

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

SYNTHESES USA SALES, LLC
1302 Wrights Lane East, West Chester
Pennsylvania 19380,

Plaintiff,

v.

STRYKER CORPORATION
2825 Airview Boulevard
Kalamazoo, Michigan 49002,

and

MICHAEL RUSSELL
11 Lupine Drive
Corte Madera, CA 94925,

and

JONATHAN SASSANI
3637 Fillmore Street
Apartment #305
San Francisco, CA 94123,

and

KRISTEN PHILLIPS-CHENG
2123 Ashton Avenue
Menlo Park, CA 94025,

Defendants.

CASE NO.:

COMPLAINT

Plaintiff Synthes USA Sales, LLC (“Synthes”), files this Complaint against Defendants Stryker Corporation (“Stryker”), Michael Russell (“Russell”), Jonathan Sassani (“Sassani”), and Kristen Phillips-Cheng (“Phillips-Cheng”) (collectively, “Defendants”), and in support thereof avers as follows:

INTRODUCTION

1. This case involves the highly competitive industry of medical implants and instrumentation used in spinal surgery in the hospitals located in and around northern California. Synthes seeks damages for actions taken by Stryker to raid Synthes' sales force in the San Francisco area to obtain an improper competitive advantage through the use and disclosure of Synthes' confidential information and trade secrets by Synthes' former sales employees, Russell, Sassani, and Phillips-Cheng.

2. Synthes also seeks damages against these three former sales employees for their misappropriation of Synthes' trade secrets, as well as their breach of their contractual and common law fiduciary obligations to Synthes, including without limitation non-solicitation and non-disclosure obligations, as well as damages for actions taken by Stryker to intentionally induce these contractual and statutory breaches.

3. These three employees—Russell, Sassani, and Phillips-Cheng—signed Confidentiality, Non-Solicitation and Non-Competition Agreements (“Non-Solicitation Agreements”) and Employee Innovation and Non-Disclosure Agreements (“Non-Disclosure Agreements”) with Synthes, as explained in greater detail below.

4. Russell, Sassani, and Phillips-Cheng resigned from Synthes between late August and early October 2011, and promptly began working for Stryker, one of Synthes' direct competitors.

5. Since their resignations, and despite Synthes' reminders of their obligations to Synthes, Russell, Sassani, and Phillips-Cheng are routinely soliciting customers with whom they had direct dealings and coverage responsibilities while employed by Synthes, and in so doing,

are using and/or disclosing Synthes' confidential and trade secret information, thus depriving Synthes of its competitive advantage.

6. Through this Complaint, Synthes seeks relief against Defendants for:
 - A. Defendants' violations of the Pennsylvania Uniform Trade Secrets Act;
 - B. Russell, Sassani, and Phillips-Cheng's violations of their Non-Solicitation Agreements with Synthes;
 - C. Russell, Sassani, and Phillips-Cheng's violations of their Non-Disclosure Agreements with Synthes;
 - D. Russell, Sassani, and Phillips-Cheng's violations of their common law fiduciary duties of loyalty to Synthes;
 - E. Stryker's aiding and abetting Russell, Sassani, and Phillips-Cheng's breaches of fiduciary duties; and
 - F. Stryker's tortious interference with Russell, Sassani, and Phillips-Cheng's contractual obligations to Synthes.

THE PARTIES

7. Plaintiff Synthes USA Sales, LLC is a citizen of the State of Delaware and the Commonwealth of Pennsylvania. It is a Delaware limited liability company and maintains its principal place of business at 1302 Wrights Lane East, West Chester, Pennsylvania 19380. Synthes USA Sales, LLC is a successor to Synthes Spine Company, L.P.¹ as a result of a merger by conversion under Delaware law. Synthes USA Sales, LLC's sole member is Synthes USA HQ, Inc., which in turn is a wholly-owned subsidiary of Synthes, Inc. Both Synthes USA HQ, Inc. and Synthes, Inc. are citizens of the State of Delaware and the Commonwealth of Pennsylvania; they are Delaware corporations and maintain their principal place of business at 1302 Wrights Lane East, West Chester, Pennsylvania 19380.

¹ Synthes Spine Company, L.P. was formerly known as Synthes Spine Company, Ltd.

8. Defendant Stryker is a citizen of the State of Michigan, with its principal place of business at 2825 Airview Boulevard, Kalamazoo, Michigan 49002.

9. Defendant Russell is a former Synthes employee and a citizen of the State of California. Upon information and belief, Russell maintains a residence at 11 Lupine Drive, Corte Madera, California, 94925.

10. Defendant Sassani is a former Synthes employee and a citizen of the State of California. Upon information and belief, Sassani maintains a residence at 3637 Fillmore Street, Apartment #305, San Francisco, CA 94123.

11. Defendant Phillips-Cheng is a former Synthes employee and a citizen of the State of California. Upon information and belief, Phillips-Cheng maintains a residence at 2123 Ashton Avenue, Menlo Park, CA 94025.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the parties, as Synthes and Defendants are citizens of different states, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

13. Venue is appropriate in this judicial district under 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to Synthes' claims occurred in this judicial district, and because Sassani and Phillips-Cheng's separately executed Non-Solicitation Agreements with Synthes contain forum selection clauses requiring enforcement of the agreements in Pennsylvania state or federal courts.

