ARIZONA COURT OF APPEALS

DIVISION ONE

RISAS HOLDINGS LLC, et al., Plaintiffs/Appellees, v. BRANDON TACKETT, et al., Defendants/Appellants.	Court of Appeals Division One No. 1 CA-CV 20-0150 Maricopa County Superior Court No. CV2016-001841

PLAINTIFFS/APPELLEES' ANSWERING BRIEF AND APPENDIX

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INTRODUCTION

This is a case about determining which party prevailed in litigation for purposes of attorneys' fees and costs—a topic on which the superior court has considerable discretion.

If the record shows *any* reasonable basis for denying fees and costs to Defendants/Appellants, this Court must affirm. Plaintiff/Appellee Risas Dental Management LLC sued its former employee, Brandon Tackett, for violating his agreement. Risas wanted an injunction to stop Tackett from continuing to breach the agreement and a money judgment. It got both. Thus, even if this Court might have ruled differently, the superior court had a reasonable basis for finding Risas the prevailing party. The Court should affirm.

STATEMENT OF FACTS AND CASE*

I. Risas sues former employee Tackett.

Plaintiff/Appellee Risas Dental Management LLC owns and operates several dental offices in Arizona and Colorado. *See* IR-5 (Risas's director's declaration) at 1, ¶ 4. Risas hired Defendant/Appellant Brandon Tackett in 2013, first in a support role and then as marketing director. *Id.* at 2, ¶ 5. In connection with his employment, Tackett signed an Employee Confidentiality and Non-Solicitation Agreement. *See* APP185-87 (agreement) [IR-52]. Among other things, the agreement prohibited him from using certain confidential information, including the RISAS WAY Operating Manual, Risas's confidential Google Drive files and emails, and other records regarding "business operations, finances, and personnel." APP185 [IR-52 at 1, ¶¶ 1-2]. This prohibition lasts for five years after he stops working for Risas. APP185 [*Id.* ¶ 2]. The agreement also prohibited Tackett from soliciting any Risas employees; this prohibition lasts for two years after he stops working for Risas. APP185 [*Id.* ¶ 4].

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* Selected record items cited are included in the Appendix attached to the end of this brief, cited by page numbers (e.g., APP150), which also match the PDF page numbers and function as clickable links. Other record items are cited with "IR-" followed by the record number.

Tackett quit on January 6, 2016. IR-55 (answer to third amended complaint) at 3, ¶ 17. Shortly thereafter, Risas learned that Tackett had formed a competing dental business and had been trying to poach Risas employees and contractors to join his new venture. *See, e.g.*, IR-90 at 37, 55-68 (communications between Tackett and co-venturers). In fact, Tackett had been working to develop his own dental business since at least the fall of 2015, while still employed and getting paid by Risas. *See* APP173-74 (third amended complaint) [IR-51 at 5-6, ¶¶ 19-20]. And just four days after leaving Risas's payroll, Tackett formally formed his competing entity, Somos Dental, LLC. IR-76 (Tackett's counsel's declaration) at 1, ¶ 3.

Risas sued Tackett and sought a temporary restraining order. APP073 (complaint) [IR-1]); IR-6 (TRO application). Throughout this case, Risas had three key objectives: (1) to prevent Tackett from using Risas's confidential information; (2) to prevent Tackett from soliciting Risas's employees; and (3) a monetary recovery. APP080-82 (complaint) [IR-1 at 8-10] (prayer for relief); *see also* APP180-82 (third amended complaint) [IR-51 at 12-14] (prayer for relief).

II. The superior court enters a consent decree giving Risas injunctive relief.

During a return hearing, the trial court set an evidentiary hearing on Risas's TRO application. APP124 [IR-10 at 1]. Shortly before the evidentiary hearing, however, the parties agreed to a consent decree giving Risas enforceable injunctive relief. APP144 (stipulation to consent decree) [IR-24]; APP147 (proposed decree) [IR-25]. Accordingly, the court entered the consent decree and vacated the evidentiary hearing. APP150 (consent decree) [IR-33]; APP143 (minute entry vacating hearing) [IR-21].

The consent decree gives Risas the core injunctive relief it sought under the agreement. Specifically, the consent decree prohibits Tackett and his associates from utilizing Risas's confidential information until January 6, 2021—five years from his termination date, just as the agreement provided and Risas wanted. *Compare* APP151 (consent decree) [IR-33 at 2], *with* APP185 (agreement) [IR-52 at 1, ¶ 2]; *see also* APP082 (complaint) [IR-1 at 10, ¶ F(3)] (requesting that the court "immediately restrain Defendant from competing with Risas in any way by using or disclosing any Risas Confidential Information . . . , *in violation of Defendant's obligations in the Confidentiality Agreement*" (emphasis added)).

The consent decree further prohibits Tackett and his associates from soliciting any Risas employee to leave the company's employment for two years after his termination—again, just as the agreement provided and Risas wanted. *Compare* APP151 [IR-33 at 2], *with* APP185 [IR-52 at 1, ¶ 4]; *see also* APP082 (complaint) [IR-1 at 10, ¶ F(3)] (requesting that the court "immediately restrain Defendant from competing with Risas in any way . . . by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas employee to leave his or her employment with Risas, *in violation of Defendant's obligations in the Confidentiality Agreement*" (emphasis added)).

The parties' subsequent stipulation regarding injunctive relief confirmed that the consent decree resolved Risas's claim for equitable relief. After Risas filed its second amended complaint and application for a temporary restraining order, the trial court set another return hearing. IR-40 (TRO application); IR-43 (order setting return hearing). The parties informed the court that no return hearing was necessary given the consent decree and filed a stipulation to that effect at the court's request. APP167 (stipulation) [IR-44]; *see also* IR-79 (Tackett's summary judgment reply) at 4 n.7 (asserting that "[t]he Consent Decree afforded Risas the full extent of relief it could expect to secure").

