement for such account reveals that he received \$71,319 via wire transfer on
16 September 24, 2015, which Gardner indicated through handwritten notation was "Payment
17 from Invoice." Gardner's October 19, 2015 HSBC bank statement also showed wire
18 transfers referred to by Gardner's handwritten notes as "Payments from Invoices" on
19 October 7, 2015 in the amount of \$120,000, and October 12, 2015 in the amount of
20 \$120,000. In or around November 2015, when asked by his mortgage broker to explain
21 the three deposits into Gardner's Hong Kong HSBC Account, Gardner emailed his
22 mortgage broker the three (3) invoices.

23
24 g. HCT is further informed and believes that Defendants, without
25 disclosure to HCT, caused the Trading Company in Taiwan to make at least \$200,000 in
26 wire transfers to Gardner's Hong Kong HSBC Account and Gardner's escrow account in
27 Santa Monica, California. On or about August 5, 2015, as part of a real estate transaction
28

1 Gardner was financing, Gardner instructed his escrow company, BST Escrow, to transfer
2 \$200,000 from Trading Company's account in Taiwan, and \$400,000 from Gardner's
3 Hong Kong HSBC Account, to Gardner's BST Escrow account in Santa Monica,
4 California. On or about September 15, 2015, after the real estate transaction fell through,
5 Gardner instructed BST Escrow in Santa Monica, California to transfer \$200,000 back to
6 Trading Company in Taiwan. In an email to his mortgage broker that same day, Gardner
7 states that he has "authorized that the wire for 200,000 be sent back to my Taiwanese
8 partners and they will then recredit my personal HSBC account in HK." On September 30,
9 2015, Gardner received a wire transfer of \$200,000, as evidenced by his October 19, 2015
10 HSBC bank statement, on which Gardner indicated through handwritten notation was for
11 "Monies Paid back into account from Escrow." In November 2015, when Gardner sought
12 to purchase a property in New York City, the bank financing the transaction asked Gardner
13 about the \$200,000 deposit into his Hong Kong HSBC Account. Gardner, in a November
14 16, 2015 email to his mortgage broker, represented that the \$200,000 deposit on September
15 30, 2015 was "an amalgamation of some six months of work that was actually paid into
16 escrow but was then 'paid back' when my financing deal fell through." When Gardner
17 instructed BST Escrow to wire \$200,000 back to the Trading Company, he kept the
18 \$400,000 wired from his personal HSBC HK account in BST Escrow's account for at least
19 four months before instructing BST Escrow to wire the funds to his *U.S. Citibank*
20 *account*.

21
22 h. In or around August 2016, Gardner approached HCT supplier,
23 Bayport, regarding a project with AM and Customer A under the false pretense that
24 Gardner was acting as an employee of HCT and on HCT's behalf or at least acting with
25 HCT's approval. Gardner communicated with Bayport using his HCT issued e-mail
26 account and set up meetings with Bayport at HCT locations, while concealing that the
27 project was in fact for his own and Defendants' personal financial gain and that the
28

1 Defendants' actions were completely unauthorized by HCT. HCT is informed and
2 believes Gardner's concealment misled Bayport as to Gardner's true intentions, which
3 were to form a venture competitive with HCT. In order to further the enterprise to
4 unlawfully compete with HCT, Gardner sent monies to Bayport, via a wire transaction on
5 or around September 6, 2016 to invest \$150,000 in Bayport. Gardner failed to disclose
6 that the true nature of the investment to Bayport and HCT is informed and believes
7 Bayport mistakenly believed that it was an HCT approved investment. Defendants
8 concealed this investment in Bayport from HCT.

9
10 i. In a separate real estate transaction in or about January 2016,
11 Gardner intended to acquire real property in New York, and was short approximately
12 \$30,000. He wrote to his lending broker that "his partners" would be lending him the
13 funds. Further, for this particular real estate transaction, Gardner caused \$360,000 to be
14 wired to his attorney in New York, Mark Tatelman ("Tatelman"), from Gardner's HSBC
15 HK account to avoid having to explain the large funds coming from abroad before closing
16 the real estate transaction. Interestingly, Gardner's counsel ultimately only transferred
17 \$310,000 to escrow to close the real estate transaction.

18
19 j. In a later transaction in or about February 2016, Gardner sends
20 wire transfers of \$1.17 million and \$400,000 from his HSBC HK account to Tatelman's
21 client trust account in New York. Gardner avoided wiring large sums of funds after having
22 to explain to the underwriters where the funds were coming from.

23
24 **Emails By Defendants:**

25
26 k. Gardner, while in HCT's Santa Monica offices, emailed the
27 purchase orders, which pertained to orders placed with the PRC Factory and the Trading
28

1 Company, to HCT's accounting division in New Jersey for payment. The invoices were
2 fraudulent because they contained overcharges concealed by Gardner to induce HCT to
3 make payment. Chang and Lim assisted with this process.

4
5 l. HCT is informed and believes that Gardner, from HCT's Santa
6 Monica office, emailed Bayport Laboratories, Inc., a filled goods supplier in Texas that he
7 was introduced to by virtue of his position at HCT, without HCT's knowledge, with the
8 following proposal:

9
10 "What we are hopefully going to do is have an entity that I
11 control called Cognisant invest in your filling
12 machinery... Your proposal on the \$0.04 per piece is
13 accepted. Cognisant will quote the fill and assembly cost to
14 [Customer A] at \$.086 for the full size. Cognisant will own
15 the rights to the use of the [AM] trademark name [(hereafter
16 the "Trademark")] which are being granted by [AM]. The
17 rights to use the name and trademark will then be given to
18 [Customer A] by Cognisant. If we were to do this through
19 HCT I would have to apply HCT's markups on the filling and
20 then the project becomes a non-starter. I have therefore given
21 [Customer A] your direct quote at \$0.86."

22
23 m. During an audit of the Trading Company in late 2016, HCT is
24 informed and believes that Chang, from HCT's Santa Monica offices, sent an email in
25 foreign commerce to Idy Chim of HCT-Asia in Hong Kong. Chang, in the email,
26 concealed all his knowledge regarding the Trading Company and attempted to defend their
27 practices and protect the Trading Company's financial information. Before sending the
28

1 email to Idy Chim, Chang prepared a draft response, which he sent to Gardner, who
2 approved the response.

3
4 **MAIL FRAUD**

5
6 260. HCT is informed and believes that Defendants used the mails and/or
7 wires to file fraudulent tax returns that understated their income and/or improperly took
8 advantage of lower corporate tax rates in other countries. HCT is informed and believes
9 that Defendants acted with the intent to conceal their racketeering income so that HCT
10 would not find out and so Defendants could minimize tax payments and have additional
11 income to invest in the association-in-fact enterprise.