FACTS SUPPORTING SYNTHES' COMPLAINT

Background

14. Synthes is a worldwide leader in the medical device industry, designing, manufacturing, marketing and selling medical implants and instrumentation such as plates, screws, rods, and other devices used in orthopedic surgeries for internal fixation of broken bones and for spinal and facial surgery.

15. Russell, Sassani, and Phillips-Cheng worked for the Synthes' business division that specializes in the design, manufacture, marketing and sale of instrumentation and implants used in spinal surgeries.

16. Synthes' customers include, but are not limited to, hospitals, hospital employees who influence or may influence the use or purchase of medical devices from Synthes, including materials management, operating room, sterile processing, and related personnel, and physicians who use or may use the devices supplied by Synthes, and their partners, employees, and staff nurses (collectively, "Customers").

17. Synthes is engaged in a highly competitive business in which the protection of its confidential, proprietary, and trade secret information is vital to prevent competitors, such as Stryker, or would-be competitors from obtaining an unfair competitive advantage.

18. Synthes markets and sells its products through a sales force that is comprised primarily of regional Sales Consultants and Associate Sales Consultants who are assigned to specific territories.

19. Synthes assigns Sales Consultants territories for which they are responsible, and generally pays Sales Consultants on a commission basis. As part of their responsibilities, Sales

Consultants are required to assist in sales and coverage for Customers in adjoining or geographically proximate territories.

20. Synthes invests millions of dollars annually in resources to develop its technology, systems, and products. To protect its investment, Synthes requires all employees to sign a Non-Disclosure Agreement, which protects against the use or disclosure of confidential, proprietary, and trade secret information, defined to cover, among other things, product technology, product development information, project information, and manufacturing methods and technology.

21. Employees hired in capacities which involve sales, marketing, and product development are also required to sign a Non-Solicitation Agreement, prohibiting disclosure of confidential information, use of Synthes' confidential information and trade secrets for the solicitation of Synthes' Customers, and solicitation of Synthes' employees to leave their employment, subject to reasonable geographic and temporal limitations.

22. In exchange for executing the Non-Disclosure Agreement and Non-Solicitation Agreement, Synthes promises to provide and does provide its employees with access to its confidential and proprietary information, Customer relationships and related goodwill, and valuable training programs in which Synthes has invested significant time, effort, and money.

Russell's Employment with Synthes and Handling of His Assigned Territory

23. Synthes hired Russell as a Sales Consultant, a position in which he worked from September 14, 2005 until his resignation, which became effective on August 31, 2011. In this position, Russell was assigned to the San Francisco territory and reported to Regional Manager Robert McGee.

24. Synthes gave Russell direct access to its business relationships, and Russell was responsible for maintaining and developing business relationships on Synthes' behalf in his assigned sales territory. He also gained confidential information about Synthes' Customers and business activities that he would not have obtained but for his working for Synthes. As set forth in greater detail below, Russell's hiring was contingent on his execution of the Non-Solicitation and Non-Disclosure Agreements.

25. During his tenure with Synthes until the time of his resignation, Russell was assigned direct responsibility for sales in the San Francisco territory at UCSF Medical Center, San Francisco General Hospital, San Francisco VA Medical Center, and Marin General Hospital. Within those hospitals, Synthes also entrusted Russell specifically to call on several key surgeon Customers who perform surgery at those hospitals.

Sassani's Employment with Synthes and Handling of His Assigned Territories

26. Synthes hired Sassani as an Associate Sales Consultant, a position in which he worked from December 29, 2008 to June 31, 2009. In this position, Sassani supported Russell in the San Francisco territory and reported to Regional Manager Robert McGee.

27. On July 1, 2009, Synthes promoted Sassani to Sales Consultant for the Crystal Springs territory, also in northern California, reporting to Regional Manager Robert McGee. Sassani had sole sales responsibilities in this territory. Sassani remained in this position until his resignation, which became effective on October 3, 2011.

28. Synthes gave Sassani direct access to its business relationships, and Sassani was responsible for maintaining and developing business relationships on Synthes' behalf in his assigned sales territories. He also gained confidential information about Synthes' Customers and

business activities that he would not have obtained but for his working for Synthes. In fact, Sassani had no previous work experience in the medical device sales industry, and both his hiring and his promotion were made contingent on his execution of the Non-Solicitation and Non-Disclosure Agreements.

29. During his tenure with Synthes until the time of his resignation, Sassani was assigned responsibility for the accounts listed *supra* in ¶25 while he served as an Associate Sales Consultant, and was assigned direct responsibility for sales at El Camino Hospital, Kaiser Redwood City, Peninsula Hospital, Saint Francis Medical Center, San Mateo Medical Center, Sequoia Hospital, Seton Medical Center, and Stanford Medical Outpatient Center for the duration of his employment with Synthes. Sassani was also assigned responsibility for UCSF Medical Center after Russell's departure from Synthes. Within those hospitals, Synthes also entrusted Sassani specifically to call on several key surgeon Customers who perform surgery at those hospitals.

