

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION

MATRIX, LLC,)
)
Plaintiff,)
)
v.)
)
CANOPY PARTNERS, LLC; TMP)
INTERACTIVE LLC; JEFF PITTS;)
GREG GILBERT; ABIGAIL MacIVER;)
APRIL ODOM; and FICTITIOUS)
DEFENDANTS ONE, TWO, and)
THREE,)
Defendants.)

Case No.: _____

COMPLAINT

Plaintiff Matrix, LLC pleads this Complaint against Defendants Canopy Partners, LLC; TMP Interactive LLC; Jeff Pitts; Greg Gilbert; Abigail MacIver; April Odom; and Fictitious Defendants One, Two, and Three (collectively, “Defendants”):

PARTIES

1. Plaintiff Matrix, LLC (“Matrix”) is a limited liability company organized under the laws of the state of Alabama. Matrix is an Alabama citizen because Matrix’s sole member is a citizen of Alabama and resident of Tuscaloosa County.

2. Defendant Canopy Partners, LLC (“Canopy Partners”) is a Florida limited liability company. Canopy Partners is considered an Alabama citizen because at least one of its members is a citizen of Alabama and resident of Jefferson County.

3. Defendant TMP Interactive LLC (“TMP Interactive”) is an Alabama limited liability company. TMP Interactive is an Alabama citizen because its sole member is a citizen of Alabama and resident of Jefferson County.

4. Defendant Jeff Pitts (“Pitts”) is an individual over the age of 19 years and a resident of Jefferson County, Alabama. Pitts is a former employee of Matrix, a member of Canopy Partners, and a member of TMP Interactive.

5. Defendant Greg Gilbert (“Gilbert”) is an individual over the age of 19 years and a resident of Jefferson County, Alabama. Gilbert is a former employee of Matrix and a current employee of Canopy Partners.

6. Defendant Abigail MacIver (“MacIver”) is an individual over the age of 19 years and a resident of Tallahassee, Florida. MacIver is a former employee of Matrix and a current employee of Canopy Partners.

7. Defendant April Odom (“Odom”) is an individual over the age of 19 years and a resident of Jefferson County, Alabama. Odom is a former independent contractor of Matrix and a current employee of Canopy Partners.

8. Fictitious Defendant One (“Defendant One”) is, upon information and belief, a publicly traded company organized under the laws of the state of Florida with its principal place of business in Juno Beach, Florida. Although the legal identity of Defendant One has not been ascertained, Matrix will substitute the legal name of this fictitious defendant once it is identified through the discovery process.

9. Fictitious Defendant Two (“Defendant Two”) is, upon information and belief, an individual over the age of 19 years and a citizen of Florida. Defendant Two is an officer of Defendant One. Although the legal identity of Defendant Two has not been ascertained, Matrix

will substitute the legal name of this fictitious defendant once it is identified through the discovery process.

10. Fictitious Defendant Three (“Defendant Three”) is, upon information and belief, an individual over the age of 19 years and a citizen of Florida. Defendant Three is also an officer of Defendant One. Although the legal identity of Defendant Three has not been ascertained, Matrix will substitute the legal name of this fictitious defendant once it is identified through the discovery process. (Defendant One, Defendant Two, and Defendant Three are collectively referred to as the “Fictitious Defendants.”)

JURISDICTION AND VENUE

11. This Court has personal jurisdiction pursuant to Rule 4.2(b), ALA. R. CIV. P.

12. This Court has subject matter jurisdiction pursuant to ALA. CODE §§ 12-11-30 and 12-11-31 (2020).

13. Venue is proper in this judicial circuit pursuant to ALA. CODE §§ 6-3-2 and 6-3-7 (2020) and Rule 82, ALA. R. CIV. P., because the claims arose in part in Jefferson County and multiple Defendants are residents of Jefferson County.

FACTS

14. Matrix is a strategic communications firm headquartered in Montgomery, Alabama, with three satellite offices and clients nationwide. Matrix was founded by Dr. Joseph W. Perkins, Jr. (“Dr. Perkins”), who remains Matrix’s principal and sole member. All Matrix employees ultimately report to Dr. Perkins. Dr. Perkins travels broadly to meet with Matrix clients and other stakeholders but works from Matrix’s headquarters in Montgomery.

15. Matrix specializes in assisting clients with highly sensitive and crisis situations. Matrix also provides more general political consulting services to clients and advises clients on

strategic communications to the general public, business and political stakeholders, and other external groups. Through this work, Matrix often has access to highly confidential and proprietary information about its clients and their business operations.

