

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BIOSENSE WEBSTER, INC.,

Plaintiff,

v.

CHRISTOPHER WESTFALL and
ST. JUDE MEDICAL S.C., INC.

Defendants.

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CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

VERIFIED COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

Plaintiff Biosense Webster, Inc. (“Biosense”), by and through its undersigned counsel, complains about Defendants Christopher Westfall (“Westfall”) and St. Jude Medical S.C., Inc., (“SJMSC”), by alleging and stating as follows:

I. NATURE OF THIS ACTION

1. As set forth more fully herein, this action arises from the Defendants’ efforts to steal Biosense’s rights and interests in its trade secrets and/or confidential and proprietary information relating to the manufacture, marketing, sales and servicing of its atrial fibrillation (“AF”) products. Westfall learned of Biosense’s trade secrets and/or confidential and proprietary information while working in a position of trust with Biosense, *i.e.*, as a Territory Manager for the Western Pennsylvania/West Virginia territory subject to, among other things, a written confidentiality, non-competition and non-solicitation agreement which he executed on April 18, 2011 at the start of his employment with Biosense. Prior to Westfall’s employment with Biosense, he worked for SJMSC selling products not sold by Biosense, including cardiac rhythm management (“CRM”) products such as implantable pacemakers, implantable defibrillators, and leads. However, Westfall did not sell for SJMSC, and had no prior experience in selling, AF products. Despite having accepted the Territory Manager position with Biosense

and having received extensive training and access to Biosense's trade secrets and/or confidential and proprietary information, Westfall never severed his ties with SJMSC, and on December 19, 2011, he resigned from his employment with Biosense to accept a regional manager position with SJMSC to sell and support all of its product lines, including AF products, in direct competition with Biosense. Moreover, with SJMSC's consent and authorization, Westfall solicited Biosense's other field employees of Biosense to join him at SJMSC. The Defendants' wrongful acts include breaches of and interference with Biosense's contractual and common law rights, misappropriation of Biosense's trade secrets and/or confidential and proprietary information, unjust enrichment and civil conspiracy. As a result of the Defendants' wrongful acts, Biosense has suffered and will continue to suffer irreparable harm and, in addition to any monetary damages, is therefore entitled to injunctive relief to prevent the Defendants from further benefiting from their wrongful conduct.

II. JURISDICTION AND VENUE

2. The Court has diversity jurisdiction because the action involves citizens of different states and the amount in controversy exceeds the sum and value of \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332.

3. Venue is proper because Biosense, Westfall and SJMSC do business in this judicial district and a substantial part of the events or omissions giving rise to Biosense's claims occurred in this judicial district. *See* 28 U.S.C. § 1391(a) (1) & (2).

III. PARTIES

4. Biosense is a California corporation with its headquarters and principal place of business in Diamond Bar, California.

5. Westfall is an individual citizen and resident of the State of Ohio. His last known address is 42545 Frontier Drive, Belmont, Ohio 43718.

6. SJMSC is a Minnesota corporation with its headquarters and principal place of business in Austin, Texas.

IV. FACTUAL BACKGROUND

7. Biosense is a wholly-owned, indirect subsidiary of Johnson & Johnson, which is a New Jersey corporation in the business of manufacturing, supplying, and marketing a wide variety of health care products worldwide.

8. As a member of the Johnson & Johnson Family of Companies, Biosense is a worldwide leader in the science behind the diagnosis and treatment of cardiac arrhythmias. It designs, produces, sells, and supports the use of diagnostic and therapeutic cardiac catheters as well as cardiac mapping and navigation systems that enable electrophysiologists (“EP”) to map the pathways of complex cardiac arrhythmias and to offer their patients a cure through advanced cardiac ablation techniques (*i.e.*, “AF Products”).

9. The mission of Biosense is to help physicians around the world transform patient care through innovation, and it spends substantial amounts of money on research and development of new and improved AF Products, and on educating surgeons on how to use those AF Products (*i.e.*, the “EP Market”). Biosense also spends substantial resources, both human and financial, educating and training its field sales and clinical and technical-support employees (known as “Clinical Account Specialists (CAS),” “Field Service Engineers,” and “Ultrasound CAS,” among other names) on human anatomy, diagnostic and therapeutic procedures, and how to use, service, and support the use of the company’s AF Products. Biosense’s sales and clinical and technical-support employees spend a significant portion of their time in hospitals and operating rooms building relationships with the company’s customers, observing and assisting with procedures, addressing and resolving customer complaints, problems and/or issues, and training physicians and other health care professionals on the safe and efficacious use of the

company's AF Products. Once they are trained and gain field experience, Biosense's sales, clinical, and technical-support employees are extremely valuable to anyone seeking to compete in the EP Market, including without limitation, SJMSC.

10. As a result of Biosense's investment of time, money and other efforts, Biosense possesses a vast amount of trade secrets and/or confidential and proprietary information relating to the manufacture, marketing, sales and servicing of its AF products in the EP Market, including but not limited to: customer names, employee/representative contacts and other customer-identification information; account detail information; purchasing requirements and histories; customer preferences, needs or requirements; customer complaints, issues, problems and resolutions; product sales information; sales and market volumes, forecasts and pricing; marketing, sales and pricing strategies including the number and location of sales representatives; equipment field performance; and personal or business information about Biosense's sales and technical-support employees, customers, vendors, consultants and agents.