Phillips-Cheng's Employment with Synthes and Handling of Her Assigned Territories

30. Synthes hired Phillips-Cheng as an Associate Sales Consultant, a position in which she worked from January 14, 2008 to November 10, 2008. In this position, Phillips-Cheng supported Russell in the San Francisco territory and reported to Regional Manager Robert McGee.

31. On November 10, 2008, Synthes promoted Phillips-Cheng to Sales Consultant for the San Jose territory, also in northern California, reporting to Regional Manager Robert McGee. Phillips-Cheng had sole sales responsibilities in this territory. Phillips-Cheng remained in this position until her resignation, which became effective on August 31, 2011.

32. Synthes gave Phillips-Cheng direct access to its business relationships, and Phillips-Cheng was responsible for maintaining and developing business relationships on Synthes' behalf in her assigned sales territories. She also gained confidential information about Synthes' Customers and business activities that she would not have obtained but for her working for Synthes. In fact, Phillips-Cheng had no previous work experience in the medical device sales industry, and both her hiring and her promotion were made contingent on her execution of the Non-Solicitation and Non-Disclosure Agreements.

33. During her tenure with Synthes until the time of her resignation, Phillips-Cheng was assigned responsibility for the accounts listed *supra* in ¶25 while she served as an Associate Sales Consultant, and was assigned direct responsibility for sales at Bascom Surgery Center, El Camino Hospital in Los Gatos, Silicon Valley Surgery Center, Regional Medical Center of San Jose, Forrest Surgery Center of San Jose, Good Samaritan Hospital, Kaiser Permanente San Jose Medical Center, O'Connor Hospital, Santa Clara Valley Health and Hospital System, Kaiser Permanente Santa Clara Medical Center, Palo Alto Medical Foundation, and Bay Area Surgical Group for the duration of her employment with Synthes. Within those hospitals, Synthes also entrusted Phillips-Cheng specifically to call on several key surgeon Customers who perform surgery at those hospitals.

**Synthes Treats the Information it Shared with Russell, Sassani, and
Phillips-Cheng as Highly Confidential**

34. Synthes protects its business relationships and confidential information by, among other measures, requiring its employees to enter into the Non-Solicitation and Non-Disclosure Agreements as a condition of employment.

35. Synthes also requires its employees to return, and not retain copies of, all correspondence files, business card files, customer and prospect lists, price lists, product lists, software, manuals, technical data, forecasts, budgets, notes and other material that contain any of this information and other similar information upon separation from Synthes' employment.

36. The Non-Solicitation and Non-Disclosure Agreements protect Synthes against disclosure of confidential information and the use of such confidential information for the solicitation of Synthes' Customers, subject to reasonable scope and temporal limitations.

37. Synthes takes additional and significant measures to protect its confidential, proprietary and trade secret information, including obtaining patent protection when available and physically and electronically limiting access to information.

38. As promised in the Non-Solicitation Agreement, Synthes provided Russell, Sassani, and Phillips-Cheng with information about Synthes' marketing and sales strategies, product performance information, expansion plans, and other confidential and proprietary information. Synthes also provided Russell, Sassani, and Phillips-Cheng with confidential and proprietary information about its technology, pricing, competitive terms, and other related information.

39. As promised in the Non-Solicitation Agreement, Russell, Sassani, and Phillips-Cheng received a substantial amount of specialized training on the technical aspects of Synthes' products and the medical procedures in which these products are used. This training included techniques for educating operating room personnel and surgeons so that Russell, Sassani, and Phillips-Cheng could be resources to those surgeons during medical procedures on the use of new and existing implants and instrumentation. During these training sessions, Russell, Sassani,

and Phillips-Cheng also received information about Synthes' contract and sales administration, personnel, and other departments.

Russell, Sassani, and Phillips-Cheng's Non-Solicitation and Non-Disclosure Agreements with Synthes

40. In connection with their taking of employment with Synthes, Russell, Sassani, and Phillips-Cheng were asked to review and subsequently sign the Non-Solicitation and Non-Disclosure Agreements. All three of their offer letters made employment contingent on execution of these agreements. In addition, Sassani and Phillips-Cheng signed virtually identical Non-Solicitation Agreements in connection with their promotions from Associate Sales Consultants to Sales Consultants. Both of their promotion offers were made contingent on execution of these Non-Solicitation Agreements.

41. True and correct copies of Russell's Non-Solicitation and Non-Disclosure Agreements are Exhibits A and B hereto, respectively.

42. True and correct copies of Sassani's Non-Solicitation and Non-Disclosure Agreements are Exhibits C and D hereto.

43. True and correct copies of Phillips-Cheng's Non-Solicitation and Non-Disclosure Agreements are Exhibit E and F hereto.