III. The superior court grants in part and denies in part Tackett's summary judgment motion.

With Tackett's consent, Risas filed a third amended complaint to join Tackett's wife (for community property purposes) and the business entities through which Tackett manages his competing dental business. IR-50 (consent to filing); APP170 (third amended complaint) [IR-51 at 2, ¶¶ 4, 7].

Tackett then filed a motion for summary judgment. IR-65. The superior court granted Tackett's motion in part, but allowed Risas to proceed on its breach of fiduciary duty claim (Count 3). APP190 [IR-82 at 3]. The consent decree remained in place.

IV. Before facing a jury, Tackett stipulates to a money judgment.

Following the summary judgment ruling, the superior court set a trial date for a jury trial. IR-101. As the trial date neared, however, Tackett agreed to stipulate to an $80,601.43 money judgment in favor of Risas. APP191 (stipulation) [IR-110]. This amount reflects every penny that Risas paid to or on behalf of Tackett while he surreptitiously competed with Risas while still employed by and getting paid by it. IR-85 at 5 ($58,668.50 in salary, $4,234.23 in employer-side taxes, $14,118.79 for medical insurance

premiums, $820.91 for Tackett's cell phone, $298.00 of dental services, and $2,461.00 in award distributions, for a total of $80,601.43).

Soon thereafter, the superior court approved the proposed stipulated judgment against Tackett and vacated the upcoming trial. APP193 [IR-112]. At that point, Risas had achieved its three core litigation goals: (1) enforceable injunctive relief preventing Tackett from using its confidential information; (2) enforceable injunctive relief preventing Tackett from soliciting its employees; and (3) a monetary recovery.

V. The superior court determines that Risas is the prevailing party and enters final judgment in its favor.

Having achieved its core litigation goals, Risas filed an application for an award of costs. IR-113. Tackett also filed applications for awards of attorneys' fees and costs. IR-116; IR-117. The parties agreed that the trial court should determine the prevailing party using the totality of the litigation or percentage of success test, but disagreed about who had in fact prevailed. *See, e.g.*, IR-120 (Risas's response to fee application) at 4 (citing percentage of success/totality of the litigation standard); IR-132 (Tackett's motion for reconsideration) at 10 ("The appropriate test is therefore the percentage of success/totality of litigation test").

After reviewing the parties' briefing, the superior court found that Risas was the prevailing party: "looking at the outcome of the various claims to determine who the prevailing party in the case is, the balance is clearly with Plaintiffs, who got the injunctive relief they particularly sought, and also got the only money that changed hands." APP197 [IR-130 at 1]. Accordingly, it awarded Risas its costs and denied Tackett's applications for fees and costs. APP198 [IR-130 at 2].

Risas lodged a proposed form of final judgment; Tackett did not. IR-131 (Risas's proposed form of judgment); *see also* APP193-94 [IR-112 at 1-2] (ordering the parties to lodge proposed final judgments within ten days of ruling on fees and costs). The superior court entered a final judgment incorporating both the injunctive relief provided in the consent decree and the money judgment. APP199 [IR-137 at 1, ¶¶ 1-2]; *see also* APP201 (order denying Tackett's motion for reconsideration) [IR-141].

Tackett appealed. IR-138. This Court has jurisdiction under A.R.S. § 12-2101(A)(1).

STATEMENT OF THE ISSUES

1. On appeal, the trial court's determination of the prevailing party for fee award purposes must be upheld if any reasonable basis exists for it. Risas achieved its core litigation goals. Did the superior court have a reasonable basis to find Risas the prevailing party for purposes of awarding attorneys' fees?

2. Likewise, the appellate court must uphold the trial court's determination of the prevailing party for purposes of awarding costs if any reasonable basis exists for it. Risas achieved its core litigation goals. Did the superior court have a reasonable basis to find Risas the prevailing party for purposes of awarding costs?

STANDARD OF REVIEW

This appeal primarily addresses which party prevailed in the superior court. "The decision as to who is the successful party for purposes of awarding attorneys' fees is within the *sole discretion* of the trial court, and will not be disturbed on appeal *if any reasonable basis exists for it*." *Sanborn v. Brooker & Wake Prop. Mgmt., Inc.*, 178 Ariz. 425, 430 (App. 1994) (emphases added).

This abuse-of-discretion standard for determining the prevailing party applies even if the parties' contract serves as the basis for the fees claim. *Bobrow v. Bobrow*, 241 Ariz. 592, 598, ¶ 25 (App. 2017) ("Generally, if a contract contains a prevailing-party provision, [t]he decision as to who is the successful party for purposes of awarding attorneys' fees is within the sole discretion of the trial court, and will not be disturbed on appeal if any reasonable basis exists for it.") (quotation marks omitted).

As with any appeal that calls for reviewing the trial court's exercise of discretion, "[t]he question is not whether the judges of this court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the bounds of reason. We cannot substitute our discretion for that of the trial judge." *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 571 (1985) (citation omitted); *Hawk v. PC Vill. Ass'n, Inc.*, 233 Ariz. 94, 100, ¶ 21 (App. 2013) (a trial court does not abuse its discretion merely because "reasonable minds may have balanced the factors differently").

The same standard applies to determining the prevailing party for purposes of costs. *See Ariz. Biltmore Hotel Villas Condos. Ass'n v. Conlon Grp.*

Ariz., LLC, No. 1 CA-CV 18-0709, ___ Ariz. ___, 2020 WL 3428202, at *7, ¶ 39 (App. June 23, 2020).

Tackett asserts (at 21) that interpreting the fees-and-costs provision of the agreement "is reviewed de novo." But this appeal does not involve any dispute about the terms of the agreement. Both sides agree that the provision justifies awarding fees only to the successful party. APP186 (agreement) [IR-52 at 2, ¶ 9].

This Court reviews the interpretation of A.R.S. § 44-404 de novo. *See Ariz. Biltmore*, ___ Ariz. at ___, 2020 WL 3428202 at *4, ¶ 25.