11. Biosense's trade secrets and/or confidential and proprietary information are not publicly known or generally available to its competitors and are kept confidential by Biosense by employing various methods and means, including but not limited to: requiring employees and customers to execute written confidentiality agreements; restricting access on a "need-to-know" basis; using password protected computers and websites that limit disclosure to key employees; and marking any distributed materials as "Confidential" or otherwise proprietary.

12. SJMSC, through its AF division, directly competes with Biosense and is at the current time Biosense's most substantial competitor. SJMSC also produces and sells products not sold by Biosense, including CRM products. SJMSC formerly had separate divisional sales organizations in the United States for its various product lines. Recently, SJMSC consolidated

its U.S. sales organization to sell and support all of its product lines, including AF and CRM products. The hospitals who buy Biosense's AF products and the physicians who use those products are virtually all potential customers for SJMSC's AF and CRM products.

13. Immediately before joining Biosense, Westfall had worked for a number of years in SJMSC's CRM division under the terms of a written confidentiality, non-compete and non-solicitation agreement. As part of his employment with SJMSC, Westfall did not sell, and had no prior experience in selling, AF Products.

14. Effective April 18, 2011, Biosense hired Westfall as a Territory Manager for its Western Pennsylvania/West Virginia territory.

15. As a Territory Manager for Biosense, Westfall was responsible for achieving sales goals and key business metrics in his assigned territory. His duties included building and maintaining mutually beneficial relationships with physicians, electrophysiology laboratory staff, and key management, administrative, and purchasing personnel at hospitals that purchased or considered purchasing Biosense products. He also was responsible for coordinating the business priorities and activities of a team (commonly referred to as a "pod") that includes clinical and technical-support employees and others. His responsibilities likewise included managing the overall territory business plan; new product introductions; communicating pricing; making budgetary proposals; following up on contracts; and managing all aspects of the hospital customer groups. Also, his duties included advancing the awareness and business opportunities for Biosense throughout the marketplace through the execution of national, regional and local promotional campaigns.

16. As a condition of and before starting his employment with Biosense, Westfall executed an Employee Secrecy, Intellectual Property, Non-Competition and Non-Solicitation

Agreement ("Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit "1," made a part hereof, and referred to and incorporated herein by reference.

17. The Agreement provides on Page 7, immediately preceding Westfall's signature, the following statement in all uppercase type:

YOU ACKNOWLEDGE HAVING READ, EXECUTED AND RECEIVED A COPY OF THIS AGREEMENT, AND YOU AGREE TO THE TERMS ABOVE.

18. On Page 6, the Agreement includes the following term:

This Agreement sets forth the entire agreement between the parties relating to its subject matter and supersedes all prior agreements, written or oral, between them. No modification of or amendment to this Agreement will be effective unless it is in writing and signed by you and an authorized representative of your EMPLOYER. You represent that you have not relied on any representations by any representative of any COMPANY concerning the subject matter of this Agreement that are not expressly stated in this Agreement.

19. Paragraph 17 of the Agreement provides, in pertinent part, that:

This Agreement will be governed by and interpreted according to the laws of the State of New Jersey, without regard to its conflict of law rules. ...

20. Paragraph 16 of the Agreement states that:

Nothing in this Agreement shall affect any common law duties you have to any COMPANY, including, but not limited to, your duty of loyalty.

21. Section B of the Agreement defines the term "COMPANY" to include Biosense and Johnson & Johnson.

22. Section B of the Agreement defines the term "CONFIDENTIAL INFORMATION" as follows:

CONFIDENTIAL INFORMATION means information about the business of any COMPANY, not generally known to the trade or industry in which the COMPANY is engaged, which is disclosed to you or known to you as a result of your employment by any COMPANY. CONFIDENTIAL INFORMATION includes, but is not limited to, (a) information that the COMPANY keeps confidential from competitors concerning such things as inventions, research, development, strategies, operations, logistics, manufacturing, distribution, purchasing, licensing, business planning and development, finance, computer software or hardware, automated systems, engineering, marketing, merchandising, selling, sales, personnel, customers or clients, including, but not limited to, sales volumes or strategies, number or location of sales representatives, names or significance of a COMPANY's customers or clients or their employees or representatives, preferences, needs or requirements, purchasing histories, or other customer or client-specific information; and (b) personal or business information about any COMPANY's employees, customers, vendors, consultants and agents which is not publicly known and is disclosed to you or known by you in connection with your employment by any COMPANY.

23. Section B of the Agreement defines the term "COMPETITOR" as follows:

COMPETITOR means any person or entity outside the COMPANIES (a) that is engaged in or preparing to become engaged in research, development, production, marketing, selling of, or consulting on a product, process, technology, machine, invention or service in existence or under development that resembles or competes with an existing or potential product, process, technology, machine, invention or service of any COMPANY or (b) that could benefit from CONFIDENTIAL INFORMATION.

24. In Paragraphs 5, 6, 7 and 8 of the Agreement, in return for certain undertakings and actions by Biosense, Westfall agreed, among other commitments, that for eighteen (18) months after his employment ends, he would not: (i) render services, directly or indirectly, to certain Biosense competitors, including in a position for any competitor where he could use Biosense confidential information to the detriment of Biosense (Paragraph 6), or (ii) solicit any business from, sell to, or render any service to, or, directly or indirectly, help others to solicit business from or render service or sell to, any of the accounts, customers, or clients with whom

he had contact during the last 12 months of his Biosense employment, for any purpose related to the sale of any product or service that could compete with a product or service being sold or developed by Biosense (Paragraph 7). Westfall further agreed that for a period of twelve (12) months after his last date of employment with Biosense, he would not solicit or hire on his own behalf or on behalf of others any Biosense employee with whom worked or who became known to him as a result of his employment with Biosense (Paragraph 8). Additionally, Westfall agreed that during his employment with Biosense and thereafter, he would not use, disclose, disseminate, lecture upon or publish any of Biosense's trade secrets and/or confidential and proprietary information (Paragraph 5).