44. The confidentiality provisions of the Non-Solicitation Agreements specifically provide that, during their employment and after their employment ended, Russell, Sassani, and Phillips-Cheng were not permitted to disclose the following:

- A. customer lists, customer preferences, and customer usage history;
- B. prices, renewal dates and other detailed terms of customer and supplier contracts and proposals;

- C. pricing policies, methods of delivering services and products, marketing and sales strategies, product know-how, product technology, and product development strategies;
- D. physical security systems, access control systems, network, and other equipment designs;
- E. employment and payroll records;
- F. forecasts, budgets, and other non-public financial information;
- G. product performance information, product technical information, and product know-how; and
- H. expansion plans, management policies, and other business strategies and policies.

See Exhibits A, C, and E.

45. In addition, Sassani and Phillips-Cheng's Non-Solicitation Agreements also prevent them from disclosing inventions (whether or not reduced to practice), discoveries, methodologies, algorithms, formulas, protocols, reports, data, results, observations, computer programs, patent applications, strategic plans, hypotheses, research directions, developments, improvements, drawings, designs, specifications, opinions of legal counsel, and draft or final regulatory filings. See Exhibits C and E.

46. In addition, the non-solicitation covenants in Sassani and Phillips-Cheng's Non-Solicitation Agreements prohibit them from soliciting business from the following categories of Synthes Customers and prospective Customers for a period of one year following their resignation:

- A. any Customer of Synthes within their assigned territory;
- B. any Customer of Synthes that they contacted, solicited, received commissions on sales, to whom they provided coverage, or in any way supported or dealt with at any time during the last two years of their employment; or

- C. any prospective Customer of Synthes that they contacted or who received or requested a proposal or offer from them on behalf of Synthes at any time during the last two years of their employment; or
- D. any Customer of Synthes for which they had any direct or indirect responsibility at any time during the last two years of their employment.

See Exhibits C and E.

47. The non-solicitation covenants in Russell's Non-Solicitation Agreement similarly prohibit Russell from soliciting business from the following categories of Synthes Customers and prospective Customers for a period of one year following his resignation:

- A. any Customer of Synthes that he solicited at any time during the last three years of his employment;
- B. any prospective Customer of Synthes that received or requested a proposal or offer from him on behalf of Synthes at any time during the last three years of his employment; or
- C. any Customer or prospective Customer of Synthes for which he had any responsibility, directly or indirectly, at any time during the last three years of his employment.

See Exhibit A.

48. For a period of one year following their resignations, Russell, Sassani, and Phillips-Cheng were also prohibited from soliciting any Synthes employees to leave their employment, such as by offering employment elsewhere. See Exhibits A, C, and E.

49. In sum, the restrictions in the Non-Solicitation Agreements are reasonable in scope and time, as they limit Russell, Sassani, and Phillips-Cheng from disclosing Synthes' highly proprietary and trade secret information, including customer lists; from using Synthes' confidential information and trade secrets for the solicitation of Synthes' Customers (whether current or prospective) in their assigned territories or with whom they had contact as a result of their employment with Synthes for a period of one year following the end of their employment

with Synthes; and from soliciting other Synthes employees to leave their employment with Synthes for a period of one year following the end of their employment with Synthes.

50. The Non-Disclosure Agreements that Russell, Sassani, and Phillips-Cheng signed prohibit them from, among other things, using, publishing or otherwise disclosing any of Synthes' trade secrets or confidential information or data either during or subsequent to their employment with Synthes. The Non-Disclosure Agreements further required Russell, Sassani, and Phillips-Cheng to promptly return all items which belong to Synthes or which by their nature are for the use of Synthes employees only, including, without limitation, all written and other materials which are of a secret or confidential nature relating to Synthes' business. See Exhibits B, D, and F.

51. Russell, Sassani, and Phillips-Cheng were aware that their obligations to Synthes under both Agreements remained in force after their resignations from Synthes.

52. Synthes neither would have allowed Russell, Sassani, or Phillips-Cheng to become employees had they not signed both the Non-Solicitation and Non-Disclosure Agreements prior to their commencing employment with Synthes, nor would Synthes have promoted Sassani and Phillips-Cheng from Associate Sales Consultants to Sales Consultants had they not signed the Non-Solicitation Agreements. Moreover, Synthes fulfilled its obligations under these Agreements.

53. The Non-Solicitation Agreements provide for the award of attorneys' fees and costs incurred in connection with their enforcement:

I agree to indemnify Synthes for its reasonable attorneys fees and costs incurred in enforcing the terms of this agreement should I violate any of its terms.

See Exhibits A, C, E.

Application of Pennsylvania Law to the Agreements Signed by Russell, Sassani, and Phillips-Cheng with Synthes

54. The Non-Solicitation Agreements have choice of law provisions requiring the application of Pennsylvania law to the interpretation and enforcement of the Agreements.