16. Matrix also has its own trade secrets and highly confidential and proprietary information. For example, Matrix sometimes provides polling, focus group, and other research services to its clients. Over the decades, Dr. Perkins and Matrix have developed proprietary research techniques that enable them to provide unique services and advice to clients. Matrix also has longstanding relationships with client contacts, media outlets, and other external stakeholders that are not easily or quickly replicated.

17. Twenty-six years ago, Matrix hired Pitts as an employee to provide strategic communications and political consulting services to Matrix clients. Over the years, Pitts took on more of a leadership role within Matrix. In 2009, Pitts became the manager of Matrix's Birmingham, Alabama office and began servicing Matrix clients with less direct oversight and more independence from Dr. Perkins. As Pitts's role with Matrix continued to expand, he eventually became the company's chief executive officer around 2000.

18. In his capacity as manager of Matrix's Birmingham office, Pitts hired Gilbert and MacIver as Matrix employees and contracted with Odom as an independent contractor. Gilbert, MacIver, and Odom worked directly with Matrix clients and provided back-office services for Matrix's Birmingham office. During the entire time of their Matrix employment (or, in the case of Odom, during the entire time of her independent contractor relationship), Gilbert, MacIver, and Odom reported directly to Pitts.

19. Under Pitt's management, the Birmingham employees of Matrix regularly reported to Dr. Perkins on the status of services provided to Matrix clients by its Birmingham office.

20. In December of 2020, Dr. Perkins scheduled a meeting with Pitts to discuss Perkins's eventual retirement and a continuity plan for Matrix. Dr. Perkins had intended to develop a plan with Pitts's input through which Pitts would eventually take over leadership and an ownership interest in Matrix.

21. During this meeting and to Dr. Perkins's surprise, Pitts announced his desire to resign from Matrix and form his own competing communications company. This was the first time Pitts had mentioned breaking away from Matrix and going out on his own.

22. Although Dr. Perkins had no prior indication that Pitts wanted to form his own company, the two came to an agreement that Pitts would have exclusive rights to provide consulting services to two Matrix clients with which he had worked extensively and that Pitts and Matrix would jointly provide services to Defendant One.

23. Following his meeting with Dr. Perkins, Pitts resigned from Matrix and created Canopy Partners along with at least one other business partner. Canopy Partners is a communications consulting firm that provides similar services to those provided by Matrix.

24. On Pitts's resignation, Gilbert and MacIver also resigned from Matrix and became employees of Canopy Partners. At the same time, Odom terminated her independent contractor relationship with Matrix and also became a Canopy Partners employee.

25. Upon the resignation of these employees, Matrix changed the locks on its Birmingham office and undertook an inventory of equipment it owned that was used by Odom and the former employees, including computers, smartphones, and other electronic devices, and took additional steps to secure all electronically-stored information from unauthorized access by Odom and the former employees.

26. Matrix's Birmingham office housed a computer server on which significant amounts of electronically stored information was saved. This information included back-ups of Matrix company email accounts, text messages from Matrix-owned devices, and other communications and documents.

27. Immediately upon beginning the inventory process, Matrix's in-house technology team realized that the computer server in the Birmingham office had been physically compromised. It appeared that someone had tried to physically destroy the server in an apparent attempt prevent access to the electronic information it contained. This realization caused concern that Pitts and the other former employees were attempting to hide or destroy data stored on the server, which led to the suspicion surrounding these employees' and Odom's activities prior to their resignations.

28. Because of these suspicions, Matrix had all of the Birmingham office's electronic devices fully imaged to preserve the data they contained. Matrix successfully recovered and reviewed all data from the server.

29. In its investigation and review of the recovered data and communications, Matrix learned for the first time that without Matrix's or Dr. Perkins's knowledge:

- Pitts created an entity called TMP Interactive in 2018 through which he operated a competing communications consulting business during his employment by Matrix;
- Pitts even provided services to Matrix clients but billed those clients through TMP Interactive, effectively embezzling money from and unlawfully competing with Matrix; and

- Starting in 2017, Pitts, with the help of Gilbert, MacIver, and Odom, created various other entities—some 501(c)(4) organizations—as vehicles to accept money from various Matrix clients.

30. The communications uncovered in Matrix’s investigation revealed for the first time that Gilbert, MacIver, and Odom directly and knowingly participated in Pitts’s scheme to actively compete with Matrix while still respectively Matrix employees or independent contractor. From 2017 through their resignations, Pitts, Gilbert, MacIver, and Odom, spent the vast majority of their time working for Pitts’s competing businesses while being paid as Matrix employees.