12
13 261. . In one instance of the kickback scheme, Gardner was asked by
14 Supplier X whether the markup amount should be increased to include a commission for
15 Fisher, who Gardner and Chang recruited to become a member of the association-in-fact
16 enterprise (who is currently being investigated as another co-conspirator).

17
18 **LAUNDERING OF MONETARY INSTRUMENTS**

19
20 262. To have funds to carry on their mail and wire fraud, and trade secret
21 theft, monies were transferred from the United States to an HSBC-UK foreign currency
22 bank account. This enabled Defendants to easily fund the operations of the Trading
23 Company, so that it could manufacture tooling for HCT and then cause HCT to overpay
24 for such tooling through wire transfers so that Defendants could then cause the
25 overpayments to be wired from the Trading Company to Defendants.

1 263. When transferring funds from the United States to the HSBC-UK
2 foreign currency bank account, Defendants knew that such funds represented the proceeds
3 earned from Defendants' mail and wire fraud, and trade secret theft, and that the transfer of
4 such funds was designed in whole or in part to conceal or disguise the nature, the location,
5 the source, the ownership, and the control of the proceeds of the unlawful activity and to
6 avoid transaction reporting requirements under state and federal law.

7
8 264. HCT is informed and believes that Defendants attempted to finance
9 and/or purchase a daycare center to further launder money, but that ultimately this
10 transaction did not go through.

11
12 265. In a separate real estate transaction in or about January 2016, Gardner
13 intended to acquire real property in New York, and was short approximately \$30,000. He
14 wrote to his lending broker that "his partners" would be lending him the funds. Further,
15 for this particular real estate transaction, Gardner caused \$360,000 to be wired to his
16 attorney, Tatelman, in New York, from Gardner's HSBC HK account to avoid having to
17 explain the large funds coming from abroad before closing the real estate transaction.
18 Interestingly, Gardner's counsel ultimately only transferred \$310,000 to escrow to close
19 the real estate transaction.

20
21 266. In a later transaction in or about February 2016, Gardner sends wire
22 transfers of \$1.17 million and \$400,000 from his HSBC HK account to Tatelman's client
23 trust account in New York. Gardner avoided wiring large sums of funds after having to
24 explain to the underwriters where the funds were coming from.

25
26 267. Further, starting in or about June 2014, Gardner shamelessly involved
27 his mother in Great Britain, whom he instructed to withdraw on average approximately
28

1 1,000 pounds daily using his ATM card from his HSBC HK account. He did so to avoid
2 detection, to hide his assets, and continue to defraud HCT.

3
4 268. Defendants further laundered their ill-gotten gains through the use of
5 various escrow companies and accounts, including BST Escrow, West Coast Escrow, and
6 Escrow Trust Advisors and Tatelman’s client trust account. Defendants’ scheme was so
7 masterful that they had Escrow Trust Advisors hold funds for the benefit of one of
8 Gardner’s real properties, 527 Westgate Ave., Los Angeles, CA property. On information
9 and belief, HCT alleges that Escrow Trust Advisors received wire transfers from Gardner’s
10 HSBC HK account for the purchase and/or refinancing of the 527 Westgate Ave. property.
11 Gardner later used excess funds to instruct Escrow Trust Advisors to wire \$25,000 to
12 Sprayable Inc.—a cosmetic company. The same process occurred with additional escrow
13 accounts. Indeed, in an email to his real estate broker in or about December 2015, Gardner
14 tells him that he “figured out” a way to wire \$300,000 for his closing without having to
15 explain the source of the funds. Later, Gardner wires \$360,000 to Tatelman’s “client trust
16 account”. One month later, Tatelman wires \$310,000 to Gardner’s escrow account.

17
18 **THEFT OF TRADE SECRETS**

19
20 269. HCT incorporates by reference and realleges the allegations as set
21 forth in paragraphs 117 through 128 above.

22
23 270. In addition to the above predicate acts, Defendants engaged in
24 additional predicate acts involving trade secret theft. In 2016, the Defend Trade Secrets
25 Act of 2016 (“DTSA”), codified at 18 U.S.C. §1836, was enacted. Congress also amended
26 RICO to provide that a violation of DTSA constitutes a predicate act under RICO. 18
27 U.S.C. §1961(B). Congress made it clear that the DTSA was not to preempt or displace
28

1 any other civil remedies provided by States for trade secret misappropriation. 18 U.S.C.
2 §1838. This is consistent with CUTSA, which expressly provides that “this title does not
3 supersede any statute relating to misappropriation of a trade secret, or any statute otherwise
4 regulating trade secrets.” Cal. Civ. Code §3426.7(a).

5
6 271. At all relevant times herein, HCT was in possession of HCT’s Trade
7 Secrets, as set forth in Paragraph 118 above and defined by DTSA.

8
9 272. HCT has taken reasonable measures to keep HCT’s Trade Secrets
10 secret.

11
12 273. HCT’s Trade Secrets derives independent economic value, actual or
13 potential, from not being generally known to, and not being readily ascertainable through
14 proper means by, another person, who can obtain economic value from the disclosure or
15 use of the information.

16
17 274. Gardner, Chang, and Lim, as employees of HCT, acquired knowledge
18 of certain of HCT’s Trade Secrets under circumstances giving rise to a duty to maintain the
19 secrecy of HCT’s Trade Secrets and to limit the use of HCT’s Trade Secrets in which they
20 were given access for purposes approved by HCT. Gardner, Chang, Lim, and the
21 Cognisant Entities were each aware Gardner, Chang, and Lim owed such a duty to HCT,
22 yet Gardner, Chang and Lim shared with each other and the Cognisant Entities the
23 knowledge that they obtained of HCT’s Trade Secrets. Gardner, Chang, Lim, and the
24 Cognisant Entities then used and/or disclosed HCT’s Trade Secrets to others for the benefit
25 of their enterprise and to inflict harm upon HCT, fully knowing that none of them were
26 authorized to disclose HCT’s Trade Secrets to third parties or to use HCT’s Trade Secrets

1 for any purposes other than those expressly approved by HCT and that the purposes for
2 which they were using HCT's Trade Secrets had not been approved by HCT.