55. This choice of law is part of Synthes' need to protect its interests with a uniform and national standard.

56. Synthes also incorporates its choice of law provision because the Commonwealth of Pennsylvania has a substantial and overriding interest in Synthes' contractual relationships with Russell, Sassani, and Phillips-Cheng in that:

- A. Synthes' principal place of business is located in Pennsylvania;
- B. Synthes drafted the Non-Disclosure Agreement and Non-Solicitation Agreement in Pennsylvania;
- C. Synthes countersigned the Non-Disclosure Agreement with Sassani and Phillips-Cheng and the Non-Solicitation Agreement with Russell, Sassani, and Phillips-Cheng in Pennsylvania;
- D. Synthes drafted Russell, Sassani, and Phillips-Cheng's initial offers of employment ("Offer Letters") in Pennsylvania and Russell, Sassani, and Phillips-Cheng were required to return their acceptances to Pennsylvania;
- E. At the time they accepted employment with Synthes, Russell, Sassani, and Phillips-Cheng were made aware that Synthes' principal place of business and senior management personnel are located in Pennsylvania;
- F. Russell, Sassani, and Phillips-Cheng worked "in the field" and from home, they did not have an office, and they maintained almost daily contact, via telephone, letter, and electronic mail communications, with Synthes' Pennsylvania offices and employees during their employment;
- G. Russell, Sassani, and Phillips-Cheng each received a sales policies manual, an employee policies manual, benefits information, and other employee policy information as well as price lists, customer lists, product

literature, brochures, and other new product information supporting materials from Synthes' Pennsylvania offices;

- H. Russell, Sassani, and Phillips-Cheng received sales samples from Synthes' Pennsylvania offices that they then used in developing customers and potential customers;
- I. Russell, Sassani, and Phillips-Cheng entered into purchase orders with customers, sent these purchase orders to Synthes' Pennsylvania offices, and then received commissions based on these orders;
- J. Russell, Sassani, and Phillips-Cheng's initial budgets for business expenses were determined in Synthes' Pennsylvania offices;
- K. Russell, Sassani, and Phillips-Cheng submitted their reimbursable business expenses to and received reimbursement checks that were issued from Synthes' Pennsylvania offices;
- L. Russell, Sassani, and Phillips-Cheng's salaries, commissions, and benefits were calculated, made and administered from Pennsylvania;
- M. Russell, Sassani, and Phillips-Cheng received extensive training from Synthes at Synthes' Pennsylvania offices, and received training materials associated with these training sessions developed and provided to them in or from Pennsylvania; and
- N. Russell, Sassani, and Phillips-Cheng received around-the-clock customer service support from Pennsylvania and maintained frequent contact via telephone, electronic mail, or other forms of communication with Synthes' customer support personnel.

Russell, Sassani, and Phillips-Cheng's Resignations from Synthes

57. By August 10, 2011, Russell received an offer from Stryker and knew he would be leaving Synthes. Russell, however, waited at least two weeks before advising Synthes that he would be joining a competitor because he knew that Synthes would deny him continued access to Synthes' confidential and trade secret information. Before notifying Synthes of his intent to join Stryker, and while still employed by Synthes, Russell not only advised his physician Customers that he would be joining Stryker, but also criticized Synthes in an effort to convert

business away from Synthes and in favor of Stryker. Russell also solicited other Synthes Sales Consultants, including Sean Murphy, Captain Hayes, and Sassani to join him at Stryker in violation of his Non-Solicitation Agreement, and recommended to an assembly of sales consultants at a regional meeting that they consider employment with Stryker.

58. Russell and Phillips-Cheng resigned concurrently, effective August 31, 2011, and both promptly began working for Stryker in September, if not before.

59. Approximately one month later, on October 3, 2011, Sassani resigned from his employment with Synthes and advised that he, too, would be working for Stryker in northern California. Like Russell, Sassani, while still employed by Synthes, also began contacting numerous individuals about his departure from Synthes until he was asked to refrain from doing so by Synthes Regional Manager Robert McGee.

60. Upon learning of Russell, Sassani, and Phillips-Cheng's resignations, Synthes promptly discontinued each employee's access to company email and all other company databases. Synthes also sent letters to each employee reminding them of their obligations under the Non-Solicitation and Non-Disclosure Agreements. Finally, Synthes also sent letters to Stryker regarding Russell, Sassani, and Phillips-Cheng's ongoing obligations, and enclosed copies of the Non-Solicitation and Non-Disclosure Agreements.

Defendants' Violations of Contractual, Statutory, and Common Law Obligations

61. Immediately prior to Russell, Sassani, and Phillips-Cheng's resignations, Stryker had little presence in the northern California territories previously assigned to these individuals by Synthes. More specifically, Stryker's contract with a major, independent distributor of Stryker products, called Bioinitiatives, expired, and Stryker was looking to regain its business

presence in the region. Accordingly, Stryker decided to raid Synthes' business by hiring multiple Synthes Sales Consultants and, as set forth below, disregarding all obligations owed to Synthes.

62. Shortly after his resignation, Russell, on Stryker's behalf, began soliciting and assisting his former physician Customers for whom he had direct responsibility while employed by Synthes, including without limitation physicians at UCSF Medical Center, San Francisco General Hospital, and Marin General Hospital. Moreover, on at least one occasion, Russell used Synthes medical devices to complete a surgery on behalf of Stryker, and without Synthes' knowledge.