25. In Paragraph 14 of the Agreement, Westfall agreed as follows:

You acknowledge that if you violate or are about to violate this Agreement by disclosing or using information prohibited by Paragraph 5 above, by engaging in conduct prohibited by Paragraphs 6, 7, or 8 above, or by failing to turn over property as required by Paragraph 13 above, immediate irreparable injury to one or more of the COMPANIES will result, warranting (in addition to any other relief) the imposition of injunctive relief against you.

26. As a Biosense employee, Westfall also agreed to be bound by various written policies and procedures, including but not limited to the "Johnson & Johnson Policy on Business Conduct" ("J&J Business Conduct Policy"). A true and correct copy of the Business Conduct Policy is attached hereto as Exhibit "2," made a part hereof, and referred to and incorporated herein by reference.

27. Under the J&J Business Conduct Policy, Westfall was obligated to "maintain the confidentiality of any non-public information learned in the performance of [his] duties" and to "protect the [Biosense'] funds, assets and information." Further, Westfall was obligated to not

use Biosense's assets or information to pursue personal opportunities or gain or for any unlawful purpose.

28. In order to ensure that Westfall did not use or divulge any of SJMSC's trade secrets and/or confidential and proprietary information or otherwise violate any contractual or common law duties that Westfall had with SJMSC, Biosense prohibited Westfall throughout his Biosense employment from contacting any customers or accounts that he had been assigned while he was employed by SJMSC.

29. Furthermore, in keeping with its own commitments, and in connection with Westfall's Biosense employment, Biosense provided Westfall throughout his Biosense employment with both training, including field training, in-house training, sales simulations, and other trade secrets and/or confidential and proprietary information belonging to Biosense, including but not limited to: customer names, employee/representative contacts and other customer-identification information; account detail information; purchasing requirements and histories; customer preferences, needs or requirements; customer complaints, issues, problems and resolutions; product sales information; sales and market volumes, forecasts and pricing; marketing, sales and pricing strategies including the number and location of sales representatives; equipment field performance; and personal or business information about Biosense's employees, customers, vendors, consultants and agents.

30. On December 2, 2011, Westfall announced that he had accepted a managerial position with a company outside of the Johnson & Johnson Family of Companies and that he was resigning from his Biosense employment, effective December 19, 2011. After inquiry, Westfall acknowledged that the outside company was SJMSC. Further, Westfall told Biosense that his employment at SJMSC was in its cardiovascular division which, with respect to

Biosense, is a non-competitive division that sells stents. However, eventually Westfall acknowledged that his new employment at SJMSC was a regional sales manager position for both CRM and AF products.

31. Upon information and belief, in his new employment with SJMSC, Westfall will be responsible for all aspects of SJMSC's overall business efforts in his assigned territory, which, upon information and belief, includes accounts within the Western Pennsylvania/West Virginia territory that he handled while employed by Biosense. Moreover, Westfall's responsibilities for SJMSC include the sale and support of SJMSC's AF products and services which directly compete with Biosense's products and services. Further, Westfall will remain responsible for personally calling on customers and prospective customers in his assigned territory but also will be responsible for the activities of SJMSC's sales representatives who call on those customers and prospective customers.

32. Upon information and belief, Westfall's new employment at SJMSC will require him to render services to and for the sole benefit of SJMSC, which is a direct competitor of Biosense and in fact the only other substantial competitor of Biosense at this time. Upon further information and belief, Westfall's new employment duties for SJMSC will include soliciting business from, selling to, and rendering service to, and, directly or indirectly, helping others to solicit business from, sell to, and render service to, the accounts, customers, and clients with whom he had contact during the last 12 months of his Biosense employment with respect to products and services that do or could compete with products and services being sold or developed by Biosense. Additionally, upon information and belief, Westfall's new employment duties for SJMSC have resulted and will continue to result in the eventual disclosure of

Biosense's trade secrets and/or confidential and proprietary information to the detriment and harm of Biosense.

33. Biosense very recently learned that, shortly after he joined Biosense, Westfall began soliciting fellow Biosense field employees to resign from Biosense to become SJMSC employees instead. Upon information and belief, Westfall described to his fellow Biosense pod members a strategy for converting key customers from Biosense to SJMSC if they resigned en masse to join SJMSC. Westfall represented to his Biosense co-workers that they could make substantially more money working for SJMSC. He described in detail the base and incentive compensation the employees could expect to earn at SJMSC, which did in fact substantially exceed their Biosense compensation, and assured the employees that if they agreed with his proposal he could have a contract for them containing the employment terms he had described "overnight." He represented to his Biosense co-employees that he was in regular contact with SJMSC regarding their recruitment of him to rejoin SJMSC. Upon information and belief, it is believed and therefore averred that SJMSC was aware of Westfall's recruitment activities and authorized and consented to Westfall's recruitment activities while he was employed by Biosense.

