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MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY

LEE ENTERPRISES, INC.

Plaintiff,

v.

WINDFALL, INC., METTLE, LLC
d/b/a METTLE STRATEGIC
MARKETING SOLUTIONS, JIM
McGOWAN, BROOKE REDPATH,
TARA HALLS, TIA METZGER,
MEGAN RICHTER, and Does 1-10,

Defendants.

Dept. No.
Cause No.

PLAINTIFF'S VERIFIED
COMPLAINT FOR TRO,
INJUNCTIVE RELIEF, AND
DAMAGES WITH JURY DEMAND

Plaintiff Lee Enterprises, Inc. ("Lee Enterprises"), by and through its
counsel of record, Garlington, Lohn & Robinson, PLLP, alleges the following:

Plaintiff's Verified Complaint for TRO, Injunctive Relief,
and Damages with Jury Demand

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Allegations Common to All Counts

1. Lee Enterprises is a Delaware corporation that is the parent corporation and owner of *The Missoulian*, a newspaper in Missoula, Montana. Montana Marketing Group (“MMG”) is part of *The Missoulian*. *The Missoulian* and MMG are based in Missoula County, Montana.
2. *The Missoulian* and MMG operate out of the same office in Missoula, Montana. MMG is a full service marketing and advertising agency that operates on behalf of *The Missoulian*. MMG serves customers by developing advertising strategies, creating artwork in support of those strategies, and ensuring the customers’ advertisements are properly and competitively placed in print, radio, television, online, and social media outlets. *The Missoulian* and MMG derive revenue from competitively serving their customers in this manner.
3. Similar to other newspapers across the nation, *The Missoulian* and Lee Enterprises are experiencing a transformation: there has been a substantial circulation shift from print copies of its newspapers to internet subscription and circulation. Given this transformation, digital marketing and advertising have become an essential part of its business. *The Missoulian* now derives a substantial portion of its revenue through digital marketing and advertising. This includes not just advertising on *The Missoulian*’s website, but also, through MMG, facilitating the marketing strategies for customers for advertising and marketing throughout

the internet.

4. *The Missoulian* and MMG have developed detailed profiles of customer information related to the digital marketing and advertising services provided to the customers. This customer information includes detailed profiles of customer budgets and purchase histories. This information further itemizes the types of advertisements purchased, the sizes of the advertisements, and the location and placement of the advertisements. Cumulatively, this information assists *The Missoulian* and MMG by allowing them to better serve their customers and to be able to better compete with other marketing and advertising agencies for the business of their customers. This detailed customer information is proprietary in nature.

5. As part of their business, *The Missoulian* and MMG have developed extensive digital marketing and advertising records for their customers as part of their strategic online plans. The customers of *The Missoulian* and MMG, in turn, use this information to more efficiently reach their customers. This type of information is particularly important in the current market where so much revenue is generated from reaching customers online and through online sales. *The Missoulian* and MMG also serve their customers by developing profiles for search engine optimization programs that are incorporated into customer websites. This information is proprietary in nature and provides a competitive advantage for *The*

Missoulian and MMG.

6. As part of its business, Lee Enterprises purchases market research reports and analyses, which are furnished to *The Missoulian* to assist in serving its customers. For instance, Lee Enterprises purchased a research report that set forth Montana businesses with more than \$20,000,000 in revenue. This information is proprietary in nature and provides a competitive advantage for Lee Enterprises through *The Missoulian*.

7. Windfall, Inc. (“Windfall”) is a marketing and advertising agency based in Missoula County, Montana.

8. Mettle, LLC d/b/a Mettle Strategic Marketing Solutions (“Mettle”) is a marketing and advertising agency based in Missoula County, Montana. Mettle’s date of organization was February 2, 2015.