63. Since her resignation, Phillips-Cheng, on Stryker's behalf, has routinely solicited and assisted physicians who work in her former Synthes territory.

64. Promptly after resigning from Synthes, Sassani, on Stryker's behalf, contacted at least one of his former Synthes Customers by text message to set up a business meeting. Since that time, Sassani has contacted other physicians in his former accounts, including physicians at El Camino Hospital, Peninsula Hospital, and Seton Hospital to advise them about new Stryker products, and has assisted with surgeries at UCSF Medical Center. Additionally, Sassani has assisted and solicited Synthes physician Customers for whom he provided case coverage while employed by Synthes.

65. Having learned of these developments, Synthes promptly sent additional letters to Russell, Sassani, and Stryker in early October 2011, again reminding them of their obligations under the Non-Solicitation and Non-Disclosure Agreements and demanding assurances that

Defendants would adhere to the Agreements with Synthes. None of the Defendants responded to these letters.

66. On October 19, 2011, Synthes sent a final letter to Stryker as a “final attempt for an amicable resolution.” This letter, too, went unanswered.

67. Notwithstanding their contractual obligations and multiple, unanswered reminder letters, and at Stryker’s behest, Russell, Sassani, and Phillips-Cheng have engaged in activities which violate their Non-Solicitation and Non-Disclosure Agreements.

68. Russell, Sassani, and Phillips-Cheng are, directly or indirectly, using or disclosing Synthes’ confidential information and trade secrets in connection with their work for Stryker in violation of their contractual and statutory obligations.

69. Russell, Sassani, and Phillips-Cheng are, directly or indirectly, interacting with and soliciting Customers in violation of their contractual and statutory obligations for the express purpose of converting business from Synthes to Stryker.

70. Russell has, directly or indirectly, solicited Synthes employees, including Sean Murphy, Captain Hayes, and Sassani, to leave Synthes and/or join Stryker in violation of his contractual obligations.

71. Defendants’ acts of disclosure and solicitation have caused and will continue to cause direct harm to Synthes in its business by, among other things, loss of market share, loss of investment in specialized training, disclosure or use of confidential information, interference with Customer relations, lost sales, loss of goodwill and reputational harm. Defendants’ actions deprive Synthes of the benefit of its bargain with Russell, Sassani, and Phillips-Cheng through their binding contractual obligations.

COUNT I
MISAPPROPRIATION OF TRADE SECRETS UNDER THE PENNSYLVANIA
UNIFORM TRADE SECRETS ACT (12 PA.C.S. § 5301, *et seq.*)
(Synthes v. Defendants)

72. The allegations contained in the preceding paragraphs of this Complaint are hereby incorporated.

73. Russell, Sassani, and Phillips-Cheng acquired access to at least the following confidential trade secrets during their employment with Synthes:

- A. customer lists, customer preferences, and customer usage history;
- B. prices, renewal dates and other detailed terms of customer and supplier contracts and proposals;
- C. pricing policies, methods of delivering services and products, marketing and sales strategies, product know-how, product technology, and product development strategies;
- D. physical security systems, access control systems, network, and other equipment designs;
- E. employment and payroll records;
- F. forecasts, budgets, and other non-public financial information;
- G. product performance information, product technical information, and product know-how; and
- H. expansion plans, management policies, and other business strategies and policies.

74. Upon information and belief, Russell, Sassani, and Phillips-Cheng took and then used and disclosed Synthes' trade secrets without express or implied consent for the benefit of themselves and Synthes' direct competitor, Stryker, in the course of their employment with Stryker.

75. Stryker knew that Russell, Sassani, and Phillips-Cheng acquired, used, and disclosed Synthes' trade secrets and confidential information unlawfully and in violation of their contractual, statutory, and common law obligations to Synthes.

76. The information acquired, disclosed and used by Defendants includes, but is not limited to, information concerning confidential Customer information; sales, revenue, and volume information; business plans; business practices; pricing; marketing and sales strategies; strategic plans; and product technology and development strategies.

77. The information also includes information Russell, Sassani, and Phillips-Cheng improperly sent to their personal and/or family email addresses and information they failed to return to Synthes after the resignation of their employment, including without limitation Synthes information stored on their personal computers.

78. Synthes' trade secrets are not available to the general public, could not originate with another party, and were compiled at substantial expense to Synthes.

79. Synthes takes substantial measures to protect the secrecy of its trade secrets, including, but not limited to, requiring employees to sign the Non-Solicitation and Non-Disclosure Agreements.

80. Synthes' trade secrets could not easily be duplicated and derive independent economic value from not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain economic value from their disclosure or use.

81. Synthes' trade secrets provide Synthes a competitive advantage in the marketplace.

82. Use of Synthes' trade secrets gives Defendants an unfair and wrongful competitive advantage and compromises Synthes' competitive advantage.