3
4 **PATTERN**

5
6 275. The Predicate Acts were a regular way of conducting an ongoing
7 business and a regular way of conducting and participating in the conduct of the ongoing
8 enterprise. Additionally, the Predicate Acts occurred with tremendous frequency between
9 in or around 2010 and the present. Moreover, the past conduct by its nature projects into
10 the future with a threat of repetition. The enterprise's regular way of conducting business
11 involves wire and mail fraud to obtain business deals and to conceal profits. HCT is
12 informed and believes that the deal involving AM and Bayport, which materialized
13 through various acts of wire fraud, is ongoing and thus will result in additional acts of wire
14 and mail fraud. Moreover, HCT is informed and believes that the enterprise is utilizing
15 HCT's Trade Secrets to compete against HCT. Defendants' actions, including Gardner
16 just hours after being terminated from HCT, asking Defendant Chang, who was still
17 employed by HCT, to steal HCT's client list, indicates that Defendants have no intention
18 of stopping their wrongdoing.

19
20 276. The Predicate Acts have the same or similar purposes, results,
21 participants, victims, and methods of commission, and otherwise are interrelated by
22 distinguishing characteristics and are not isolated events. All the Predicate Acts are related
23 to the enterprise's affairs and operations and further the goals of and benefitted the
24 enterprise. All the Predicate Acts were part of various interrelated schemes designed to
25 usurp monies from HCT and all of which utilized the wires and mails to further their end.

26
27 **ENTERPRISE**

1 277. Gardner, Chang, Lim, the Cognisant Entities, and other unknown
2 individuals and/or entities were members of this association-in-fact enterprise and they
3 conspired with each other and other potential co-conspirators, including law firms and
4 mortgage officers who may have participated in or controlled certain aspects of the
5 racketeering activity. The enterprise was formed by Gardner, Chang, and Lim in or around
6 2010, and later joined by the Cognisant Entities after their formation. All members of the
7 enterprise knew the general nature of the enterprise and that it extended beyond their
8 individual role, and associated together for the purpose of engaging in a course of conduct.
9 The enterprise constituted a continuing unit that functioned with the common purpose of
10 utilizing wires and the United States mails to defraud HCT; utilizing HCT's Trade Secrets
11 to inflict harm upon HCT; and engaging in money laundering to conceal their activities
12 and reduce tax liability. The members of this enterprise engaged in racketeering activities,
13 which included interlocking and overlapping schemes, in furtherance of these shared
14 objectives, and financed their activity through racketeering income. The enterprise
15 enabled the Defendants to commit and/or facilitated the commission of the Predicate Acts.
16 All of the Predicate Acts were committed at the behest of and/or on behalf of the
17 enterprise. HCT was the intended target of the Predicate Acts.

18
19 278. Gardner, Chang, Lim, and the Cognisant Entities maintained a very
20 close relationship. Chang and Lim are husband and wife, and Gardner became close
21 friends with them. They decided to form the Cognisant Entities, believing it would make
22 the enterprise seem more legitimate in the eyes of third parties.

23
24 279. HCT is informed and believes that Gardner, Chang, Lim, and the
25 Cognisant Entities (after they were formed) interacted with each other regularly and would
26 hold secret meetings where they would discuss how to accomplish the enterprise's
27 purposes and that they would email and/or text message each other to discuss the
28

1 enterprise's affairs and to advance the enterprise's purposes. HCT is informed and
2 believes that the enterprise was highly coordinated with Gardner, Chang, and Lim
3 partaking in the decision-making process. This coordination enabled the enterprise to
4 carry out the common purposes of the enterprise.

5
6 280. HCT is informed and believes that Gardner and Chang recruited
7 Fisher to join the association-in-fact enterprise in January 2015, after Fisher expressed
8 interest in learning about the enterprise's activities prior to joining.

9
10 281. The enterprise had sufficient longevity to permit the associates to
11 pursue the enterprise's purposes. Indeed, HCT is informed and believes that the enterprise
12 was formed in or around 2010 and has continuously remained intact through the present
13 day.

14
15 282. Defendants earned substantial proceeds from their pattern of
16 racketeering activity. They then used a portion of such proceeds to invest in and operate
17 the enterprise. HCT was harmed by reason of this use of income.

18
19 a. For instance, the enterprise allowed Gardner, Chang, and Lim
20 to become partners in the Trading Company who beginning in or about 2012 manufactures
21 for HCT and other cosmetics companies. The enterprise has allowed Gardner to establish
22 the Cognisant Entities, which compete with HCT and competed with HCT during
23 Gardner's, Chang's and Lim's employment at HCT.

24
25 b. The enterprise has further allowed Gardner, Chang, and Lim to
26 invest in entities such as MatchCo before MatchCo landed significant contracts—which
27 Gardner, Chang and Lim established after—and only after they became shareholders of
28

1 MatchCo. Importantly, Gardner wired \$30,000 from his HSBC HK Account to MatchCo
2 in or about May 2016 as investment in MatchCo. Subsequently, in August 2016, Gardner
3 wired \$100,000 from the same HSBC HK account to MatchCo and advised MatchCo that
4 the investment was to be divided equally for Gardner and Chang (and hence Lim as
5 Chang's wife).

6
7 c. The enterprise also allowed Gardner to invest and wire \$25,000
8 on January 29, 2015 in Sprayable, Inc. a "cosmetic" company according to its LinkedIn
9 profile. All of this has allowed Defendants to undermine HCT, and to unfairly compete
10 with HCT.

11
12 283. Further, the enterprise has allowed Defendants to launder their ill-
13 gotten gains by acquiring real estate in California and New York.

14
15 a. In or about January 2016, Gardner intended to acquire real
16 property in New York, and was short approximately \$30,000. He wrote to his lending
17 broker that "his partners" would be lending him the funds. Further, for this particular real
18 estate transaction, Gardner caused \$360,000 to be wired to his attorney in New York, Mark
19 Tatelman, from Gardner's HSBC HK account to avoid having to explain the large funds
20 coming from abroad before closing the real estate transaction. Interestingly, Gardner's
21 counsel ultimately only transferred \$310,000 to escrow to close the real estate transaction.

22
23 b. In a later transaction in or about February 2016, Gardner wires
24 Tatelman \$1.7 million from his HSBC HK account. Gardner avoided wiring large sums of
25 funds after having to explain to the underwriters where the funds were coming from.