ARGUMENT SUMMARY

The superior court's finding that Risas was the prevailing party "will not be disturbed on appeal if *any reasonable basis* exists for it." *Sanborn*, 178 Ariz. at 430 (emphasis added). The superior court had ample bases to find Risas the prevailing party, whether measured as a percentage of what it set out to achieve, or based on the totality of the litigation. (Argument § I.A.) By obtaining enforceable injunctive relief and a money judgment for over $80,000, Risas achieved its core litigation goals. (Argument § I.B.) Contrary to Tackett's arguments, the superior court did not abuse its discretion by considering the relief Risas obtained in the context of the overall case

(Argument §§ I.C.1-I.C.2), or by declining to award fees under A.R.S. § 44-404(3) (Argument § I.C.3).

The same principles apply when determining the prevailing party for purposes of awarding costs. Thus, the superior court likewise had ample bases on which to award Risas its costs in this case. (Argument § II.A.) The superior court properly applied the totality of the litigation approach, and this Court should decline Tackett's invitation to reweigh the facts on appeal. (Argument § II.B.)

The Court should affirm.

ARGUMENT

I. The superior court had ample bases on which to deny fees.

A. To determine the prevailing party, Arizona courts consider the percentage of a party's success and the totality of the litigation.

The agreement provides for an award of fees only to "the prevailing party":

> If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, *the prevailing party* will be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which he or it may be entitled.

APP186 [IR-52 at 2, ¶ 9] (emphasis added). Likewise, A.R.S. § 12-341.01 allows the superior court to award fees to "the successful party." (Neither

side contends that "prevailing party" differs in any material way from "successful party").

The superior court, therefore, needed to determine who had prevailed. Under Arizona law, in cases with multiple claims, "the court must assess the overall outcome of the case to determine [which] party 'prevailed' in the lawsuit." *Murphy Farrell Dev., LLLP v. Sourant*, 229 Ariz. 124, 134, ¶ 35 (App. 2012).

Arizona courts use one of three methods for determining the prevailing party. The "net judgment rule" typically applies when both the plaintiff's and the defendant's claims and counterclaims were at least partially successful; it involves offsetting one side's victory against the other side's victory. *Vortex Corp. v. Denkewicz*, 235 Ariz. 551, 562, ¶ 40 (App. 2014). It does not apply when such "setoffs were not at issue." *Murphy*, 229 Ariz. at 134, ¶ 35. Here, Tackett did not succeed on any counterclaims or have any offsetting judgment and neither party contends that the net judgment rule applies.

When "the 'net judgment rule' is inapplicable, the trial court may use a 'percentage of success' factor or a 'totality of the litigation' rubric to determine which party prevailed." *Id.* at ¶ 36. As their names suggest, the

"percentage of success" and "totality of the litigation" methods take a holistic view of the litigation, considering what each side set out to achieve and what each side ultimately got.

All three methods boil down to one core principle: "Phrased more glibly, 'who won?'" *Id.* at ¶ 33. "[T]he fact that a party does not recover the full measure of relief it requests does not mean that it is not the successful party." *Sanborn*, 178 Ariz. at 430. Indeed, "the superior court may find that a party is the successful party even when the recovery it obtains is 'significantly reduced.'" *Lee v. ING Inv. Mgmt., LLC*, 240 Ariz. 158, 161, ¶ 10 (App. 2016) (citation omitted); *see also Ariz. Biltmore*, ___ Ariz. at ___, 2020 WL 3428202 at *7, ¶ 40 (affirming superior court's finding that a party prevailed despite not recovering the full measure of relief requested).

The same prevailing-party analysis applies to the fee-shifting provision in the agreement. *See Murphy*, 229 Ariz. at 134, ¶ 36 ("We discern no reason to apply a different paradigm in deciding which party is the 'prevailing party' under the terms of the Agreements.").

B. The superior court had ample discretion to find Risas the prevailing party because Risas achieved its goals in litigation.

The superior court had reasonable bases to find that Risas achieved its goals in litigation, whether measured as a percentage of what it set out to achieve, or based on the totality of the litigation. The various complaints in this case, from the original complaint to the last (the third amended complaint) confirm that Risas sought at least three things: (1) to prevent Tackett from using its confidential information; (2) to prevent Tackett from soliciting its employees; and (3) a monetary recovery.

First, Risas alleged that Tackett had breached the agreement by using Risas's "confidential information," including "the RISAS WAY manual, proprietary Google Drive files, and emails." APP074-75 (complaint) [IR-1 at 2-3, ¶¶ 9-10]; APP076-77 [*id.* at 4-5, ¶ 15]; *accord* APP128 (first amended complaint) [IR-11 at 3, ¶¶ 10-12]; APP130-32 [*id.* at 5-7, ¶¶ 18-27]; APP156 (second amended complaint) [IR-39 at 3, ¶¶ 9-10]; APP157-59 [*id.* at 4-6, ¶¶ 14-17]; APP171 (third amended complaint) [IR-51 at 3, ¶¶ 13-14]; APP172-74 [*id.* at 4-6, ¶¶ 18-21].

Accordingly, Risas sought to enjoin Tackett from "using or disclosing any Risas Confidential Information" (defined to include "the RISAS WAY

manual, proprietary Google Drive files, and emails"). APP080 (complaint) [IR-1 at 8, ¶ 30(c)]; APP082 [*id.* at 10, ¶¶ E(3), F(3)] (prayer for relief); APP074 [*id.* at 2, ¶ 9] (definition); *accord* APP139-40 (first amended complaint) [IR-11 at 14-15, ¶¶ E(3), F(3)]; APP165 (second amended complaint) [IR-39 at 12, ¶¶ E(3), F(3)]; APP181-82 (third amended complaint) [IR-51 at 13-14, ¶¶ E(3), F(3)].