9. Jim McGowan (“McGowan”) was the Publisher of *The Missoulian* from October 2011 until Mark Heintzelman replaced him as the Publisher on September 19, 2014. On September 17th, McGowan understood his boss was traveling to Missoula meet with him. On September 18th, McGowan knew he was being demoted from the position of Publisher. McGowan had the option to continue his employment at *The Missoulian* as the Director of Sales and Marketing, where he would lead the Montana Marketing Group (“MMG”) and *The Missoulian* advertising department with Brooke Redpath (“Redpath”), Tara Halls

("Halls"), and Tia Metzger ("Metzger") as direct reports. McGowan opted to stay at *The Missoulian* in this role and accept the demotion.

10. McGowan resigned from *The Missoulian* effective March 2, 2015. McGowan is currently the Communications Manager of Windfall and the Vice President of Strategy and Communication of Mettle. McGowan is a principal and an owner of Windfall with his wife Ericka McGowan. McGowan is a principal and owner of Mettle. Upon information and belief, McGowan is a resident of Missoula County, Montana.

11. Halls was employed by *The Missoulian*, working as an Advertising Director. Halls provided her notice of resignation from *The Missoulian* on January 23, 2015, and her last day of employment was February 13, 2015. Halls is currently the Vice President of Client Services at Mettle. Halls is a principal and owner of Mettle. Upon information and belief, Halls is a resident of Ravalli County, Montana.

12. Redpath was employed by *The Missoulian*, working as the Digital Sales Director. Redpath resigned from *The Missoulian* on March 23, 2015, and her last day of employment was April 3, 2015. Redpath is currently the Vice President of Acquisition at Mettle. Redpath is a principal and owner of Mettle. Upon information and belief, Redpath is a resident of Missoula County, Montana.

13. Metzger was employed by *The Missoulian*, working as the Agency

Director of MMG. Metzger resigned from *The Missoulian* effective March 31, 2015. Metzger is currently an Account Executive at Windfall. Upon information and belief, she is a resident of Missoula County, Montana.

14. Megan Richter (“Richter”) was employed by *The Missoulian*, working as the Creative Director of MMG. Richter resigned from *The Missoulian* effective April 22, 2015. Upon information and belief, Richter currently works for Windfall. Upon information and belief, Richter is a resident of Missoula County, Montana.

15. The true names and capacities of the Defendants named herein as Does 1-10, inclusive, whether individual, corporate, associate, or otherwise are not known to Lee Enterprises and, therefore, these Defendants are sued under fictitious names. Lee Enterprises will seek leave of Court, if necessary, to amend this Complaint to identify the true names and capacities when these parties have been identified. Lee Enterprises hereby alleges that the Defendants Does 1-10 are responsible in some manner for the events and injuries.

16. As nearly all Defendants reside in Missoula County and all relevant conduct took place in Missoula County, venue for this action is proper with this Court.

17. Upon information and belief, Windfall was formed by McGowan and has been in existence for a significant period of time. While McGowan was

employed by *The Missoulian* he also performed some work for Windfall with his wife, Ericka McGowan, and his son, Kyle McGowan. It was understood that Windfall performed some customer service functions for different Montana tourism entities, primarily running a call center to respond to inquiries related to tourism in Montana. This was acceptable to Lee Enterprises based upon this understanding of Windfall's business and McGowan's representations that he would not compete with *The Missoulian* and MMG through his work with Windfall.

18. Through the course of their work at *The Missoulian* and MMG, McGowan, Halls, Redpath, Metzger, and Richter had access to the proprietary information that Lee Enterprises developed to better serve, via *The Missoulian* and MMG, its customers and to allow it to more effectively compete with rival marketing and advertising agencies. McGowan, Halls, Redpath, Metzger, and Richter had access to, among other things, the following proprietary information: detailed accounts of customer budgets and purchase histories; digital marketing and advertising records; market research reports and analyses; and detailed information related to upcoming bids for *The Missoulian* and MMG for customer services.

19. Following McGowan's demotion in the fall of 2014, McGowan, Halls, Redpath, Metzger, and Richter began to plan their departure from *The*

Missoulian and MMG. They created a strategy to develop Windfall and Mettle as full service marketing and advertising agencies that would directly compete with MMG.