1 c. HCT is informed and believes that Defendants have acquired
2 real estate in other jurisdictions, including the United Kingdom in the names of other
3 individuals and/or entities.
4

5 **INTERSTATE AND FOREIGN COMMERCE**
6

7 284. At all times between in or about 2010 and the present, the enterprise
8 engaged in interstate and foreign commerce. Further, the enterprise's activities affected
9 interstate and foreign commerce. Members of the enterprise used instrumentalities of
10 interstate and foreign commerce, including cell phones, emails, car travel, and airplane
11 travel to conduct the enterprise's affairs all over the world. The Predicate Acts involve:
12

13 a. wire transfers between HCT's headquarters in Santa Monica,
14 California to the Trading Company in China, and then subsequent wire transfers between
15 the Trading Company in China to accounts of members of the enterprise in the United
16 States, Hong Kong and Great Britain;
17

18 b. the use of HCT's Trade Secrets in negotiations with companies
19 all over the world, including Bayport in Texas and Applied Minerals in 2016;
20

21 c. a real estate transaction in or about January 2016, in which
22 Gardner intended to acquire real property in New York, and was short approximately
23 \$30,000. He wrote to his lending broker that "his partners" would be lending him the
24 funds. Further, for this particular real estate transaction, Gardner caused \$360,000 to be
25 wired to his attorney in New York, Mark Tatelman, from Gardner's HSBC HK account to
26 avoid having to explain the large funds coming from abroad before closing the real estate
27
28

1 transaction. Interestingly, Gardner’s counsel ultimately only transferred \$310,000 to
2 escrow to close the real estate transaction;

3
4 d. a later transaction in or about February 2016, in which Gardner
5 wires Tatelman \$1.7 million from his HSBC HK account. Gardner avoided wiring large
6 sums of funds after having to explain to the underwriters where the funds were coming
7 from;

8
9 e. Gardner shamelessly involving his mother in Great Britain,
10 starting in or about June 2014, whom he instructed to withdraw on average approximately
11 1,000 pounds daily using his ATM card from his HSBC HK account. He did so to avoid
12 detection, to hide his assets, and continue to defraud HCT; and

13
14 f. Gardner further laundering his ill-gotten gains through the use
15 of various escrow companies and accounts, including BST Escrow, West Coast Escrow,
16 and Escrow Trust Advisors and Tatelman’s client trust account. Gardner’s scheme was so
17 masterful that he had Escrow Trust Advisors hold funds for the benefit of one of his real
18 properties, 527 Westgate Ave., Los Angeles, CA property. On information and belief,
19 HCT alleges that Escrow Trust Advisors received wire transfers from Gardner’s HSBC
20 HK account for the purchase and/or refinancing of the 527 Westgate Ave. property.
21 Gardner later used excess funds to instruct Escrow Trust Advisors to wire \$25,000 to
22 Sprayable Inc.—a cosmetic company. Gardner did the same thing with each of his escrow
23 accounts. Indeed, in an email to his real estate broker in or about December 2015, Gardner
24 tells him that he “figured out” a way to wire \$300,000 for his closing without having to
25 explain the source of the funds. Later, Gardner wires \$360,000 to Tatelman’s “client trust
26 account”. One month later, Tatelman wires \$310,000 to Gardner’s escrow account.

1 g. Defendants causing the Trading Company in Taiwan to make
2 at least \$200,000 in wire transfers to Gardner’s Hong Kong HSBC Account and Gardner’s
3 escrow account in Santa Monica, California. On or about August 5, 2015, as part of a real
4 estate transaction Gardner was financing, Gardner instructed his escrow company, BST
5 Escrow, to transfer \$200,000 from Trading Company’s account in Taiwan, and \$400,000
6 from Gardner’s Hong Kong HSBC Account, to Gardner’s BST Escrow account in Santa
7 Monica, California. On or about September 15, 2015, after the real estate transaction fell
8 through, Gardner instructed BST Escrow in Santa Monica, California to transfer \$200,000
9 back to Trading Company in Taiwan. In an email to his mortgage broker that same day,
10 Gardner states that he has “authorized that the wire for 200,000 be sent back to my
11 Taiwanese partners and they will then recredit my personal HSBC account in HK.” On
12 September 30, 2015, Gardner received a wire transfer of \$200,000, as evidenced by his
13 October 19, 2015 HSBC bank statement, on which Gardner indicated through handwritten
14 notation was for “Monies Paid back into account from Escrow.” In November 2015, when
15 Gardner sought to purchase a property in New York City, the bank financing the
16 transaction asked Gardner about the \$200,000 deposit into his Hong Kong HSBC Account.
17 Gardner, in a November 16, 2015 email to his mortgage broker, represented that the
18 \$200,000 deposit on September 30, 2015 was “an amalgamation of some six months of
19 work that was actually paid into escrow but was then ‘paid back’ when my financing deal
20 fell through.” When Gardner instructed BST Escrow to wire \$200,000 back to the Trading
21 Company, he kept the \$400,000 wired from his personal HSBC HK account in BST
22 Escrow’s account for at least four months before instructing BST Escrow to wire the funds
23 to his *U.S. Citibank account*.

24
25 h. Chang, from HCT’s Santa Monica offices, sending an email in
26 foreign commerce to Idy Chim of HCT-Asia in Hong Kong, in which Chang concealed all
27 his knowledge regarding the Trading Company and attempted to defend Defendants’
28

1 practices and protect the Trading Company's financial information. Before sending the
2 email to Idy Chim, Chang prepared a draft response, which he sent to Gardner, who
3 approved the response.

4
5 Members of the enterprise traveled all over the United States, Hong Kong, China, and
6 Great Britain to further the objectives of the enterprise.

7
8 **USE OF INCOME DERIVED FROM A PATTERN OF RACKETEERING**
9 **ACTIVITY TO INVEST IN, ESTABLISH, OR OPERATE AN**
10 **ENTERPRISE.**

11
12 285. Defendants derived income, directly or indirectly, from a pattern of
13 racketeering activity and a portion of such funds flowed into the enterprise. Beginning in
14 or around 2011, Defendants received income from the PRC Factory. HCT is informed and
15 believes that Defendants committed wire fraud by causing HCT to pay inflated amounts
16 for tooling and for the manufacturing of products. Defendants then used or invested,
17 directly or indirectly, a portion of that income, in the operation of the enterprise.
18 Specifically, they used the proceeds generated from the high volume of racketeering
19 activity to gain control over the PRC Factory and the Trading Company. Then, the monies
20 that the PRC Factory and the Trading Company kept enabled them to function and to
21 produce tooling and products to replicate the scheme over and over again and thereby HCT
22 was harmed by reason of Defendants' investment in the PRC Factory and the Trading
23 Company.

24
25 **EIGHTEENTH CAUSE OF ACTION**

26 (Acquisition and Maintenance of an Interest in and Control of an Enterprise Engaged in a
27 Pattern of Racketeering Activity (18 U.S.C. §§1961(5), 1962(b) Against All Defendants)

1 286. HCT incorporates by reference and realleges the allegations as set
2 forth in paragraphs 1 through 116 and 129 through 285 above.

3
4 287. All Defendants acquired and/or maintained, directly or indirectly, an
5 interest in or control of the PRC Factory and the Trading Company, who were associated
6 in fact with Defendants, and who did engage in, and whose activities did affect, interstate
7 and foreign commerce, in violation of 18 U.S.C. §§1961(4), (5), (9), and 1962(b) as
8 described above in Paragraph 284.