34. When none of the approached Biosense employees expressed interest in his plan, Westfall did not drop the idea but continued mentioning from time to time unspecified "opportunities" other than Biosense employment. Then, shortly before announcing his resignation from Biosense on December 2, 2011, Westfall called one of the key senior clinical account specialists Biosense team and again solicited him to leave Biosense to join SJMSC. As he had before, Westfall laid out very specific employment terms, including substantially higher salary and incentive compensation, and discussed ways his fellow employee could join SJMSC

notwithstanding his non-competition agreement with Biosense. The employee approached by Westfall informed him that he had no interest in leaving Biosense. Nonetheless, on his last day of employment with Biosense, Westfall made a point to provide his personal cell phone number to several Biosense employees as he was leaving Biosense. Upon information and belief, it is believed and therefore averred that SJMSC was aware of Westfall's recruitment activities with respect to this employee and authorized and consented to Westfall's recruitment activities while he was employed by Biosense.

35. Biosense also recently learned that Westfall shared with his fellow Biosense employees highly confidential information about an upcoming product collaboration between Biosense and another company. Westfall himself had recently learned that information at a Biosense sales strategy meeting. All participants in that meeting were specifically cautioned that information about the collaboration was confidential and not to be shared with anyone.

V. CAUSES OF ACTION

Count I - Breach of Contract – Westfall

36. Paragraphs 1 through 35 of this Complaint are referred to and incorporated herein by reference as though the same were repeated at length in this Count.

37. Through the Agreement, the J&J Business Conduct Policy and other policies and procedures set forth in writing by Biosense and Johnson & Johnson, Westfall agreed to not use, disclose, disseminate or publish Biosense's trade secrets and/or confidential and proprietary information, to not compete with Biosense for a period of 18 months after the termination of his employment or solicit any of Biosense's customers with which he had contact during the last 12 months of his employment, and to not solicit any of Biosense's employees for employment elsewhere other than another Johnson & Johnson entity.

38. Upon information and belief, Westfall has engaged and continues to engage in conduct in breach of the Agreement, the J&J Business Conduct Policy and other policies and procedures set forth in writing by Biosense, by: (i) rendering services or preparing imminently to render services to a Biosense competitor, SJMSC, that will require him inevitably to disclose to SJMSC Biosense's trade secrets and/or confidential and proprietary information to the advantage of SJMSC and disadvantage of Biosense; (ii) accepting a position with SJMSC that will require him to solicit business from, sell to, and rendering service to and, directly or indirectly, help others to solicit business from, sell to, and render service to accounts, customers, and clients with whom he had contact during the last 12 months of his Biosense employment with respect to products and services that do or could compete with products and services being sold or developed by Biosense; (iii) soliciting other Biosense employees to leave their employment with Biosense to work for SJMSC; and (iv) disclosing during and after his Biosense employment Biosense's trade secrets and/or confidential and proprietary information.

39. The wrongful breaches committed by Westfall, if they have not occurred already, are inevitable given the similarity between the job Westfall performed at Biosense and the job he is performing and/or is required to perform for SJMSC, the similarity between the AF and CRM products Westfall is now attempting to sell and/or market for SJMSC and the AF products he sold and/or marketed while employed by Biosense, and the fact that he is soliciting the same customers and/or accounts he called upon while employed by Biosense.

40. It would be impossible for Westfall to perform his job for SJMSC without breaching the Agreement, the J&J Business Conduct Policy and other policies and procedures set forth in writing by Biosense given the similarity between the job Westfall performed at Biosense and the job he is performing and/or is required to perform for SJMSC, the similarity

between the AF and CRM products Westfall is now attempting to sell and/or market for SJMSC and the AF products he sold and/or marketed while employed by Biosense, and the fact that he is soliciting the same customers and/or accounts he called upon while employed by Biosense.

41. All conditions precedent to the enforcement of Westfall's contractual obligations imposed by the Agreement, the J&J Business Conduct Policy and other policies and procedures set forth in writing by Biosense have occurred or have been performed, excused, waived or otherwise discharged.

42. As a direct and proximate result of Westfall's breach of his obligations under the Agreement, the J&J Business Conduct Policy and other policies and procedures set forth in writing by Biosense, Biosense has suffered and will continue to suffer substantial damages, including but not limited to the impairment or destruction of Biosense's trade secrets and/or confidential and proprietary information, loss of Biosense's property, loss of goodwill and customer relationships, and lost profits.

43. As a direct and proximate result of Westfall's breach of his contractual obligations with Biosense, Westfall is liable to Biosense for actual damages, including but not limited to the compensation and benefits he received from Biosense while effectively serving SJMSC as a master, plus interest thereon at the highest rate allowed by law, court costs and attorneys' fees.

44. The threatened and/or actual injuries that Biosense has suffered and/or will suffer are immediate and irreparable. Because of the difficulty in quantifying injury and harm to Biosense's ability to compete and to maintain a competitive advantage through its confidential and proprietary information and valuable existing and prospective customer and employee relations, as well as the harm resulting from Westfall's wrongful breach of his contract with

Biosense, monetary damages alone will not fully compensate Biosense for Westfall's wrongful conduct. Biosense therefore lacks an adequate and complete remedy at law.

45. As a direct and proximate result of Westfall's wrongful conduct alleged herein, Biosense is in imminent danger of suffering irreparable harm in the following respects:

- a. Biosense will lose valuable relationships with its existing and prospective customers and employees;
- b. Biosense will lose valuable contracts, sale opportunities, orders, and profits;
- c. Biosense's goodwill, reputation, and standing in the business community will be injured;
- d. The confidentiality and proprietary nature of Biosense's trade secrets and/or confidential and proprietary information will be destroyed and/or seriously impaired;
- e. Biosense will lose the competitive advantage afforded by its confidential and proprietary information; and
- f. Biosense will lose the benefit of its investment of time, money, and other resources in compiling and developing such confidential and proprietary information.