20. McGowan advised employees of *The Missoulian* to copy their marketing and advertising information from computer hardware owned by *The Missoulian* to private digital storage devices to facilitate transferring business outside of *The Missoulian* and MMG.

21. Forensic computer analysis shows that McGowan began copying proprietary information as early as the day he was demoted from the Publisher of *The Missoulian*.

22. McGowan, Halls, Redpath, Metzger, and Richter began planning their departure and future business while working for *The Missoulian* “on company time.” While they worked for *The Missoulian*, McGowan, Halls, Redpath, Metzger, and Richter not only planned their employment departures from *The Missoulian* and MMG, but they began directly competing with *The Missoulian* and MMG on behalf of Windfall and Mettle.

23. McGowan, Halls, Redpath, Metzger, and Richter misappropriated proprietary information from *The Missoulian* and MMG, and, acting on behalf of Windfall and Mettle, they began competing with *The Missoulian* and MMG. This conduct included, but was not limited to:

- copying and deleting company files;
- contacting customers of *The Missoulian* using *The Missoulian* email accounts to schedule meetings for the purposes of promoting Windfall and/or Mettle;
- directing communications with customers of *The Missoulian* who were seeking business services from *The Missoulian* to their personal email accounts rather than a representative from *The Missoulian* for the purposes of promoting the interests of Windfall and/or Mettle; and
- forwarding *The Missoulian's* proprietary information to their personal email accounts or copying it to an external storage device for use by Windfall and Mettle, including:
 - market research purchased by Lee Enterprises and *The Missoulian*;
 - rate proposals created by *The Missoulian*;
 - proprietary buying and reporting information for specific customers of *The Missoulian* and MMG; and
 - specific digital information for clients that explicitly sets forth their digital marketing operations.

These actions taken individually by McGowan, Halls, Redpath, Metzger, and Richter and on behalf of Mettle and Windfall, constitute actual malice.

24. When Redpath left *The Missoulian* she took her physical files from her office. Furthermore, Redpath went into the computer network of *The Missoulian* and deleted extensive active files that were needed for customer services and business interests. Redpath's conduct, taken individually and on behalf of Mettle, constitutes actual malice.

25. Days before Richter left employment with *The Missoulian* she went into the computer network of *The Missoulian* and copied and deleted extensive active files that belonged to *The Missoulian*. These files contained valuable information that constituted property of *The Missoulian*. Richter's conduct, taken individually and on behalf of Windfall, constitutes actual malice.

26. To summarize, McGowan, Halls, Redpath, Metzger, and Richter have misappropriated proprietary information from *The Missoulian* and MMG to promote the business interests of Windfall and Mettle in direct competition with *The Missoulian* and MMG. Through these acts of misappropriation, Windfall and Mettle have gained access to the following proprietary information that is the property of Lee Enterprises, through *The Missoulian* and MMG: customer lists; customer budgets, purchase histories, and advertisement histories; customer strategic online plans including audience extension buys and related digital marketing information; search engine optimization histories; market survey information; and advertising materials for historical customers who then switched

to Windfall and Mettle shortly after this information had been sent to personal email accounts.

27. Lee Enterprises, through *The Missoulian* and MMG, has incurred damages and continues to incur damages through the actions of Defendants. Lee Enterprises has incurred losses and continues to incur damages due to the dissemination of the sensitive and proprietary business information that Defendants have misappropriated. The loss of this information has directly led to the loss of historical customers who conducted business with the Defendants. These losses may continue to occur given the advantage that Defendants have gained through the misappropriation of Lee Enterprises' proprietary information. The loss of these clients erodes Lee Enterprises' reputation, leads to the loss of additional clients, and causes harm to the goodwill Lee Enterprises has earned through its marketing and advertising business. The loss of this confidential, proprietary information further causes harm to the clients of Lee Enterprises because this information was never intended to be taken from Lee Enterprises. This, in turn, leads to additional irreparable injury to the reputation and business of Lee Enterprises.