9
10 288. HCT is informed and believes that Defendants infiltrated the PRC
11 Factory and the Trading Company through investments and through promises of a large
12 volume of business. HCT is informed and believes that Defendants committed wire fraud
13 by causing HCT to pay inflated amounts for tooling and for the manufacturing of products.
14 Then they used the proceeds generated from the high volume of racketeering activity to
15 gain control over the PRC Factory and the Trading Company. Then the monies that the
16 PRC Factory and the Trading Company kept enabled them to function and to produce
17 tooling and products to replicate the scheme over and over again and thereby HCT was
18 harmed by reason of Defendants' investment in the PRC Factory and the Trading
19 Company.

20
21 289. HCT was injured by reason of Defendants' acquisition and
22 maintenance of an interest in and control of an enterprise engaged in racketeering activity.
23 There is a specific nexus between Defendants control of the PRC Factory and the Trading
24 Company and the alleged racketeering activity. Defendants wanted to establish the
25 Trading Company and all related factories as "the supplier of choice." Indeed,
26 Defendants' control over the PRC Factory and the Trading Company enabled Defendants
27 to cause the PRC Factory and the Trading Company to inflate prices quotes for the
28

1 manufacturing of tooling and products. This then enabled Gardner and Chang to create
2 fraudulent purchase orders with the inflated amounts, and then to direct payment of the
3 inflated amounts from PRC Factory and the Trading Company to Gardner's HSBC Hong
4 Kong account for distribution to Gardner, Chang, and Lim.

5
6 290. The preconceived purpose of Defendants' RICO activities described
7 above was to inflict harm upon HCT, the intended target of the RICO violations, and to
8 divert monies, which were owed to HCT, and business deals, to Defendants.

9
10 **NINETEENTH CAUSE OF ACTION**

11 (Conduct and Participation in a RICO Enterprise through a Pattern of Racketeering
12 Activity (18 U.S.C. §§1961(5), 1962(c) Against All Defendants)

13
14 291. HCT incorporates by reference and realleges the allegations as set
15 forth in paragraphs 1 through 116 and 129 through 290 above.

16
17 292. All Defendants are associated with the enterprise.

18
19 293. All Defendants conducted or participated, either directly or indirectly,
20 in the conduct of the affairs of the enterprise, including in its operation and management,
21 through a pattern of racketeering activity. All Defendants intentionally and deliberately
22 performed acts, functions, and duties, including the making and implementation of
23 decisions, that were related to and fostered the operation and management of the enterprise
24 as described more fully in Paragraph 277 through 283 above.

25
26 294. All Defendants participated in the affairs of the enterprise through a
27 pattern of racketeering activity as outlined above in Paragraphs 275 through 276.

1 298. The enterprise was engaged in interstate and foreign commerce, and
2 its activities affected interstate and foreign commerce, as described more fully in
3 Paragraph 284 above.

4
5 299. All Defendants conspired to conduct or participate, either directly or
6 indirectly, in the conduct of the affairs of the enterprise, through a pattern of racketeering
7 activity in violation of 18 U.S.C. §§1962(a), (b), (c), and (d).

8
9 300. Each Defendant engaged in the conspiracy through which they each
10 knowingly agreed to pursue the objectives of the enterprise, and adopted the goal of
11 furthering or facilitating the commission of the Predicate Acts. The Defendants reached a
12 meeting of the minds as to the operation of the affairs of the enterprise through a pattern of
13 racketeering conduct. Each Defendant was aware of and understood the nature and scope
14 of the enterprise, intended to participate in it, and understood that the enterprise extended
15 beyond their individual role. Each Defendant knowingly agreed to participate in the
16 conduct of the enterprise, which included wire fraud, mail fraud, and laundering of
17 monetary instruments, with the knowledge and intent that either themselves and/or at least
18 one other member of the enterprise would commit each of the Predicate Acts, all of which
19 constitute violations of offenses listed in 18 U.S.C. §1961. All of the Predicate Acts were
20 undertaken in furtherance of the conspiracy and benefitted the conspiracy. Defendants
21 agreed to further endeavors, which if completed, would satisfy all the elements of
22 substantive RICO offenses, and agreed that at least one member of the conspiracy would
23 commit at least two racketeering acts in furtherance of the enterprise's affairs.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, HCT prays for judgment against Defendants Nicholas
3 Gardner, Cognisant, LLC, Cognisant Real Estate, LLC, Cognisant Ltd., DOE 1-Derrick
4 Chang, DOE 2-Cindy Lim and Does 3-50 and each of them, as follows:
5

6 **ON THE FIRST CAUSE OF ACTION**

- 7
- 8 1. For an award of general damages in an amount to be proven at trial;
9
 - 10 2. For the return of all bonuses paid by HCT to Gardner, Chang, and
11 Lim following Gardner, Chang, and Lim’s breach of their duty of loyalty;
12
 - 13 3. For an imposition of a constructive trust on all monies collected by
14 Defendants from the PRC Factory, the Trading Company or other third parties for
15 kickbacks or work performed by Gardner, Chang, and or/Lim while they were employed
16 by HCT, including, but not limited to, funds deposited into HSBC foreign currency bank
17 accounts in Hong Kong (Account Number XXX-XXX657-833) and Great Britain
18 (Account Number XX-XX-XX-XX381435).
19
 - 20 4. For an award of punitive or exemplary damages, according to proof at
21 trial.
22
 - 23 5. For pre-judgment interest.
24

25 **ON THE SECOND CAUSE OF ACTION**

- 26
- 27 6. For an award of general damages in an amount to be proven at trial;
28

1 7. For restitution of all bonuses paid by HCT to Gardner, Chang, and
2 Lim following Gardner, Chang, and Lim’s unfair, unlawful, and/or fraudulent conduct;

3
4 8. For an imposition of a constructive trust on all monies collected by
5 Defendants from the PRC Factory, the Trading Company or other third parties for
6 kickbacks or work performed by Gardner, Chang, and or/Lim while they were employed
7 by HCT, including, but not limited to, funds deposited into HSBC foreign currency bank
8 accounts in Hong Kong (Account Number XXX-XXX657-833) and Great Britain
9 (Account Number XX-XX-XX-XX381435).

10
11 9. For an award of punitive or exemplary damages, according to proof at
12 trial.

13
14 10. For pre-judgment interest.

15
16 **ON THE THIRD CAUSE OF ACTION**

17
18 11. For an award of general damages in an amount to be proven at trial;

19
20 12. For restitution of all bonuses paid by HCT to Gardner, Chang, and
21 Lim following Gardner, Chang, and Lim’s unfair, unlawful, and/or fraudulent conduct;

22
23 13. For an imposition of a constructive trust on the bonuses received by
24 Gardner, Chang, and Lim.