WHEREFORE, Biosense demands judgment in its favor and against Westfall and respectfully requests that this Court grant the equitable relief and damages set forth at the end of this Complaint.

Count II - Breach of Duty of Loyalty – Westfall

46. Paragraphs 1 through 45 of this Complaint are referred to and incorporated herein by reference as though the same were repeated at length in this Count.

47. As one of Biosense's Territory Managers, Westfall was Biosense's employee and agent and was responsible for, among other things, the sales operations of the company, and customer service within the Western Pennsylvania/West Virginia territory.

48. As Biosense's employee and agent, Westfall owed Biosense a duty of loyalty to act in all matters affecting the subject of his employment and agency in the utmost good faith and in the furtherance and advancement of Biosense's interests.

49. Westfall has breached his duty of loyalty to Biosense by, among other things: (a) soliciting and attempting to induce his fellow Biosense employees to leave Biosense's employment as a group or individually and to persuade valuable Biosense customers to switch their business from Biosense to SJMSC; and (b) using, disclosing, disseminating and/or publishing Biosense's trade secrets and/or confidential and proprietary information without authority.

50. The wrongful breaches committed by Westfall, if they have not occurred already, are inevitable given the similarity between the job Westfall performed at Biosense and the job he is performing and/or is required to perform for SJMSC, the similarity between the AF and CRM products Westfall is now attempting to sell and/or market for SJMSC and the AF products he sold and/or marketed while employed by Biosense, and the fact that he is soliciting, or helping others to solicit, the same customers and/or accounts he called upon while employed by Biosense.

51. It would be impossible for Westfall to perform his job for SJMSC without breaching his duty of loyalty to Biosense given the similarity between the job Westfall performed at Biosense and the job he is performing and/or is required to perform for SJMSC, the similarity between the AF and CRM products Westfall is now attempting to sell and/or market for SJMSC and the AF products he sold and/or marketed while employed by Biosense, and the fact that he is soliciting, or helping others to solicit, the same customers and/or accounts he called upon while employed by Biosense.

52. All conditions precedent to the enforcement of Westfall's duty of loyalty to Biosense have occurred or have been performed, excused, waived or otherwise discharged.

53. As a direct and proximate result of Westfall's breach of his duty of loyalty, Biosense has suffered and will continue to suffer substantial damages, including but not limited to the impairment or destruction of Biosense's trade secrets and/or confidential and proprietary information, loss of Biosense's property, loss of goodwill and customer relationships, and lost profits.

54. As a direct and proximate result of Westfall's breach of his duty of loyalty to Biosense, Westfall is liable to Biosense for actual damages, including but not limited to the compensation and benefits he received from Biosense while effectively serving SJMSC as a master, plus interest thereon at the highest rate allowed by law, court costs and attorneys' fees.

55. The threatened and/or actual injuries that Biosense has suffered and/or will suffer are immediate and irreparable. Because of the difficulty in quantifying injury and harm to Biosense's ability to compete and to maintain a competitive advantage through its confidential and proprietary information and valuable existing and prospective customer and employee relations, as well as the harm resulting from Westfall's wrongful breach of his duty of loyalty, monetary damages alone will not fully compensate Biosense for Westfall's wrongful conduct. Biosense therefore lacks an adequate and complete remedy at law.

56. As a direct and proximate result of Westfall's wrongful conduct alleged herein, Biosense is in imminent danger of suffering irreparable harm in the following respects:

- a. Biosense will lose valuable relationships with its existing and prospective customers and employees;
- b. Biosense will lose valuable contracts, sale opportunities, orders, and profits;

- c. Biosense's goodwill, reputation, and standing in the business community will be injured;
- d. The confidentiality and proprietary nature of Biosense's trade secrets and/or confidential and proprietary information will be destroyed and/or seriously impaired;
- e. Biosense will lose the competitive advantage afforded by its confidential and proprietary information; and
- f. Biosense will lose the benefit of its investment of time, money, and other resources in compiling and developing such confidential and proprietary information.

WHEREFORE, Biosense demands judgment in its favor and against Westfall and respectfully requests that this Court grant the equitable relief and damages set forth at the end of this Complaint.

Count III - Tortious Interference with Contract – SJMSC

57. Paragraphs 1 through 56 of this Complaint are referred to and incorporated herein by reference as though the same were repeated at length in this Count.

58. At all times material hereto, a valid contract existed between Biosense and Westfall, of which the terms included without limitation the Agreement and Westfall's duty of loyalty to Biosense.

59. SJMSC has longstanding, express knowledge of the contract between Biosense and Westfall including without limitation the specific terms of the Agreement and Westfall's duty of loyalty to Biosense. SJMSC likewise has actual knowledge that all Biosense Territory Managers, including Westfall, sign such an Agreement as a condition of their employment with Biosense.

60. Despite its knowledge of the contract between Biosense and Westfall, and without legal excuse, defense or justification, SJMSC procured Westfall's breach of his contract with

Biosense by offering him substantially higher compensation and other inducements in exchange for resigning his Biosense employment to take a job with SJMSC, a job that SJMSC had actual knowledge would cause him to breach his contractual and common law obligations to Biosense.

61. As a direct and proximate result of SJMSC's tortious interference of the contract between Biosense and Westfall, Biosense has suffered and will suffer substantial damages, including but not limited to the impairment or destruction of Biosense's trade secrets and/or confidential and proprietary information, loss of goodwill and customer and employee relationships, and lost profits.

62. As a direct and proximate result of the SJMSC's tortious interference with Biosense's contract with Westfall, SJMSC is liable to Biosense for actual damages, including but not limited to the compensation and benefits Westfall received from Biosense while effectively serving SJMSC as a master, interest thereon at the highest rate allowed by law, court costs and attorneys' fees.