83. Use of Synthes' trade secrets by Defendants would unjustly enrich them.

84. Defendants' conduct is a direct and proximate cause of Synthes' damages.

85. Synthes has suffered damages, including attorneys' fees and costs, by Defendants' unlawful activities.

WHEREFORE, Synthes demands judgment in its favor and against Defendants:

- A. For equitable relief as permitted by law;
- B. For actual, unjust enrichment, and/or reasonable royalty damages that Synthes is entitled to recover as a result of Defendants' violation of the Pennsylvania Uniform Trade Secrets Act;
- C. For incidental and consequential damages as permitted by law;
- D. For Synthes' attorneys' fees and costs incurred, as permitted by the Pennsylvania Uniform Trade Secrets Act; and
- E. For all such other relief as this Court deems appropriate.

COUNT II
BREACH OF CONTRACT: NON-SOLICITATION AGREEMENT
(Synthes v. Russell, Sassani, and Phillips-Cheng)

86. The allegations contained in the preceding paragraphs of this Complaint are hereby incorporated.

87. The Non-Solicitation Agreements between Synthes and Russell, Sassani, and Phillips-Cheng are valid and enforceable agreements.

88. Russell, Sassani, and Phillips-Cheng have breached their contractual duties to Synthes by, directly or indirectly, within one year after resigning their employment with Synthes,

if not before, using Synthes' confidential information and trade secrets to solicit Synthes' Customers on behalf of Stryker within the territories previously assigned to them, in violation of the non-solicitation obligations in their Non-Solicitation Agreements.

89. Russell, Sassani, and Phillips-Cheng have further breached their contractual duties to Synthes by, directly or indirectly, using confidential, proprietary, and/or trade secret information about the territories assigned to them by Synthes and its Customers and disclosing such information to Stryker, in violation of their confidentiality obligations in the Non-Solicitation Agreements.

90. Russell has also breached his contractual duties to Synthes by soliciting Synthes employees, including Sean Murphy, Captain Hayes, and Sassani, to leave Synthes and/or join Stryker within less than one year of his resignation, in violation of his Non-Solicitation Agreement.

91. Russell, Sassani, and Phillips-Cheng will continue, among other things, to take advantage of the specialized training, investment and access that Synthes gave them to its business and its valuable business relationships as well as its confidential and proprietary business information, and they will continue to solicit Synthes' Customers, all in violation of Sassani's contractual obligations.

92. Russell, Sassani, and Phillips-Cheng's breaches of contract are a direct and proximate cause of Synthes' damages.

93. All conditions precedent to the relief requested herein have been performed, have occurred, or have been waived.

94. Russell, Sassani, and Phillips-Cheng's acts alleged herein were performed without Synthes' consent.

95. Synthes has suffered damages, including attorneys' fees and costs, by the unlawful activities of Russell, Sassani, and Phillips-Cheng.

WHEREFORE, Synthes demands judgment in its favor and against Russell, Sassani, and Phillips-Cheng:

- A. For actual damages that Synthes is entitled to recover as a result of Russell, Sassani, and Phillips-Cheng's breaches of their Non-Solicitation Agreements with Synthes;
- B. For incidental and consequential damages as permitted by law;
- C. For Synthes' attorneys' fees and costs incurred in enforcing the terms of Non-Solicitation Agreements, as permitted by the Non-Solicitation Agreements; and
- D. For all such other relief as this Court deems appropriate.

COUNT III
BREACH OF CONTRACT: NON-DISCLOSURE AGREEMENT
(Synthes v. Russell, Sassani, and Phillips-Cheng)

96. The allegations contained in the preceding paragraphs of this Complaint are hereby incorporated.

97. The Non-Disclosure Agreements between Synthes and Russell, Sassani, and Phillips-Cheng are valid and enforceable agreements.

98. Russell, Sassani, and Phillips-Cheng breached their contractual duties to Synthes by using and disclosing the identities and preferences of Customers in the territories previously assigned to them by Synthes, information about Synthes' products and their performance, as well as other confidential information of Synthes in connection with their employment with Stryker.

99. Upon information and belief, Russell, Sassani, and Phillips-Cheng have further breached their contractual duties to Synthes by, directly or indirectly, using and disclosing confidential, proprietary, and/or trade secret information about their territories and Customers in connection with their work for Stryker, a direct competitor of Synthes, in violation of their non-disclosure and confidentiality obligations in their Non-Disclosure Agreements.

100. Upon information and belief, Russell, Sassani, and Phillips-Cheng will continue, among other things, to take advantage of Synthes' valuable confidential and proprietary business information in violation of their contractual obligations.

101. Russell, Sassani, and Phillips-Cheng's breaches of contract are a direct and proximate cause of Synthes' damages.

102. All conditions precedent to the relief requested herein have been performed, have occurred, or have been waived.

103. Russell, Sassani, and Phillips-Cheng's acts alleged herein were performed without Synthes' consent.

104. Synthes has suffered damages by the unlawful activities of Russell, Sassani, and Phillips-Cheng.

WHEREFORE, Synthes demands judgment in its favor and against Russell, Sassani, and Phillips-Cheng:

- A. For actual damages that Synthes is entitled to recover as a result of Russell, Sassani, and Phillips-Cheng's breaches of their Non-Disclosure Agreements with Synthes;
- B. For incidental and consequential damages as permitted by law; and
- C. For all such other relief as this Court deems appropriate.