25
26 14. For an award of punitive or exemplary damages, according to proof at
27 trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. For pre-judgment interest.

ON THE FOURTH CAUSE OF ACTION

16. For an award of general damages in an amount to be proven at trial;

17. For an award of punitive or exemplary damages in an amount not exceeding any award made under Civil Code Sections 3426.3(a) and (b), according to proof at trial.

18. For an award of reasonable attorney’s fees pursuant to Civil Code Section 3426.4.

19. For pre-judgment interest.

ON THE FIFTH CAUSE OF ACTION

20. For an award of general damages in an amount to be proven at trial;

21. For an imposition of a constructive trust on all monies collected by Defendants from the PRC Factory, the Trading Company or other third parties for kickbacks or work performed by Gardner, Chang, and or/Lim while they were employed by HCT, including, but not limited to, funds deposited into HSBC foreign currency bank accounts in Hong Kong (Account Number XXX-XXX657-833) and Great Britain (Account Number XX-XX-XX-XX381435).

22. For pre-judgment interest.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ON THE SIXTH CAUSE OF ACTION

23. For an award of general damages in an amount to be proven at trial;

24. For restitution of all bonuses paid by HCT to Gardner, Chang, and Lim following Gardner, and Chang, and Lim’s unfair, unlawful, and/or fraudulent conduct;

25. For an imposition of a constructive trust on all monies collected by Defendants from the PRC Factory, the Trading Company or other third parties for kickbacks or work performed by Gardner, Chang, and or/Lim while they were employed by HCT, including, but not limited to, funds deposited into HSBC foreign currency bank accounts in Hong Kong (Account Number XXX-XXX657-833) and Great Britain (Account Number XX-XX-XX-XX381435).

26. For an award of punitive or exemplary damages, according to proof at trial.

27. For pre-judgment interest.

ON THE SEVENTH CAUSE OF ACTION

28. For an award of general damages in an amount to be proven at trial;

29. For restitution of all bonuses paid by HCT to Gardner, Chang, and Lim following Gardner, Chang, and Lim’s unfair, unlawful, and/or fraudulent conduct;

1 30. For an imposition of a constructive trust on all monies collected by
2 Defendants from the PRC Factory, the Trading Company or other third parties for
3 kickbacks or work performed by Gardner, Chang, and or/Lim while they were employed
4 by HCT, including, but not limited to, funds deposited into HSBC foreign currency bank
5 accounts in Hong Kong (Account Number XXX-XXX657-833) and Great Britain
6 (Account Number XX-XX-XX-XX381435).

7
8 31. For an award of punitive or exemplary damages, according to proof at
9 trial.

10
11 32. For pre-judgment interest.

12
13 **ON THE EIGHTH CAUSE OF ACTION**

14
15 33. For an award of general damages in an amount to be proven at trial;

16
17 34. For an imposition of a constructive trust on all monies collected by
18 Defendants as a result of their tortious interference.

19
20 35. For an award of punitive or exemplary damages, according to proof at
21 trial.

22
23 36. For pre-judgment interest.

24
25 **ON THE NINTH CAUSE OF ACTION**

26
27 37. For an award of general damages in an amount to be proven at trial;

28

1 38. For an imposition of a constructive trust on all monies collected by
2 Defendants as a result of their tortious interference.

3
4 39. For an award of punitive or exemplary damages, according to proof at
5 trial.

6
7 40. For pre-judgment interest.

8
9 **ON THE TENTH CAUSE OF ACTION**

10
11 41. For an award of general damages in an amount to be proven at trial;

12
13 42. For an imposition of a constructive trust on all monies collected by
14 Defendants as a result of their tortious interference.

15
16 43. For an award of punitive or exemplary damages, according to proof at
17 trial.

18
19 44. For pre-judgment interest.

20
21 **ON THE ELEVENTH CAUSE OF ACTION**

22
23 45. For an award of general damages in an amount to be proven at trial;

24
25 46. For an imposition of a constructive trust on all monies collected by
26 Defendants as a result of their tortious interference.

27
28

1 47. For an award of punitive or exemplary damages, according to proof at
2 trial.

3
4 48. For pre-judgment interest.

5
6 **ON THE TWELFTH CAUSE OF ACTION**

7
8 49. For an award of general damages in an amount to be proven at trial;

9
10 50. For an award equal to three times the amount of actual damages
11 sustained by HCT.

12
13 51. For reasonable attorneys' fees pursuant to Penal Code Section 496(c).

14
15 52. For pre-judgment interest.

16
17 **ON THE THIRTEENTH CAUSE OF ACTION**

18
19 53. For restitution of all bonuses paid by HCT to Gardner, Chang, and
20 Lim following Gardner, Chang, and Lim's unfair, unlawful, and/or fraudulent conduct;

21
22 54. For an injunction to enjoin Defendants from their ongoing unlawful,
23 unfair, and fraudulent conduct and to require Defendants to identify and return all
24 wrongfully obtained proprietary and confidential information and property of HCT's in
25 their possession, custody or control and enjoining them from further accessing, disclosing,
26 or utilizing such information and from contacting HCT's customers.

1 62. For an imposition of a constructive trust on all monies collected by
2 Defendants for kickbacks or work performed by Gardner and Chang while they were
3 employed by HCT and all other monies belonging to HCT and wrongfully retained by
4 Defendants.

5
6 **ON THE SEVENTEENTH CAUSE OF ACTION**
7

8 63. For a finding that all Defendants, both jointly and severally, used
9 income derived from a pattern of racketeering activity to invest in, establish, or operate an
10 enterprise whose activities did affect interstate and foreign commerce in violation of 18
11 U.S.C. § 1962(a) (Prohibited activities).

12
13 64. For an injunction against all Defendants and all their directors,
14 officers, employees, agents, servants and all other *persons* in active concert or in
15 participation with them, to be enjoined *temporarily* during pendency of this action, and
16 *permanently* thereafter, from using income derived from a pattern of racketeering activity
17 to invest in, establish or operate an enterprise engaged in or affecting interstate or foreign
18 commerce, whether directly or indirectly.

19
20 65. For an injunction against all Defendants and all of their directors,
21 officers, employees, agents, servants and all other *persons* in active concert or in
22 participation with them, to be enjoined *temporarily* during pendency of this action, and
23 *permanently* thereafter, from committing any more predicate acts in furtherance of the
24 RICO *enterprise* alleged in the Second Amended Complaint.

25
26 66. For an accounting of all gains, profits, and advantages derived from
27 Defendants several acts of *racketeering activity* in violation of 18 U.S.C. § 1962(a) and
28

1 from all other violation(s) of applicable State and federal law(s).