**Count 1 – Violation of Montana’s Uniform Trade Secrets Act
(Mont. Code Ann. §§ 30-14-401, et. seq.)
(All Defendants)**

28. Lee Enterprises incorporates by reference and re-alleges herein all previous paragraphs.

29. By virtue of their employment with *The Missoulian* and MMG, McGowan, Halls, Redpath, Metzger, and Richter were given access to and obtained confidential and trade secret information including but not limited to *The Missoulian*’s customer lists; customer budgets, purchase histories, and advertisement histories; customer strategic online plans including audience extension buys and search engine optimization histories; market survey information and analyses; and specific bids for services to clients.

30. These materials and the information derive independent economic value, actual and potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from their disclosure or use and are the subject of reasonable efforts under the circumstances to maintain their secrecy.

31. Lee Enterprises has at all times kept secret and confidential its trade secrets and confidential or proprietary business information and has made only limited and confidential disclosures of this information. The Employee Handbook for Lee Enterprises specifically informs employees they that cannot disclose

proprietary or sensitive information. The handbook further forbids the use of confidential information for personal profit and forbids its use by competitors. Finally, the handbook mandates that employees protect company assets, including proprietary information.

32. Upon information and belief, Defendants have used and are using the confidential information and trade secrets of Lee Enterprises. Defendants have used this confidential and trade secret information to further their position and for their advantage and to Lee Enterprises' disadvantage.

33. Defendants are using Lee Enterprises' proprietary and trade secret information to wrongfully and illegally compete with Lee Enterprises.

34. Defendants misappropriated this information by improper means, and used it to further the business objectives of Windfall and Mettle.

Count 2 – Injunctive Relief (All Defendants)

35. Lee Enterprises incorporates by reference and re-alleges herein all previous paragraphs.

36. Based upon the allegations set forth in this Complaint, Lee Enterprises has demonstrated a likelihood of success on the merits and that a balancing of the equities favors an injunction against all Defendants.

37. Unless a Temporary Restraining Order is issued and Defendants are permanently enjoined from the possession, use, and dissemination of the

proprietary information created by Lee Enterprises, Lee Enterprises will further suffer immediate and irreparable injury due to the following:

- Lee Enterprises will lose the competitive advantage it had obtained through years of work compiling client and market information that allowed it to better serve its clients and compete with rival agencies;
- Lee Enterprises will continue to suffer the loss of longtime clients of *The Missoulian* through Defendants' use of this proprietary information that not only provides significant detail as to how *The Missoulian* operates but also how pertinent clients operate;
- the loss of clients related to Defendants' misappropriation of this proprietary information will lead to irreparable injury to Lee Enterprises' business reputation and the related goodwill necessary to successfully compete within the pertinent competitive business market; and
- Defendants have misappropriated information about *The Missoulian's* clients without the permission of these clients. Lee Enterprises stands to incur the loss of confidence and trust of the clients, the loss of goodwill, and the loss of business reputation.

38. Lee Enterprises has no adequate remedy at law.

**Count 3 – Breach of the Implied Covenant of Good Faith and Fair Dealing
(McGowan, Halls, Redpath, Metzger, and Richter)**

39. Lee Enterprises incorporates by reference and re-alleges herein all previous paragraphs.

40. A covenant of good faith and fair dealing was implied at all times in the employment of McGowan, Halls, Redpath, Metzger and Richter with *The Missoulian*.

41. McGowan, Halls, Redpath, Metzger, and Richter breached the implied covenant of good faith and fair dealing repeatedly by undertaking and participating in the above-described actions.

42. These breaches of the implied covenant have damaged Lee Enterprises.

**Count 4 – Tortious Interference with Business Relations
(All Defendants)**

43. Lee Enterprises incorporates by reference and re-alleges all previous paragraphs.

44. The above-described acts by Defendants were intentional and willful.

45. The above-described acts by Defendants were unlawful and were calculated to cause damage to Lee Enterprise's business. Defendants intentionally interfered with *The Missoulian's* relationships with its clients in order to cause loss to *The Missoulian* and MMG, and to strengthen Windfall and Mettle. Defendants

also misappropriated information developed by Lee Enterprises, *The Missoulian*, and MMG, and used it to gain customers for Windfall and Mettle. Specifically, Defendants' acts were further calculated to harm Lee Enterprises, via *The Missoulian* and MMG, by depriving it of the business it conducted with specific customers, and the revenue earned thereby.