63. The threatened and/or actual injuries that Biosense has suffered and/or will suffer are immediate and irreparable. Because of the difficulty in quantifying injury and harm to Biosense's ability to compete and to maintain a competitive advantage through its trade secrets and/or confidential and proprietary information and valuable existing and prospective customer and employee relations, as well as the harm resulting from SJMSC's wrongful interference with the contract between Biosense and Westfall, monetary damages alone will not fully compensate Biosense for SJMSC's wrongful conduct. Biosense therefore lacks an adequate and complete remedy at law.

64. As a direct and proximate result of SJMSC's wrongful conduct alleged herein, Biosense is in imminent danger of suffering irreparable harm in the following respects:

- a. Biosense will lose valuable relationships with its existing and prospective customers and employees;
- b. Biosense will lose valuable contracts, sale opportunities, orders, and profits;
- c. Biosense's goodwill, reputation, and standing in the business community will be injured;
- d. The confidentiality and proprietary nature of Biosense's trade secrets and/or confidential and proprietary information will be destroyed and/or seriously impaired;
- e. Biosense will lose the competitive advantage afforded by its confidential and proprietary information; and
- f. Biosense will lose the benefit of its investment of time, money, and other resources in compiling and developing such confidential and proprietary information.

WHEREFORE, Biosense demands judgment in its favor and against SJMSC and respectfully requests that this Court grant the equitable relief and damages set forth at the end of this Complaint.

Count IV - Misappropriation of Trade Secrets/Confidential and Proprietary Information – Westfall & SJMSC

65. Paragraphs 1 through 64 of this Complaint are referred to and incorporated herein by reference as though the same were repeated at length in this Count.

66. By virtue of a relationship of trust and confidence and the contractual and common law obligations that existed between Biosense and Westfall, and as consideration for his execution of the Agreement, Westfall was provided with access to Biosense's trade secrets and/or confidential and proprietary information.

67. Biosense's trade secrets and/or confidential and proprietary information were obtained and/or developed by Biosense at great expense and are not publicly known or generally available to Biosense's competitors. Biosense derives value from Biosense's trade secrets

and/or confidential and proprietary information by virtue of the fact that they are not publicly known or generally available.

68. Biosense takes reasonable steps to ensure that Biosense's trade secrets and/or confidential and proprietary information remain confidential and is not disclosed to Biosense's competitors or to the general public.

69. Upon information and belief, Westfall has used and/or disclosed Biosense's trade secrets and/or confidential and proprietary information in violation of his contractual and common law obligations.

70. Upon information and belief, Westfall has disclosed Biosense's trade secrets and/or confidential and proprietary information to SJMSC, and Westfall and SJMSC have utilized Biosense's trade secrets and/or confidential and proprietary information knowing it was obtained through wrongful means.

71. The wrongful disclosure and/or use of Biosense's trade secrets and/or confidential and proprietary information, if it has not occurred already, is inevitable given the similarity between SJMSC's products and Biosense's products, as well as the fact that Westfall and/or SJMSC are soliciting the same customers and/or accounts Westfall called upon while employed by Biosense.

72. As a direct and proximate result of the misappropriation by SJMSC and Westfall of Biosense's trade secrets and/or confidential and proprietary information, Biosense has suffered and will suffer substantial damages, including but not limited to the impairment or destruction of Biosense's trade secrets and/or confidential and proprietary information, loss of goodwill and customer and employee relationships, and lost profits.

73. As a direct and proximate result of their misappropriation of Biosense's trade secrets and/or confidential and proprietary information, SJMSC and Westfall are jointly and severally liable to Biosense for actual damages, including but not limited to the compensation and benefits Westfall received from Biosense while effectively serving SJMSC as a master, interest thereon at the highest rate allowed by law, court costs and attorneys' fees.

74. The threatened and/or actual injuries that Biosense has suffered and/or will suffer are immediate and irreparable. Because of the difficulty in quantifying injury and harm to Biosense's ability to compete and to maintain a competitive advantage through its trade secrets and/or confidential and proprietary information and valuable existing and prospective customer and employee relations, as well as the harm resulting from Defendants' wrongful possession, use, disclosure, dissemination and publishing of Biosense's trade secrets and/or confidential and proprietary information, monetary damages alone will not fully compensate Biosense for Defendants' wrongful conduct. Biosense therefore lacks an adequate and complete remedy at law.

75. As a direct and proximate result of the wrongful conduct alleged herein, Biosense is in imminent danger of suffering irreparable harm in the following respects:

- a. Biosense will lose valuable relationships with its dealers, distributors, customers and prospective customers;
- b. Biosense will lose valuable contracts, sale opportunities, orders, and profits;
- c. Biosense' goodwill, reputation, and standing in the business community will be injured;
- d. The confidentiality and proprietary nature of Biosense' Biosense's trade secrets and/or confidential and proprietary information will be destroyed and/or seriously impaired;

- e. Biosense will lose the competitive advantage afforded by its trade secrets and/or confidential and proprietary information; and
- f. Biosense will lose the benefit of its investment of time, money, and other resources in compiling and developing such Biosense's trade secrets and/or confidential and proprietary information.

WHEREFORE, Biosense demands judgment in its favor and against Westfall and SJMSC, jointly and severally, and respectfully requests that this Court grant the equitable relief and damages set forth at the end of this Complaint.