Second, Risas alleged that Tackett had breached the agreement by soliciting Risas employees. APP075 (complaint) [IR-1 at 3, ¶ 12] (Tackett agreed "he would not directly or indirectly solicit, induce, recruit, or encourage any Risas Management employee to leave his or her employment with Risas Management"); APP077 [*id.* at 5, ¶¶ 16-17] (Tackett "is currently actively recruiting doctors and other medical professionals"); *accord* APP129 (first amended complaint) [IR-11 at 4, ¶ 14]; APP132-33 [*id.* at 7-8, ¶¶ 28-31]; APP156-57 (second amended complaint) [IR-39 at 3-4, ¶ 12]; APP159 [*id.* at 6, ¶¶ 18-19]; APP172 (third amended complaint) [IR-51 at 4, ¶ 16]; APP174 [*id.* at 6, ¶ 22].

Accordingly, Risas sought to enjoin Tackett from "soliciting, inducing, recruiting, or encouraging any Risas employee to leave his or her employment with Risas." APP082 (complaint) [IR-1 at 10, ¶¶ E(3), F(3)];

accord APP139-40 (first amended complaint) [IR-11 at 14-15, ¶¶ E(3), F(3)]; APP165 (second amended complaint) [IR-39 at 12, ¶¶ E(3), F(3)]; APP181-82 (third amended complaint) [IR-51 at 13-14, ¶¶ E(3), F(3)].

Third, Risas consistently sought monetary recovery for the harm Tackett caused. APP080 (complaint) [IR-1 at 8, ¶ A]; *accord* APP138 (first amended complaint) [IR-11 at 13, ¶ A]; APP163 (second amended complaint) [IR-39 at 10, ¶ A]; APP180 (third amended complaint) [IR-51 at 12, ¶ A].

Risas succeeded on each of these items.

1. Risas obtained enforceable injunctive relief.

First, Risas obtained a consent decree based on the parties' contract giving it injunctive relief enforceable by contempt sanctions.

(a) The consent decree gives Risas enforceable judicial relief.

A consent decree "is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees." *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992). "A consent decree is a judgment, has the force of res judicata, and it may be enforced by judicial sanctions, including . . . citations for contempt." *S.E.C. v. Randolph*, 736 F.2d

525, 528 (9th Cir. 1984). The Supreme Court of the United States has "held that settlement agreements enforced through a consent decree may serve as the basis for an award of attorney's fees." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604 (2001) (citing *Maher v. Gagne*, 448 U.S. 122 (1980)). This rule makes good sense because "court-ordered consent decrees create the material alteration of the legal relationship of the parties necessary to permit an award of attorney's fees." *Buckhannon*, 532 U.S. at 604 (quotation marks omitted).

Here, the consent decree created much of the enforceable injunctive relief that Risas sought. Risas sought to enjoin Tackett from "using or disclosing any Risas Confidential Information" (defined to include "the RISAS WAY manual, proprietary Google Drive files, and emails"). APP080 (complaint) [IR-1 at 8, ¶ 30(c)]. The consent decree accomplished that goal. It specifically enjoined Tackett from using those documents for his own commercial purposes. APP150-51 [IR-33 at 1-2] (enjoining Tackett "from using for commercial purposes" several confidential materials, including the "RISAS WAY Operating Manual," the "Google Drive files," and "e-mails" listed in the complaint, plus Risas's "accounting records" and records regarding "business operations, finances, and personnel").

Risas also sought to enjoin Tackett from "soliciting, inducing, recruiting, or encouraging any Risas employee to leave his or her employment with Risas." APP082 (complaint) [IR-1 at 10, ¶¶ E(3), F(3)]. The consent decree accomplished that goal, too. It specifically enjoined him "from directly or indirectly soliciting or recruiting" Risas employees. APP151 [IR-33 at 2].

(b) The consent decree arose out of contract.

Moreover, because the consent decree arose out of the parties' agreement, the superior court had a reasonable basis to find Risas the prevailing party under that agreement. (*Cf.* Opening Br. at 22-25.)

The agreement provides that the prevailing party "in any action at law or in equity . . . to enforce . . . the terms of this Agreement" is entitled to reasonable attorneys' fees and costs. APP186 [IR-52 at 2, ¶ 9]. Here, Risas sued Tackett for breaching the agreement and asked the superior court to enjoin Tackett from continuing to use its confidential information and solicit its employees in violation of the agreement. The consent decree gives Risas precisely the equitable relief it sought. (*See* Argument § I.B.1.) Accordingly, the superior court had a reasonable basis for finding that Risas prevailed in an action to enforce the terms of the agreement.

The fact that Risas ultimately lost the breach of contract claim on summary judgment does not negate the relief Risas obtained in the consent decree. As discussed above in Argument § I.B.1.a, the consent decree gave Risas enforceable injunctive relief *without having to prove the merits of its underlying claims*.

Moreover, the consent decree's lifespan is exactly as long as a permanent injunction on the merits could be on the contract claim. By the decree's own terms, the injunction against using the specified confidential information will expire on January 6, 2021, and the injunction against soliciting Risas employees expired on January 6, 2018. APP150-51 [IR-33 at 1-2].

These dates are not arbitrary. They exactly match the scope of the agreement. The agreement barred Tackett from using confidential information during his "employment and for five years thereafter." APP185 [IR-52 at 1, ¶ 2]. The agreement barred him from soliciting Risas employees "for a period of twenty-four (24) months immediately following the termination." APP185 [IR-52 at 1, ¶ 4]. Tackett resigned on January 6, 2016. APP172 (third amended complaint) [IR-51 at 4, ¶ 17]; IR-55 (answer to third amended complaint) at 3, ¶ 17 ("Defendants admit Mr. Tackett resigned

from Risas Management on January 6, 2016 . . . .”). That means that the agreement’s own provisions will or did expire on January 6, 2021 (five years later) and January 6, 2018 (24 months later), respectively.