2
3 67. For an award of Plaintiffs' actual damages, and for any gains, profits,
4 or advantages attributable to all violations of 18 U.S.C. § 1962(a), according to the best
5 available proof.

6
7 68. For an award of treble (triple) damages, under authority of 18 U.S.C.
8 § 1964(c), for any gains, profits, or advantages attributable to all violations of 18 U.S.C. §
9 1962(a), according to the best available proof.

10
11 69. For an award of all damages sustained by Plaintiffs in consequence of
12 Defendants' several violations of 18 U.S.C. § 1962(a), according to the best available
13 proof.

14
15 70. For reasonable attorneys' fees and costs.

16
17 71. For the imposition of a constructive trust on all monies derived by
18 Defendants, including all gains, profits and advantages, from their several acts of
19 racketeering in violation of 18 U.S.C. § 1962(a).

20
21 **ON THE EIGHTEENTH CAUSE OF ACTION**

22
23 72. For a finding that all Defendants, both jointly and severally, have
24 acquired and maintained, both directly and indirectly, an interest in and/or control of a
25 RICO *enterprise* of *persons* and of other individuals who were associated in fact, all of
26 whom engaged in, and whose activities did affect, interstate and foreign commerce in
27 violation of 18 U.S.C. § 1962(b) (Prohibited activities).

1 73. For an injunction against all Defendants and all their directors,
2 officers, employees, agents, servants and all other *persons* in active concert or in
3 participation with them, to be enjoined *temporarily* during pendency of this action, and
4 *permanently* thereafter, from acquiring or maintaining, whether directly or indirectly, any
5 interest in or control of any RICO *enterprise* of *persons*, or of other individuals associated
6 in fact, who are engaged in, or whose activities do affect, interstate or foreign commerce.

7
8 74. For an injunction against all Defendants and all of their directors,
9 officers, employees, agents, servants and all other *persons* in active concert or in
10 participation with them, to be enjoined *temporarily* during pendency of this action, and
11 *permanently* thereafter, from committing any more predicate acts in furtherance of the
12 RICO *enterprise* alleged in the Second Amended Complaint.

13
14 75. For an accounting of all gains, profits, and advantages derived from
15 Defendants several acts of *racketeering activity* in violation of 18 U.S.C. § 1962(b) and
16 from all other violation(s) of applicable State and federal law(s).

17
18 76. For an award of Plaintiffs' actual damages, and for any gains, profits,
19 or advantages attributable to all violations of 18 U.S.C. § 1962(b), according to the best
20 available proof.

21
22 77. For an award of treble (triple) damages, under authority of 18 U.S.C.
23 § 1964(c), for any gains, profits, or advantages attributable to all violations of 18 U.S.C. §
24 1962(b), according to the best available proof.

25
26 78. For an award of all damages sustained by Plaintiffs in consequence of
27 Defendants' several violations of 18 U.S.C. 1962(b), according to the best available proof.

1 79. For reasonable attorneys’ fees and costs.

2

3 80. For the imposition of a constructive trust on all monies derived by
4 Defendants, including all gains, profits, and advantages from their several acts of
5 racketeering in violation of 18 U.S.C. 1962(b) and from all other violation(s) of applicable
6 State and federal law(s).

7

8 **ON THE NINETEENTH CAUSE OF ACTION**

9

10 81. For a finding that all Defendants have associated with a RICO
11 *enterprise of persons* and of other individuals who were associated in fact, all of whom did
12 engage in, and whose activities did affect, interstate and foreign commerce in violation of
13 the RICO law at 18 U.S.C. § 1962(c) (Prohibited activities).

14

15 82. That this Court liberally construe the RICO laws and thereby find that
16 all Defendants have conducted and/or participated, directly or indirectly, in the affairs of
17 said RICO *enterprise* through a *pattern of racketeering activity* in violation of the RICO
18 laws at 18 U.S.C. §§ 1961(5) (“pattern” defined) and 1962(a), 1962(b), and 1962(c).

19

20 83. For an injunction against all Defendants and all of their directors,
21 officers, employees, agents, servants and all other *persons* in active concert or in
22 participation with them, to be enjoined *temporarily* during pendency of this action, and
23 *permanently* thereafter, from associating with any RICO *enterprise of persons*, or of other
24 individuals associated in fact, who do engage in, or whose activities do affect, interstate
25 and foreign commerce.

26

27 84. For an injunction against all Defendants and all of their directors,

28

1 officers, employees, agents, servants and all other *persons* in active concert or in
2 participation with them, to be enjoined *temporarily* during pendency of this action, and
3 *permanently* thereafter, from conducting or participating, either directly or indirectly, in
4 the conduct of the affairs of any RICO *enterprise* through a *pattern of racketeering activity*
5 in violation of the RICO laws at 18 U.S.C. §§ 1961(5) and 1962(c).

6
7 85. For an injunction against all Defendants and all of their directors,
8 officers, employees, agents, servants and all other *persons* in active concert or in
9 participation with them, to be enjoined *temporarily* during pendency of this action, and
10 *permanently* thereafter, from committing any more predicate acts in furtherance of the
11 RICO *enterprise* alleged in the Second Amended Complaint.

12
13 86. For an accounting of all monies Defendants derived, including all
14 gains, profits, and advantages from their several acts of racketeering in violation of 18
15 U.S.C. § 1962(c) and from all other violation(s) of applicable State and federal law(s).

16
17 87. For an award of Plaintiffs' actual damages, and for any gains, profits,
18 or advantages attributable to all violations of 18 U.S.C. § 1962(c) according to the best
19 available proof.

20
21 88. For an award of treble (triple) damages, under authority of 18 U.S.C.
22 § 1964(c), for any gains, profits, or advantages attributable to all violations of 18 U.S.C. §
23 1962(c) according to the best available proof.

24
25 89. For an award of all damages sustained by Plaintiffs in consequence of
26 Defendants' several violations of 18 U.S.C. § 1962(c) according to the best available
27 proof.

28

1 90. For reasonable attorneys' fees and costs.

2

3 91. For the imposition of a constructive trust of all monies derived by
4 Defendants, including all gains, profits, and advantages from their several acts of
5 racketeering in violation of 18 U.S.C. § 1962 (c) and from all other violation(s) of
6 applicable State and federal law(s).

7

8 **ON THE TWENTIETH CAUSE OF ACTION**

9

10 92. For a finding that all Defendants, both jointly and severally, used
11 income derived from a pattern of racketeering activity to invest in, establish, or operate an
12 enterprise whose activities did affect interstate and foreign commerce in violation of 18
13 U.S.C. §§ 1961(5) and 1962(a).