COUNT IV
BREACH OF FIDUCIARY DUTY
(Synthes v. Russell, Sassani, and Phillips-Cheng)

105. The allegations contained in the preceding paragraphs of this Complaint are hereby incorporated.

106. Russell, Sassani, and Phillips-Cheng held positions of trust and confidence as Synthes employees and Sales Consultants.

107. In equity and good conscience, Russell, Sassani, and Phillips-Cheng were bound to act in good faith and with due regard for Synthes' interests while they were Synthes employees.

108. Synthes was dependent upon Russell, Sassani, and Phillips-Cheng to act only in Synthes' best interests until the end of their employment with Synthes.

109. Russell, Sassani, and Phillips-Cheng breached their fiduciary duties to Synthes by plotting to deprive Synthes of future business opportunities, including without limitation by contacting Synthes' customers to solicit their business on behalf of Stryker, all while still employed by Synthes.

110. Russell, Sassani, and Phillips-Cheng's conduct is a direct and proximate cause of Synthes' damages.

111. Synthes has suffered damages by the unlawful activities of Russell, Sassani, and Phillips-Cheng

WHEREFORE, Synthes demands judgment in its favor and against Russell, Sassani, and Phillips-Cheng:

A. For equitable relief as permitted by law;

- B. For actual damages that Synthes is entitled to recover as a result of Russell, Sassani, and Phillips-Cheng's violations of Pennsylvania common law;
- C. For incidental and consequential damages as permitted by law; and
- D. For all such other relief as this Court deems appropriate.

COUNT V
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(Synthes v. Stryker)

112. The allegations contained in the preceding paragraphs of this Complaint are hereby incorporated.

113. During the course of their employment with Synthes, Russell, Sassani, and Phillips-Cheng owed Synthes a fiduciary duty of loyalty, under which they were obligated to act exclusively for the benefit of Synthes.

114. Stryker knew at all relevant times that Russell, Sassani, and Phillips-Cheng, prior to their resignation from Synthes, owed Synthes the fiduciary duty of loyalty.

115. Stryker encouraged, supported, condoned, and otherwise aided and abetted Russell, Sassani, and Phillips-Cheng's violations of their fiduciary duties of loyalty to Synthes.

116. Synthes has suffered and continues to suffer actual legal damages as a result of Stryker's willful, malicious, and tortious acts.

117. Stryker's unlawful conduct has inflicted and continues to inflict losses, harms and injuries upon Synthes.

118. Stryker's actions are the direct and proximate cause of Synthes' damages.

WHEREFORE, Synthes demands judgment in its favor and against Stryker:

- A. For equitable relief as permitted by law;

- B. For actual damages that Synthes is entitled to recover as a result of Stryker's violations of Pennsylvania common law;
- C. For incidental and consequential damages as permitted by law; and
- D. For all such other relief as this Court deems appropriate.

COUNT VI
TORTIOUS INTERFERENCE WITH CONTRACT
(Synthes v. Stryker)

119. The allegations contained in the preceding paragraphs of this Complaint are hereby incorporated.

120. Synthes and Russell, Sassani, and Phillips-Cheng are parties to the Non-Solicitation and Non-Disclosure Agreements, which contain valid and enforceable post-employment non-solicitation and non-disclosure covenants.

121. Stryker's willful and intentional interference with Synthes' contractual relations with Russell, Sassani, and Phillips-Cheng constitutes tortious interference with contractual relations.

122. Stryker knew of Russell, Sassani, and Phillips-Cheng's contractual and legal obligations to Synthes under both Agreements when Stryker engaged in the willful and tortious conduct described herein.

123. Nevertheless, Stryker, without privilege and in violation of the law, induced Russell, Sassani, and Phillips-Cheng to breach their Non-Solicitation and Non-Disclosure Agreements by using and disclosing Synthes' confidential information and trade secrets for and converting Synthes business to Stryker, Synthes' direct competitor.

124. As such, Stryker has intentionally interfered with, and continues to intentionally interfere with, Synthes' contractual relations with Russell, Sassani, and Phillips-Cheng.

125. Stryker's tortious interference with Synthes' contractual relations with Russell, Sassani, and Phillips-Cheng has been and continues to be intentional, without justification, purposeful and with malice and intent to injure Synthes.

126. Synthes has suffered and continues to suffer actual legal damages as a result of Stryker's willful, malicious and tortious acts.

127. Stryker's conduct is a direct and proximate cause of Synthes' damages.

WHEREFORE, Synthes demands judgment in its favor and against Stryker:

- A. For equitable relief as permitted by law;
- B. For actual damages that Synthes is entitled to recover as a result of Stryker's violations of Pennsylvania common law;
- C. For incidental and consequential damages as permitted by law; and
- D. For all such other relief as this Court deems appropriate.

Respectfully submitted,

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