These are the exact same dates in the consent decree. In other words, the injunctive relief expires on precisely the same date as the relevant provisions in the agreement, and reflect the outer bounds of what Risas could have hoped to achieve in a permanent injunction on the merits. The superior court would not have awarded a permanent injunction that lasted longer than the prohibition in the underlying contract. An injunction with a date-certain lifespan is still a permanent injunction, not a preliminary one. By analogy, a permanent injunction against patent infringement expires when the patent expires, but it is still a permanent injunction. *See, e.g.*, *Kearns v. Chrysler Corp.*, 32 F.3d 1541, 1550 (Fed. Cir. 1994) (“Because the rights flowing from a patent exist only for the term of the patent, there can be no infringement once the patent expires. . . . [After expiration, the patentee] can no longer obtain injunctive relief with respect to those patents.”) (alteration omitted; citation omitted).

2. Risas obtained a money judgment.

Risas also got a money judgment. The parties stipulated to judgment in Risas's favor on Count 3 (fiduciary duty) for $80,601.43. APP191 (stipulation) [IR-110]; APP193 (order granting stipulation) [IR-112]. This amount reflects, to the penny, the money Risas sought, as measured by what Risas paid to or on behalf of Tackett while he was setting up and working on his competing business while still employed by Risas. IR-85 at 5 ($58,668.50 in salary, $4,234.23 in employer-side taxes, $14,118.79 for medical insurance premiums, $820.91 for Tackett's cell phone, $298.00 of dental services, and $2,461.00 in award distributions, which add up to $80,601.43). A monetary recovery, of course, is relevant in determining the prevailing party.

The superior court thus had ample bases to conclude that Risas "got the injunctive relief they particularly sought, and also got the only money that changed hands." APP197 [IR-130 at 1]. This is true even though Risas sought some other items it did not achieve. "[T]he fact that a party does not recover the full measure of relief it requests does not mean that it is not the successful party." *Sanborn*, 178 Ariz. at 430. When viewing the totality of the litigation, the superior court could reasonably conclude that Risas

achieved much of what it wanted, including some of the most important items. For example, Risas consistently asserted that "the RISAS WAY manual [is] among its most valuable assets," right next to the "'Risas' trade name" itself. APP078 (complaint) [IR-1 at 6, ¶ 22]; *accord* APP135 (first amended complaint) [IR-11 at 10, ¶ 46]; APP160 (second amended complaint) [IR-39 at 7, ¶ 24]; APP175 (third amended complaint) [IR-51 at 7, ¶ 27]. Risas successfully enjoined Tackett from using this "most valuable asset[]."

When answering the crucial question of "who won?," *Murphy*, 229 Ariz. at 133, ¶ 33, the superior court could easily answer "Risas." The superior court did not abuse its discretion in reaching this conclusion. On appeal, "[t]he question is not whether the judges of this court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the bounds of reason." *Warner*, 143 Ariz. at 571 (citation omitted). Although Risas did not obtain everything it asked for, Risas achieved its core litigation goals. Consequently, the superior court did not "exceed[] the bounds of reason" by finding Risas the prevailing party. *Id.*

C. Tackett's arguments to the contrary ignore fundamental aspects of the record and the law.

Arizona law places discretion in the hands of the superior court to determine who prevailed in litigation. In contending that the superior court abused its discretion, Tackett argues that (1) the superior court had no discretion to consider the money judgment, and (2) the superior court had no discretion to consider the injunctive relief in the consent decree. In other words, Tackett contends that the superior court abused its discretion in even *considering* the litigation outcomes and the relief Risas achieved. But, consistent with Arizona law, the superior court considered "the overall outcome of the case" and the "totality of the litigation." *Murphy*, 229 Ariz. at 134, ¶¶ 35-36. The court was not required to ignore the case's outcome and the relief Risas obtained.

Even if a different judge *could have* viewed the case differently, this judge—who presided over the case from beginning to end—did not abuse his discretion in considering the two main forms of relief awarded in this case. *See Warner*, 143 Ariz. at 571 (deferring to the trial court's discretion "is appropriate in view of the [trial court's] superior understanding of the

litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters") (citation omitted).

1. The superior court had discretion to consider the money judgment.

Tackett argues (at 26-28) that the superior court abused its discretion for even *considering* the money judgment awarded to Risas. Not so. As explained above, in a multi-claim case with mixed results, Arizona courts apply a "'percentage of success' factor or a 'totality of the litigation' rubric to determine which party prevailed." *Murphy*, 229 Ariz. at 134, ¶ 36. Here, the superior court considered a "total[ity] of the litigation" standard, *see* APP201 [IR-141 at 1], and it had ample discretion to do so. Under that standard, the superior court was not required to disregard the only monetary recovery in the case. "Phrased more glibly," the superior court had to answer the question, "'who won?'" *Murphy*, 229 Ariz. 133 at ¶ 33. The court was not required to ignore the money judgment in answering "who won."

Tackett's insistence (at 26-27) that the claim was not fee-eligible misses the point. The superior court did not rule that the fiduciary duty claim arose out of contract, and did not award fees to Risas on that basis. But that did

not preclude the superior court from looking at "the overall outcome of the case" and the "totality of the litigation" to determine the prevailing party. *Id.* at 134, ¶¶ 35-36. In denying Tackett's motion for reconsideration, the superior court explained, consistent with Arizona law, that "all claims must be considered." APP201 [IR-141 at 1].

At bottom, Tackett is asking this Court to reweigh the litigation and substitute its own judgment. But again, when reviewing for abuse of discretion, "[t]he question is not whether the judges of this court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the bounds of reason." *Warner*, 143 Ariz. at 571 (citation omitted); *see also Orfaly v. Tucson Symphony Soc'y*, 209 Ariz. 260, 266, ¶ 21 (App. 2004) ("Although we have some concerns . . . , we cannot say the fee awards are unsupported by any reasonable basis. And, because a reasonable basis exists for the award, we may not substitute our discretion for that of the trial court.").