14

15 93. For a finding that all Defendants have conspired to acquire and
16 maintain an interest in, and/or conspired to acquire and maintain control of, a RICO
17 *enterprise* engaged in a *pattern of racketeering activity* in violation of 18 U.S.C. §§
18 1961(5), 1962(b) and (d).

19

20 94. For a finding that all Defendants have conspired to conduct and
21 participate in said RICO *enterprise* through a *pattern of racketeering activity* in violation
22 of 18 U.S.C. §§ 1961(5), 1962(c) and (d).

23

24 95. For an injunction against all Defendants and all their directors,
25 officers, employees, agents, servants and all other *persons* in active concert or in
26 participation with them, to be enjoined *temporarily* during pendency of this action, and
27 *permanently* thereafter, from using income derived from a *pattern of racketeering activity*

28

1 to invest in, establish or operate an enterprise engaged in or affecting interstate or foreign
2 commerce, whether directly or indirectly, in violation of 18 U.S.C. §§ 1961(5) and 1962(a).

3
4 96. For an injunction against all Defendants and all their directors,
5 officers, employees, agents, servants and all other *persons* in active concert or in
6 participation with them, to be enjoined *temporarily* during pendency of this action, and
7 *permanently* thereafter, from conspiring to acquire or maintain an interest in, or control of,
8 any RICO *enterprise* that engages in a *pattern of racketeering activity* in violation of 18
9 U.S.C. §§ 1961(5), 1962(b) and (d).

10
11 97. For an injunction against all Defendants and all their directors,
12 officers, employees, agents, servants and all other *persons* in active concert or in
13 participation with them, to be enjoined *temporarily* during pendency of this action, and
14 *permanently* thereafter, from conspiring to conduct, participate in, or benefit in any manner
15 from any RICO *enterprise* through a *pattern of racketeering activity* in violation of 18
16 U.S.C. §§ 1961(5), 1962(c) and (d).

17
18 98. For an injunction against all Defendants and all their directors,
19 officers, employees, agents, servants and all other *persons* in active concert or in
20 participation with them, be enjoined *temporarily* during pendency of this action, and
21 *permanently* thereafter, from committing any more predicate acts in furtherance of the
22 RICO *enterprise* alleged in the Second Amended Complaint.

23
24 99. That all Defendants be required to account for all gains, profits, and
25 advantages derived from their several acts of racketeering in violation of 18 U.S.C. §
26 1962(d) and from all other violation(s) of applicable State and federal law(s).

1 100. For an award of Plaintiff's actual damages, and for any gains, profits,
2 or advantages attributable to all violations of 18 U.S.C. §1962(d) according to the best
3 available proof.

4
5 101. For an award of treble (triple) damages, under authority of 18 U.S.C.
6 § 1964(c), for any gains, profits, or advantages attributable to all violations of 18 U.S.C. §
7 1962(d) according to the best available proof.

8
9 102. For an award of all damages sustained by Plaintiffs in consequence of
10 Defendants' several violations of 18 U.S.C. § 1962(d) according to the best available
11 proof.

12
13 103. For reasonable attorneys' fees and costs.

14
15 104. For the imposition of a constructive trust on all monies derived by
16 Defendants, including all gains, profits, and advantages from their several acts of
17 racketeering in violation of 18 U.S.C. § 1962(d) and from all other violation(s) of
18 applicable State and federal law(s).

19
20 **FOR ALL CAUSES OF ACTION**

21
22 103. For prejudgment interest;

23
24 104. For costs of suit incurred herein

25
26 105. For reasonable attorney's fees, to the extent allowed by law;

1 106. For an accounting to determine all sums of monies collected by
2 Defendants as kickbacks from the PRC Factory and the Trading Company, and for sums of
3 money collected by Gardner, Chang, and Lim from the PRC Factory, the Trading
4 Company, or other third parties for work performed while they were employed by HCT;
5

6 107. For an imposition of a constructive trust on all monies collected by
7 Defendants from the PRC Factory, the Trading Company or other third parties for
8 kickbacks or work performed by Gardner, Chang, and or/Lim while they were employed
9 by HCT, including, but not limited to, funds deposited into HSBC foreign currency bank
10 accounts in Hong Kong (Account Number XXX-XXX657-833) and Great Britain
11 (Account Number XX-XX-XX-XX381435).
12

13 108. For suitable temporary restraining orders, writs of attachment,
14 expedited discovery orders, and preliminary injunctions, as necessary to prevent
15 Defendants from causing additional harm to HCT and to prevent the dissipation of assets
16 and to ensure that a judgment can be satisfied;
17

18 109. For such other and further relief as the Court may deem just and
19 proper.
20
21
22
23
24
25
26
27
28

1 DATED: June 26, 2017

2 GARCIA RAINEY BLANK & BOWERBANK LLP

3
4 By



5
6
7 NORMA V. GARCIA
8 JEFFREY M. BLANK
9 Attorneys for Plaintiffs
10 HCT GROUP HOLDINGS LIMITED, et al.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 I, Maya Kapadia, state:

3 My business address is 695 Town Center Dr., Suite 700, Costa Mesa, CA 92626. I am
4 over the age of eighteen years and not a party to this action.

5 On the date set forth below, I served true copies of the foregoing document(s) described as
6 **SECOND AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF** on the interested parties listed below:

7 Counsel for Defendants NICHOLAS GARDNER, COGNISANT LLC,
8 COGNISANT REAL ESTATE, LLC, and COGNISANT LIMITED:

9 Eric J. Lorenzini, Esq.
10 Elliot J. Siegel, Esq.
11 Elkins Kalt Weintraub Reuben Gartside LLP
12 2049 Century Park East, Suite 2700
13 Los Angeles, California 90067
14 Tel: (310) 746-4400
15 Fax: (310) 746-4499
16 esiegel@elkinskalt.com
17 elorenzini@elkinskalt.com
18 tthomas@elkinskalt.com
19 dcalderon@elkinskalt.com

20 Counsel for Defendants DOE-1 DERRICK CHANG and DOE-2 Cindy Lim

21 David M. Marmorstein, Esq.
22 Michael A. Taitelman
23 Freedman + Taitelman LLP
24 1901 Avenue of the Stars, Suite 500
25 Los Angeles, CA 90067
26 Tel: (310) 201-0005
27 Fax: (310) 201-0045
28 dmarmorstein@ftllp.com
mtaitelman@ftllp.com

BY ELECTRONIC MAIL: Based on a court order or an agreement of the parties to accept service by electronic mail, I caused the document(s) identified above to be transmitted electronically to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on June 26, 2017, at Overland Park, Kansas.

Maya Kapadia

Maya Kapadia