Count V - Intentional Interference With Prospective Economic Advantages – Westfall & SJMSC

76. Paragraphs 1 through 75 of this Complaint are referred to and incorporated herein by reference as though the same were repeated at length in this Count.

77. SJMSC and Westfall have acted and continue to act with the intent and for the purpose of harming Biosense and destroying Biosense's business by attempting to interfere, interfering with, and disrupting Biosense's contractual relations with its existing and prospective customers and employees.

78. SJMSC and Westfall have no right or privilege to interfere with Biosense's present or prospective contractual relations.

79. As a direct result of the intentional and tortious interference by SJMSC and Westfall with Biosense's existing contractual relations and their attempts to disrupt and interfere with Biosense's prospective contractual relations, Biosense has suffered and will suffer substantial damages, including but not limited to the impairment or destruction of Biosense's trade secrets and/or confidential and proprietary information, loss of goodwill and customer and employee relationships, and lost profits.

80. As a direct and proximate result of their tortious interference with existing and prospective contracts, SJMSC and Westfall are jointly and severally liable to Biosense for damages, including but not limited to the compensation and benefits Westfall received from Biosense while effectively serving SJMSC as a master, interest thereon at the highest rate allowed by law, court costs and attorneys' fees.

81. Further, the threatened and/or actual injuries that Biosense has suffered and/or will suffer are immediate and irreparable. Because of the difficulty in quantifying injury and harm to Biosense's ability to compete and to maintain a competitive advantage through its trade secrets and/or confidential and proprietary information and valuable existing and prospective customer and employee relations, as well as the harm resulting from resulting from the Defendants' intentional interference with Biosense's contractual relations, monetary damages alone will not fully compensate Biosense for such wrongful conduct. Biosense therefore lacks an adequate and complete remedy at law.

82. As a direct and proximate result of the wrongful conduct alleged herein, Biosense is in imminent danger of suffering irreparable harm in the following respects:

- a. Biosense will lose valuable relationships with its dealers, distributors, customers and prospective customers;
- b. Biosense will lose valuable contracts, sale opportunities, orders, and profits;
- c. Biosense' goodwill, reputation, and standing in the business community will be injured;
- d. The confidentiality and proprietary nature of Biosense' Biosense's trade secrets and/or confidential and proprietary information will be destroyed and/or seriously impaired;
- e. Biosense will lose the competitive advantage afforded by its trade secrets and/or confidential and proprietary information; and

- f. Biosense will lose the benefit of its investment of time, money, and other resources in compiling and developing such Biosense's trade secrets and/or confidential and proprietary information.

WHEREFORE, Biosense demands judgment in its favor and against Westfall and SJMSC, jointly and severally, and respectfully requests that this Court grant the equitable relief and damages set forth at the end of this Complaint.

Count VI - Unjust Enrichment/Constructive Trust – SJMSC & Westfall

83. Paragraphs 1 through 82 of this Complaint are referred to and incorporated herein by reference as though the same were repeated at length in this Count.

84. A constructive trust arises when a person holding legal title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it.

85. Upon information and belief, Westfall and SJMSC have taken and now possess and/or are seeking to take and possess Biosense's trade secrets and/or confidential and proprietary information and valuable existing and prospective customer and employee relations even though they are not entitled to such property.

86. At all times material hereto, Biosense has both an immediate and superior right to possession of all of its trade secrets and/or confidential and proprietary information and valuable existing and prospective customer and employee relations.

87. Notwithstanding that Biosense's trade secrets and/or confidential and proprietary information and valuable existing and prospective customer and employee relations are its property, Westfall and SJMSC have, upon information and belief, taken, received and/or used such property for their own personal benefit without Biosense's knowledge, consent or authority.

88. Upon information and belief, Westfall and SJMSC have taken, received and/or used Biosense's trade secrets and/or confidential and proprietary information and valuable existing and prospective customer and employee relations to the detriment of Biosense.

89. By taking, receiving and/or using Biosense's trade secrets and/or confidential and proprietary information and valuable existing and prospective customer and employee relations, Westfall and SJMSC have been unjustly enriched and allowing them to retain such property is unjust and inequitable.

90. In addition, Westfall has been unjustly enriched by receiving compensation and benefits from Biosense while he was effectively serving SJMSC as his master.

91. As a direct result of the unjust enrichment committed by SJMSC and Westfall, Biosense has suffered and will suffer substantial damages, including but not limited to the impairment or destruction of Biosense's trade secrets and/or confidential and proprietary information, loss of goodwill and customer and employee relationships, and lost profits.

92. As a direct and proximate result of their unjust enrichment, SJMSC and Westfall are jointly and severally liable to Biosense for actual damages, including but not limited to the compensation and benefits Westfall received from Biosense while effectively serving SJMSC as a master, interest thereon at the highest rate allowed by law, court costs and attorneys' fees.

93. Westfall and SJMSC have caused and will continue to cause immediate and irreparable harm and injury to Biosense. Accordingly, unless a constructive trust is entered, Biosense has no adequate remedy at law and further immediate and irreparable injury to it increases with each and every continuing unjust enrichment received by Defendants with respect to Biosense's trade secrets and/or confidential and proprietary information and valuable existing and prospective customer and employee relations.

WHEREFORE, Biosense demands judgment in its favor and against SJMSC and Westfall, jointly and severally, and respectfully requests that this Court grant the equitable relief and damages set forth at the end of this Complaint.

Count VII - Civil Conspiracy or Aiding and Abetting – SJMSC & Westfall

94. Paragraphs 1 through 93 of this Complaint are referred to and incorporated herein by reference as though the same were repeated at length in this Count.