2. The superior court had discretion to consider the consent decree.

Tackett argues (at 29-33) that the superior court "abused its discretion in considering the Consent Decree" at all in determining the prevailing

party. In other words, Tackett argues that the superior court committed reversible error and exceeded the bounds of its considerable discretion in even *considering* the binding, enforceable relief Risas obtained. None of Tackett's arguments withstand scrutiny.

(a) A consent decree alters the legal relationship with the parties because it is binding and enforceable by contempt sanctions.

First, Tackett argues (at 29) that the consent decree "did not resolve any disputed issues."

As an initial matter, "[a]n adjudication on the merits is not a prerequisite to recovering attorneys' fees." *Fulton Homes Corp. v. BBP Concrete*, 214 Ariz. 566, 572, ¶ 24 (App. 2007); *see also Maher v. Gagne*, 448 U.S. 122, 129-30 (1980) (rejecting argument that a party "did not gain sufficient relief through [a] consent decree to be considered the prevailing party" in analogous fee context).

Even so, the superior court had ample discretion to find that the consent decree did resolve disputed issues here. Tackett quotes (at 29) the *Buckhannon* case for the premise that the prevailing-party analysis requires an "alteration in the legal relationship in the parties," but *Buckhannon* itself proves that the superior court had discretion to consider the consent decree.

Buckhannon held that "court-ordered consent decrees create the material alteration of the legal relationship of the parties necessary to permit an award of attorney's fees." *Buckhannon*, 532 U.S. at 604 (quotation marks omitted).

Tackett quotes *Buckhannon* as requiring that a party have "prevailed on the merits," but the Court said so in the context of rejecting a party's "catalyst theory," which unsuccessfully tried to achieve prevailing-party status by prompting "a voluntary change" (unenforceable by a court), when the party "has failed to secure a judgment on the merits *or a court-ordered consent decree*." *Id.* at 600 (emphasis added). The rest of the opinion confirms that "a consent decree may serve as the basis for an award of attorney's fees." *Id.* at 604. Tackett is simply wrong as a matter of law on this point.

Tackett is also wrong on the facts. Tackett claims (at 30) that the consent decree "simply confirmed the application of uncontested provisions of the Confidentiality Agreement." But he can characterize those provisions as "uncontested" only because of the consent decree. Risas had to sue Tackett to stop his inappropriate conduct, and sought precisely the injunctive relief that the consent decree awarded.

In addition, the consent decree itself confirms that the parties entered the decree only after a contested hearing on March 8, 2016. APP150 [IR-33 at 1]. "[A] contested action is one in which the defendant has appeared and generally defends against the claims and demands made by the plaintiff." *Assyia v. State Farm Mut. Auto. Ins. Co.*, 229 Ariz. 216, 221, ¶ 18 (App. 2012). Here, Tackett appeared at the hearing and defended against Risas's allegations. Like in *Assyia*, he caved *after* the contested hearing. Tackett did not provide this Court with a transcript from the hearing and cannot now claim that the items in the consent decree were uncontested. *See* ARCAP 11(c)(1) (appellant has duty to order necessary transcripts). This Court must presume that the missing transcript from the contested hearing supports the superior court's award of attorneys' fees. *Blair v. Burgener*, 226 Ariz. 213, 217, ¶ 9 (App. 2010) ("[I]n the absence of a transcript, we presume the evidence and arguments presented at the hearing support the trial court's ruling.").

Tackett essentially claims that injunctive relief requiring a party to honor a contract does not alter the parties' relationship. But his argument would render superfluous many types of injunctions that courts routinely issue. For example, injunctions against patent infringement would be

unnecessary—after all, 35 U.S.C. § 271(a) already prohibits patent infringement, so why would a party need an injunction?

Fundamentally, as *Buckhannon* held, a consent decree *does* alter the parties' legal relationship. *Buckhannon*, 532 U.S. at 604. Risas can enforce the consent decree by seeking contempt sanctions, without having to file a new breach-of-contract claim. "A consent decree offers more security to the parties than a settlement agreement where the only penalty for failure to abide by the agreement is another suit. A consent decree is a judgment, has the force of res judicata, and it may be enforced by judicial sanctions, including . . . citations for contempt." *S.E.C. v. Randolph*, 736 F.2d 525, 528 (9th Cir. 1984) (quotation marks omitted); *see also* 17 Am. Jur. 2d *Contempt* § 143 ("Once the parties' agreement is reduced to judgment, contempt is a proper sanction for terms included in the judgment . . . ."). The superior court therefore did not abuse its discretion by considering the consent decree.

(b) The consent decree's reservations did not undermine the relief it gave Risas.

Second, Tackett argues (at 30-31) that the consent decree "reserved the parties' rights and defenses." That's true, but it does not negate the relief it

gave Risas; Risas still has the injunctive relief without needing to overcome any defenses. Tellingly, Tackett never took any steps to vacate the consent decree (nor could he have).

Likewise, although the consent decree also states "Defendant den[ied] any wrongdoing or contractual violation," APP150 [IR-33 at 1], the consent decree guaranteed Risas the injunctive relief it sought *without having to prove* that Tackett breached the agreement. Consent decrees routinely disclaim wrongdoing, but that does not affect the relief the decree guarantees.

Tackett also claims (at 31) that the consent decree "on its face states that it does not resolve any disputed claims." That's simply false. It says no such thing.

And of course the consent decree resolves disputed claims—it entitles Risas to injunctive relief without having to prove its claims. Without the consent decree, Tackett could have tried to avoid injunctive relief by arguing that the agreement was unenforceable (e.g., for lack of consideration, on public policy grounds, or otherwise). The consent decree offered Risas the injunctive relief it sought in Count 4 without having to prove the agreement's enforceability. Under a consent decree, "[t]he parties waive their right to litigate the issues involved in the case and thus save themselves

the time, expense, and inevitable risk of litigation." *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971). Once again, Tackett cannot claim that the subject-matter of the dispute was undisputed without providing a copy of the transcript of the hearing that led to the decree. *See* ARCAP 11(c)(1). And he cannot claim that it was undisputed any more than a patent infringer can claim, after a consent decree, that the patent's validity and the defendant's infringement were uncontested.