46. Defendants' acts of interference were done without right or justifiable cause.

47. Defendants caused actual damages and loss to Lee Enterprises through *The Missoulian* and MMG.

**Count 5 – Civil Conspiracy
(McGowan, Halls, Redpath, Metzger, and Richter)**

48. Lee Enterprises incorporates by reference and re-alleges herein all previous paragraphs.

49. McGowan, Halls, Redpath, Metzger, and Richter agreed to resign from *The Missoulian* and join Windfall and/or Mettle to compete with MMG, and planned their departure from *The Missoulian* together before resigning.

50. In planning their departure, Defendants repeatedly misappropriated proprietary information belonging to Lee Enterprises and *The Missoulian* and interfered with customer relationships.

51. As detailed above, Defendants' acts were unlawful, tortious, and overt.

52. Defendants' civil conspiracy damaged *The Missoulian* and MMG and consequently damaged Lee Enterprises.

**Count 6 – Duty of Loyalty
(McGowan, Halls, Redpath, Metzger, and Richter)**

53. Lee Enterprises incorporates by reference and re-alleges herein all previous paragraphs.

54. McGowan, Halls, Redpath, Metzger, and Richter owed a duty of loyalty to their employer at all times during their employment. They owed a duty under common law and under Montana Code Annotated § 39-2-409.

55. McGowan, Halls, Redpath, Metzger, and Richter breached that duty repeatedly by actively competing with their employer while they were still employees, by diverting the business of their employer to Mettle and Windfall, and by misappropriating information that was proprietary and the property of their employer.

56. These breaches of the duty of loyalty damaged Lee Enterprises.

**Count 7 – Unfair Competition and Misappropriation
(All Defendants)**

57. Lee Enterprises incorporates by reference and re-alleges herein all previous paragraphs.

58. Lee Enterprises, through *The Missoulian* and MMG, rightfully owned and possessed specific proprietary information relating to their business, as set

forth above.

59. Defendants have used Lee Enterprises' proprietary information for the benefit of competing against Lee Enterprises.

60. Under the common law of Montana, the previously described action constitutes unfair competition and misappropriation.

61. Defendants' actions have damaged Lee Enterprises.

62. Defendants have been unjustly enriched by their unfair competition and misappropriation of trade secrets and proprietary information, in violation of Montana law.

**Count 8 – Conversion
(All Defendants)**

63. Lee Enterprises incorporates by reference and re-alleges herein all previous paragraphs.

64. Lee Enterprises, through *The Missoulian* and MMG, rightfully owned and possessed specific proprietary information relating to their business, as set forth above.

65. Defendants have exercised unauthorized dominion over such property, which has resulted in damages to Lee Enterprises.

**Count 9 – Punitive Damages
(All Defendants)**

66. Lee Enterprises incorporates by reference and re-alleges herein all

previous paragraphs.

67. Defendants knew or intentionally disregarded facts that created a high probability of injury to Lee Enterprises when they deliberately acted in conscious or intentional disregard of the high probability of injury to Lee Enterprises, or deliberately acted with indifference to the high probability of injury to Lee Enterprises.

68. Defendants' malicious conduct warrants punitive damages pursuant to Montana Code Annotated § 27-1-221 in an amount to be determined at trial.