31. The communications also showed that Pitts, Gilbert, MacIver, and Odom went to great lengths to hide their scheme from Dr. Perkins and Matrix.

32. Following their resignations, these former employees improperly retained Matrix trade secrets and proprietary information in the form of client contacts and relationships, relationships with valuable media and thought leader contacts, and confidential information related to the pricing of specialized communications services. They also unlawfully retained Matrix proprietary research techniques. Pitts, Gilbert, MacIver, and Odom and their business entities, including Canopy Partners and TMP Interactive, have continuously and improperly used Matrix trade secrets and proprietary information for their own benefit through unlawful competition with Matrix.

33. The Fictitious Defendants worked with Pitts and the other former Matrix employees to unlawfully divert fees earned by Matrix to Canopy Partners, TMP Interactive, and other entities Pitts, Gilbert, MacIver, and Odom created. During the course of this conspiracy, Defendants worked together to hide their unlawful competition scheme from Dr. Perkins and Matrix.

COUNT I
BREACH OF FIDUCIARY DUTIES

34. Matrix incorporates and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.

35. As Matrix employees, Pitts, Gilbert, and MacIver and Odom, as a Matrix independent contractor, owed fiduciary duties to Matrix. These fiduciary duties include their duty to act honestly and in the best interest of Matrix during their status as employees or an independent contractor. These fiduciary duties also include their duty not to compete with Matrix or to use Matrix's trade secrets and proprietary information or resources for their own purposes and to Matrix's detriment.

36. As discussed above, Pitts, Gilbert, MacIver, and Odom breached their fiduciary duties to Matrix. They breached their duties for the benefit of themselves, Canopy Partners, and TMP Interactive and with the concerted assistance of and benefit to the Fictitious Defendants.

WHEREFORE, premises considered, Matrix demands judgment against Defendants for compensatory and punitive damages, interest, attorneys' fees, costs of court, and such other equitable relief as may be deemed appropriate at trial.

COUNT II
FRAUD – CONCEALMENT

37. Matrix incorporates and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.

38. Defendants worked together to secretly divert business from existing Matrix clients away from Matrix and to Pitts's competing businesses while Pitts, Gilbert, and MacIver were Matrix employees and while Odom was a Matrix independent contractor.

39. Defendants hid the important fact of the existence of this scheme from Matrix.

40. Matrix was not aware of this important fact.

41. Because Matrix was not aware of the existence of Defendants' scheme, Matrix allowed Pitts, Gilbert, and MacIver to remain as Matrix employees (and Odom as a Matrix independent contractor) with access to Matrix clients, trade secrets, and proprietary information. Matrix was harmed as a result.

WHEREFORE, premises considered, Matrix demands judgment against Defendants for compensatory and punitive damages, interest, attorneys' fees, costs of court, and such other equitable relief as may be deemed appropriate at trial.

COUNT III
FRAUD – INTENTIONAL FALSE STATEMENT

42. Matrix incorporates and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.

43. In order to hide their scheme, Pitts, Gilbert, MacIver, and Odom misrepresented to Dr. Perkins and Matrix that they were working on projects for Matrix clients when, instead, they were spending their time on Matrix's payroll working for Pitts's competing businesses to the detriment of Matrix and some of its other clients. The remaining Defendants actively participated in, supported, and benefited from Pitts, Gilbert, MacIver, and Odom's scheme.

44. Pitts, Gilbert, MacIver, and Odom's statements were false.

45. Pitts, Gilbert, MacIver, and Odom knew their statements were false when they made them to Dr. Perkins and Matrix, and Matrix did not know they were false.

46. Pitts, Gilbert, MacIver, and Odom intended that Matrix rely on their statements.

47. Matrix reasonably relied on Pitts, Gilbert, MacIver, and Odom's statements.

48. Because of Matrix's reliance on their false statements, Matrix allowed Pitts, Gilbert, and MacIver to remain as Matrix employees (and Odom as an independent contractor)

with access to Matrix clients, trade secrets, and proprietary information. Matrix was harmed as a result.

WHEREFORE, premises considered, Matrix demands judgment against Defendants for compensatory and punitive damages, interest, attorneys' fees, costs of court, and such other equitable relief as may be deemed appropriate at trial.

**COUNT IV
VIOLATION OF THE ALABAMA TRADE SECRETS ACT**

49. Matrix incorporates and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.

50. As discussed above, Defendants took confidential and proprietary documents and information from Matrix, including those related to Matrix's business operations, client information, and client contacts and lists. This information is of significant economic value both to Matrix and to Matrix's competitors—including Canopy Partners and TMP Interactive—who would use this information to unlawfully compete against Matrix.