(c) Tackett's arguments about amended complaints and Count 4 do not withstand scrutiny.

Third, Tackett argues (at 31-32) that because Risas requested injunctive relief in subsequent amended complaints filed after the consent decree, the decree did not give Risas any relief. That argument makes no sense. Once Risas obtained the relief in the consent decree, it did not need to drop those claims from the complaint. By analogy, a plaintiff who prevails on summary judgment does not need to drop the successful claim in a later-amended complaint. As for Tackett's claim about Count 4 in particular, Count 4 sought the identical relief sought in the original and first amended complaints, which were filed before the consent decree. Rearranging the allegations and requested relief does not change the substance of the claims.

The parties' subsequent stipulation regarding injunctive relief confirmed that the consent decree resolved Risas's claim for equitable relief. After Risas filed its second amended complaint and application for a temporary restraining order, the trial court set another return hearing. IR-40 (TRO application); IR-43 (order setting return hearing). The parties informed the court that no return hearing was necessary given the consent decree and filed a stipulation to that effect at the court's request. APP167 (stipulation) [IR-44]; *see also* IR-79 (Tackett's summary judgment reply) at 4 n.7 (asserting that "[t]he Consent Decree afforded Risas the full extent of relief it could expect to secure").

Tackett's claim (at 32) that the consent decree could not resolve Count 4 because Count 4 sought injunctive relief against Mrs. Tackett and Somos, who had not been named at the time of the consent decree, also fail for several reasons when viewed in context:

1. Mrs. Tackett was joined in the amended complaint "solely for community property purposes." APP170 (third amended complaint) [IR-51 at 2, ¶ 4] ("Catherine Tackett is named solely for community property purposes."). *See Spudnuts, Inc. v. Lane*, 139 Ariz. 35, 36 (App. 1984) ("if a plaintiff wants to hold a marital community accountable for an obligation,

both spouses must be sued jointly"). Community property is irrelevant for injunctive relief.

2. As for the Somos entities, the complaint alleged that Tackett engaged in wrongdoing *through the Somos entities*. *E.g.*, APP179 (third amended complaint) [IR-51 at 11, ¶¶ 49-52]. Tackett, after all, admitted that he is a manager of both entities. APP170 (third amended complaint) [IR-51 at 2, ¶ 7] ("Tackett is a Manager of Somos Dental and Somos Dental Services."); IR-55 (answer) at 2, ¶ 7 ("Defendants admit the allegations contained in paragraph 7 of the Third Amended Complaint."). By enjoining Tackett in the consent decree, Risas achieved what it hoped to achieve vis-à-vis Somos. And in any event, the Somos entities affirmatively represented to the superior court that they are abiding by the consent decree. IR-79 (Tackett's summary judgment reply) at 4 ("the Somos Entities have . . . abided by the Consent Decree that has been in place in this action since May 21, 2016"); *id.* n.7 ("Under the Consent Decree, *Defendants* agreed not to use Risas' documents or solicit Risas employees." (Emphasis added.)).

3. The consent decree applies to Tackett and "his agents, and those acting in active concert or participation with him who receive actual notice of this Consent Decree by personal service or otherwise." APP150-51 [IR-33

at 1-2]. It therefore applies to both Mrs. Tackett and Somos to the extent Tackett uses them to violate the consent decree, and neither party took any effort to vacate the consent decree.

4. The Somos entities did not file a notice of appeal and are not parties to this appeal. *Cf.* IR-138 (Tacketts' notice of appeal). The Tacketts cannot now assert arguments on their behalf. And even if the result were different as to Somos, that would not change the prevailing party analysis as between Risas and the Tacketts.

(d) The summary judgment ruling did not dissolve the consent decree.

Fourth, Tackett argues (at 32-33) that Risas did not secure the injunctive relief because it lost the contract and trade secret claims on summary judgment. Not so. The consent decree did not dissolve upon entry of summary judgment, and Tackett took no steps to vacate it. To the contrary, the final judgment explicitly "affirm[s] the injunctive relief provided in the Consent Decree." APP199 [IR-137 at 1, ¶ 1].

The four corners of the consent decree confirm its continued validity, as well. *See Armour*, 402 U.S. at 681-82 ("the scope of a consent decree must be discerned within its four corners, and not by reference to what might

satisfy the purposes of one of the parties to it"). By the decree's own terms, the injunction against using the specified confidential information will expire on January 6, 2021. APP150 [IR-33 at 1]. It is still in force today, even on appeal. (The injunction against soliciting Risas employees expired on January 6, 2018. APP151 [IR-33 at 2].) As explained below, that provision expired not because of any summary judgment ruling, but because of the consent decree's own term, which stemmed from the length of the non-solicitation provision in the agreement.)

At bottom, although the summary judgment ruling barred Risas from pursuing some of its claims for damages (core litigation goal #3), it did not purport to vacate the ongoing relief Risas had already obtained in the consent decree.

In a footnote (at 33 n.13), Tackett characterizes the consent decree as an "initial victor[y]" and "ephemeral." Not so. Tackett's cited authority concerns a preliminary injunction, which automatically terminates with a judgment on the merits. By contrast, the consent decree specifies an expiration date based on the substantive provisions of the parties' disputed agreement. The injunction against using confidential information remains active today. The consent decree has a limited duration, but it is not

preliminary, contingent, or ephemeral. Tellingly, Tackett told the superior court that the consent decree "is not *pendente lite*. It is not a preliminary injunction and the restrictions it imposed did not require continued litigation to make them permanent." IR-124 (Tackett's reply re application for costs) at 2 n.1. Tackett cannot now seek reversal by taking a position opposite from what it told the superior court.

(e) Risas and Tackett have the same rights and obligations regardless of whether the consent decree resolved Count 4.

Finally, Tackett argues (at 32-33) that the superior court abused its discretion in finding that Risas "won" on Count 4 (injunctive relief) by obtaining the consent decree. This argument elevates form over substance.