69. Pursuant to Montana Code Annotated § 30-14-404, Lee Enterprises also seeks exemplary damages.

Prayer for Relief

Wherefore, Plaintiff Lee Enterprises respectfully requests that the Court enter judgment in its favor against Defendants as follows:

1. Pursuant to Montana's Trade Secret Act, Montana Code Annotated § 30-14-403, Lee Enterprises seeks a Temporary Restraining Order and Preliminary Injunction because Defendants' conduct is continuing to cause immediate and irreparable injury to Lee Enterprises. The Temporary Restraining Order and Injunction should enjoin Defendants, directly or indirectly, alone or in concert with others, in the following manner:

- from further use of Lee Enterprises' trade secret information in any

manner;

- from further transfer, copying, or distribution of any of Lee Enterprises' trade secret information in any form;
- from the destruction of any of Lee Enterprises' trade secret information;
- from further soliciting any business from any existing or recent customers of *The Missoulian* and MMG until it can be confirmed that Defendants do not possess or have not been in possession of trade secret information that provides Defendants an unfair advantage in pursuing those customers;
- from employing Lee Enterprises' trade secret information in the course of solicitation of any customers or from using it in any manner for the purposes of Defendants' business;
- to immediately cease solicitation of any current employees of Lee Enterprises and *The Missoulian*;
- to preserve all evidence which may be relevant to this litigation, including but not limited to, all physical files, all computer or electronically stored information that is related to the claims in this cause of action and/or that may reveal Defendants' use of confidential information and/or trade secret information of Lee Enterprises and

The Missoulian. This specifically pertains to email, all stored digital information (cloud storage systems, external hard drives, thumb drives, or otherwise), and text messages, among other items. Lee Enterprises has sent Defendants Litigation Hold letters that provide further details; and

- as part of the preliminary injunction, Defendants shall provide immediate access to Lee Enterprises to Defendants' computers, telephones, and other digital storage devices to search for and document the misappropriation of confidential trade secret information. This pertains to all information storage systems including, but not limited to, computers, telephones, hard drives, thumb drives, cloud digital storage space, business and private email accounts, history of text messages, and other means of storing digital information and messaging; and
- Defendants shall return all pertinent information, digital or physical, that is proprietary in nature and is the property of Lee Enterprises and *The Missoulian*.

2. For a permanent injunction, preventing Defendants and/or their agents from using Lee Enterprises' trade secret information.

3. For all damages for the claims set forth herein in an amount to be

determined at trial.

4. For punitive damages, pursuant to Montana Code Annotated § 27-1-221.

5. For an accounting of Defendants' revenues and profits that have been wrongfully derived through their misappropriation of proprietary property from Lee Enterprises, the misappropriation of trade secrets, and via other means of unfair competition that has caused damages to Lee Enterprises and revenues for Defendants.

6. For attorney fees and exemplary damages under Montana Code Annotated § 30-14-405.

7. For such other and further relief as the Court deems just.

Demand for Jury Trial

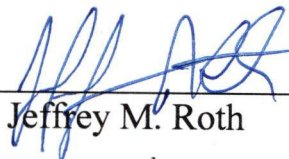
Plaintiff demands a jury trial of all issues in this case.

DATED this 26th day of May, 2015.

Attorneys for Plaintiff:

GARLINGTON, LOHN & ROBINSON, PLLP

By



Jeffrey M. Roth

VERIFICATION

STATE OF MONTANA)

: ss.

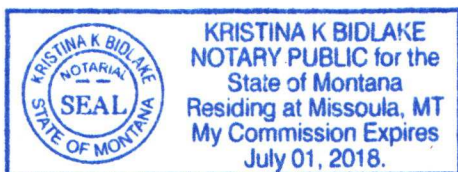
County of Missoula)

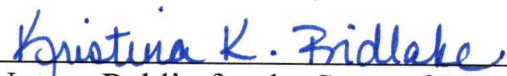
Mark Heintzelman, being first duly sworn upon his oath, deposes and says:

That he is an authorized representative of Lee Enterprises, Inc., the Plaintiff named in the foregoing Complaint; that he has read the foregoing Complaint, knows the contents thereof, and that the matters and things therein stated are true to the best of his knowledge, information, and belief.


Mark Heintzelman

Signed and sworn to before me on the 26th day of May, 2015, by Mark Heintzelman.




Notary Public for the State of Montana