51. Matrix is a privately-owned company, and the information Defendants stole was maintained secretly by Matrix. This information is not disclosed to the public and is neither publicly known nor publicly available. The only reason Pitts was given access to this information was pursuant to his senior leadership position at Matrix.

52. The information Pitts, Gilbert, MacIver, and Odom took without Matrix's authorization constitute trade secrets under the Alabama Trade Secrets Act.

53. Pitts, Gilbert, MacIver, and Odom misappropriated these trade secrets by taking them through improper means and by obtaining them in breach of the confidence placed in them by Matrix. Their actions in misappropriating these trade secrets were taken for the benefit of and

acting as an agent of the remaining Defendants, who also misappropriated them by learning them from Pitts, Gilbert, MacIver, and Odom, whom they knew had misappropriated them.

54. Defendants' misappropriation of these trade secrets was done maliciously and in bad faith.

WHEREFORE, premises considered, Matrix demands judgment against Defendants for compensatory and punitive damages, interest, attorneys' fees, costs of court, and such other equitable relief as may be deemed appropriate at trial.

COUNT V UNJUST ENRICHMENT

55. Matrix incorporates and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.

56. Under Alabama law, an employee is precluded from receiving compensation from an employer for conduct that is disloyal to the employer or in violation of the employee's duties to the employer. The same duties and preclusions also apply to Odom as an independent contractor, both in addition to and as a result of her contractual obligations.

57. Pitts, Gilbert, MacIver, and Odom breached their fiduciary duties to Matrix and acted in bad faith by misappropriating Matrix's trade secrets and by secretly and unlawfully competing with Matrix while remaining Matrix employees or a Matrix independent contractor.

58. During the course of their employment, Pitts, Gilbert, and MacIver worked for their own personal benefits—and for the benefit of the remaining Defendants—rather than for Matrix's benefit, despite the fact that they were employed and compensated by Matrix. The same is also true for Odom during the course of her independent contractor relationship with Matrix.

WHEREFORE, premises considered, Matrix demands judgment against Defendants for compensatory and punitive damages, interest, attorneys' fees, costs of court, and such other equitable relief as may be deemed appropriate at trial.

**COUNT VI
CONVERSION**

59. Matrix incorporates and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.

60. Defendants intentionally and wrongfully used and misused Matrix's property.

61. Matrix did not consent to Defendants' conduct.

62. Defendants' conduct caused Matrix harm.

WHEREFORE, premises considered, Matrix demands judgment against Defendants for compensatory and punitive damages, interest, attorneys' fees, costs of court, and such other equitable relief as may be deemed appropriate at trial.

**COUNT VII
INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONS**

63. Matrix incorporates and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.

64. A business relationship existed between Matrix and its clients that were solicited by Defendants and that were convinced by Defendants to divert their Matrix fee payments to other entities.

65. Defendants were fully aware of Matrix's relationships with these clients.

66. Defendants intentionally interfered with Matrix's relationships with these clients by soliciting these customers on behalf of Pitts's competing businesses and by convincing these clients to divert their Matrix fee payments to other entities controlled by Defendants.

67. There is no justification for Defendants' interference. In fact, Defendants' intentional interference with Matrix's business relations was in direct violation of Pitts, Gilbert, MacIver, and Odom's duties owed to Matrix.

68. As a result of Defendants' intentional interference, Matrix has been harmed in the form of lost revenue and profits. Matrix has also suffered damage to its goodwill and reputation.

WHEREFORE, premises considered, Matrix demands judgment against Defendants for compensatory and punitive damages, interest, attorneys' fees, costs of court, and such other equitable relief as may be deemed appropriate at trial.

COUNT VIII CIVIL CONSPIRACY

69. Matrix incorporates and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.

70. Defendants agreed and worked together to commit the unlawful conduct described above.

71. Defendants did so to harm Matrix and to benefit themselves.

72. All Defendants did at least one overt act to achieve the unlawful conduct described above.

73. Defendants' conduct caused Matrix harm.

WHEREFORE, premises considered, Matrix demands judgment against Defendants for compensatory and punitive damages, interest, attorneys' fees, costs of court, and such other equitable relief as may be deemed appropriate at trial.

JURY DEMAND

Matrix respectfully demands a trial by jury on all issues so triable.

Respectfully submitted this the 23rd day of July, 2021.

/s/ Cason M. Kirby

Cason M. Kirby
Counsel for Plaintiff Matrix, LLC

OF COUNSEL:

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PLEASE SERVE THE FOLLOWING DEFENDANTS BY CERTIFIED MAIL:

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/s/ Cason M. Kirby

Of Counsel