95. As alleged herein, Westfall has breached his contractual and common law obligations and duties that he owes to Biosense.

96. Upon information and belief, SJMSC, through its agents and representatives, had knowledge of and unlawfully used the trade secrets and confidential information of Biosense and had knowledge of the trade secret and confidential nature thereof.

97. By engaging in the conduct described herein, SJMSC and Westfall intentionally and willfully entered into an agreement and conspiracy with the intent to breach Westfall's contractual and common law obligations and duties that he owes to Biosense, to tortiously (a) interfere with Biosense's business relationships and prospective business advantages; (b) solicit and attempt to induce his fellow Biosense employees to leave Biosense's employment as a group or individually and to persuade valuable Biosense customers to switch their business from Biosense to SJMSC; and (c) misappropriate Biosense's trade secrets and/or confidential and proprietary information to develop and advance their own business interests and to harm the business interests of Biosense.

98. In furtherance of their conspiracy, SJMSC and Westfall gained access to and used for their own benefit trade secrets and other valuable proprietary and confidential business

information and belonging to Biosense and used and/or intend to use such information to compete unfairly with Biosense.

99. Upon information and belief, in furtherance of their conspiracy, Westfall, while still in the employ of Biosense, misappropriated Biosense's trade secrets and/or confidential and proprietary information and has used and disclosed such information for the benefit of SJMSC and Westfall in order to compete unfairly with Biosense and to unlawfully interfere with Biosense' existing and prospective contractual relations.

100. At all times, SJMSC and Westfall sought to and did successfully conceal from Biosense their improper competitive activities and conspiracy.

101. As a direct and proximate result of conspiracy between SJMSC and Westfall, Biosense has suffered and will suffer substantial damages, including but not limited to the impairment or destruction of the Biosense's trade secrets and/or confidential and proprietary information, loss of goodwill and customer or employee relationships, and lost profits.

102. As a direct and proximate result of their conspiracy, SJMSC and Westfall are jointly and severally liable to Biosense for actual damages, including but not limited to the compensation and benefits Westfall received from Biosense while effectively serving SJMSC as a master, interest thereon at the highest rate allowed by law, court costs and attorneys' fees.

103. The threatened and/or actual injuries that Biosense has suffered and/or will suffer are immediate and irreparable. Because of the difficulty in quantifying injury and harm to Biosense' ability to compete and to maintain a competitive advantage through its trade secrets and/or confidential and proprietary information and valuable existing and prospective customer and employee relations, as well as the harm resulting from the conspiracy between SJMSC and

Westfall, monetary damages alone will not fully compensate Biosense for such wrongful conduct. Biosense therefore lacks an adequate and complete remedy at law.

104. As a direct and proximate result of the wrongful conduct alleged herein, Biosense is in imminent danger of suffering irreparable harm in the following respects:

- a. Biosense will lose valuable relationships with its dealers, distributors, customers and prospective customers;
- b. Biosense will lose valuable contracts, sale opportunities, orders, and profits;
- c. Biosense' goodwill, reputation, and standing in the business community will be injured;
- d. The confidentiality and proprietary nature of Biosense' Confidential Information will be destroyed and/or seriously impaired;
- e. Biosense will lose the competitive advantage afforded by its Confidential Information; and
- f. Biosense will lose the benefit of its investment of time, money, and other resources in compiling and developing such Confidential Information.

WHEREFORE, Biosense demands judgment in its favor and against Westfall and SJMSC, jointly and severally, and respectfully requests that this Court grant the equitable relief and damages set forth at the end of this Complaint.

RELIEF REQUESTED

Biosense requests that this Honorable Court:

(a) Without notice, issue a temporary restraining order enjoining Westfall from working for SJMSC in any capacity that will require or allow him, directly or indirectly, including by managing the activities of others, to: (i) solicit business from, sell to, or render service to, accounts, customers, and clients about whom he obtained confidential and proprietary information and/or with whom he had direct or indirect contact during his Biosense employment

with respect to products and services that do or could compete with products and services being sold or developed by Biosense; (ii) solicit or hire Biosense's employees; and (iii) use, disclose, disseminate, lecture upon or publish Biosense's trade secrets and/or confidential and proprietary information;

(b) After a hearing, issue a preliminary injunction enjoining Westfall on the same terms requested for the temporary restraining order;

(c) After trial, issue a permanent injunction, consistent with the time limitations contained in Paragraphs 5, 6, 7 and 8 of the Agreement, enjoining Westfall on the same terms requested for the temporary restraining order;

(d) After trial, impose a constructive trust upon all assets, property or other benefits obtained by SJMSC or Westfall as a result of their unjust enrichment with respect to Biosense's property;

(e) After trial, enter judgment in favor of Biosense and against Westfall and SJMSC for money damages plus interest and costs;

(f) Award Biosense its reasonable attorney's fees necessarily incurred in the prosecution of this action; and

(g) Give Biosense all other relief, legal and equitable, to which it is entitled.

Dated: January 3, 2011.

Respectfully submitted,

s/ David G. Oberdick

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ATTORNEYS FOR BIOSENSE WEBSTER, INC.

908678

VERIFICATION

I, Craig M. Healy, hereby declare and verify that I hold the position of Regional Business Director with Plaintiff Biosense Webster, Inc., that I am authorized to make this Verification on Plaintiff's behalf, and that the facts contained in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 28 U.S.C. §1746 relating to unsworn declarations under penalty of perjury.

Executed on December 30, 2011.

Signature: 
Printed: Craig M. Healy
Title: Regional Business Director
Biosense Webster Inc.