Whether the consent decree formally "resolved" Count 4 is irrelevant to the superior court's prevailing party determination. The question for the superior court was not whether the total claim count favors one party or the other, but whether, considering the totality of the litigation, one party achieved some or all of its goals. And even if Count 4 were moved from Risas's "win" column to Tackett's "win" column, as Tackett requests (at 33), the parties would continue to stand in exactly the same position relative to each other. They still have exactly the same rights and obligations under the

terms of the consent decree regardless of how the final judgment describes the resolution of Count 4.

As discussed above, the consent decree remains valid. None of the defendants moved to vacate the consent decree, and the non-Tackett parties did not appeal. (*See* Argument §§ I.C.2.c-d.) Risas can enforce the consent decree with contempt, without having to file a new breach of contract claim. (*See* Argument § I.B.1.a.)

In short, the litigation outcome is the same whether or not the consent decree is deemed to resolve Count 4. In either case, Tackett and Risas continue to have the same substantive rights and obligations, and Risas would still be entitled to relief under the consent decree and judgment.

3. The superior court properly declined to award fees under A.R.S. § 44-404(3).

(a) A.R.S. § 44-404(3) does not apply to a defendant seeking fees.

A.R.S. § 44-404 governs fee awards for claims under Arizona's Uniform Trade Secret Protection Act. It allows for a discretionary award of fees in three circumstances:

1. A claim of misappropriation made in bad faith.
2. A motion to terminate an injunction made or resisted in bad faith.

3. Willful and malicious misappropriation.

A.R.S. § 44-404.

Tackett sought fees under § 44-404(3), but that subsection authorizes an award of fees only to the plaintiff, not the defendant. *See True Ctr. Gate Leasing, Inc. v. Sonoran Gate, LLC*, 427 F. Supp. 2d 946, 951 (D. Ariz. 2006) ("Attorneys' fees may be recovered under A.R. S. § 44–404 only if the trade secret claim was made in bad faith *or the opposing party was guilty of willful and malicious misappropriation*. *See* A.R.S. § 44–404(1)-(3)." (Emphasis added.)).

The official comment to the Uniform Trade Secrets Act[1] confirms that subsection (3) applies to a successful *claimant* in a misappropriation case:

> [The statute] allows a court to award reasonable attorney fees to a prevailing party in specified circumstances as a deterrent to specious claims of misappropriation [subsection (1)], to specious efforts by a misappropriator to terminate injunctive relief [subsection (2)], and to willful and malicious misappropriation [subsection (3)]. *In the latter situation*, the court should take into consideration the extent to which *a complainant* will recover exemplary damages in determining whether additional attorney's fees should be awarded.

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[1] Arizona has adopted the Uniform Trade Secrets Act's fee-shifting provisions, with minor stylistic changes. *Compare* A.R.S. § 44-404, *with* Unif. Trade Secrets Act § 4.

Unif. Trade Secrets Act § 4 cmt. (emphases added). Thus, only plaintiffs that prevail on a willful and malicious misappropriation claim may recover fees under § 44-404(3).

The text of the statute confirms this interpretation. The statute authorizes fees "*for* . . . [w]illful and malicious misappropriation." A.R.S. § 44-404 (emphasis added). In other words, willful and malicious misappropriation is a necessary prerequisite, but if there has been willful and malicious misappropriation, then the defendant will not be the prevailing party.

By contrast, subsection (1) allows a defendant to claim fees, but only if the plaintiff asserted "[a] claim of misappropriation made in bad faith." A.R.S. § 44-404(1). Tackett does not contend that Risas asserted any claim in bad faith, and the superior court never made any such finding.

Tackett's arguments to the contrary (at 35-36) misread the statutory text and context. Tackett characterizes (at 36) the statute as requiring an "*assertion* of willful and malicious misappropriation." But merely asserting willful and malicious misappropriation does not trigger subsection (3). The statute authorizes fees "*for* . . . [w]illful and malicious misappropriation." A.R.S. § 44-404 (emphasis added). The word *for* modifies all three subparts,

but the word *claim* modifies only subpart (1). *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 22, at 156 (2012) ("Material within an indented subpart relates only to that subpart; material contained in unindented text relates to all the following or preceding indented subparts."). An assertion alone will not do. An assertion alone triggers only subsection (1), which requires a finding of bad faith.

In short, only *plaintiffs* that prove malicious and willful misappropriation can recover fees under § 44-404(3). Because this subsection does not authorize fee-shifting for successfully defending against a good-faith claim of malicious and willful misappropriation, the superior court properly declined to award fees to Tackett on that basis.

(b) Even if § 44-404(3) did apply, the superior court acted within its discretion in denying fees.

In any event, § 44-404 is discretionary. *See* A.R.S. § 44-404 ("[t]he court *may* award reasonable attorney fees . . . " (emphasis added)). Tackett cannot show that the superior court "exceed[ed] the bounds of reason" when it declined to award him fees under § 44-404(3). *Warner*, 143 Ariz. at 571 (citation omitted).

Although the superior court did not explicitly address § 44-404(3) in its order denying fees, this Court must presume that the superior court's reasoning supports its decision. *Lee v. ING Inv. Mgmt., LLC*, 240 Ariz. 158, 161, ¶ 12 (App. 2016) ("the court 'will affirm an award with a reasonable basis even if the trial court gives no reasons for its decision'" (quoting *Fulton*, 214 Ariz. at 569). And declining to award fees under this provision makes sense. Awarding fees against Risas here would not serve the fee-shifting statute's purpose—deterring willful and malicious misappropriation—because Risas did not engage in any. *See* Unif. Trade Secrets Act § 4, cmt. (allowing a court to award attorney's fees "as a deterrent to . . . willful and malicious misappropriation"). And, as noted above, Tackett has not provided any examples of a court awarding fees under § 44-404(3) against a plaintiff who brings a good-faith but unsuccessful claim of willful and malicious misappropriation.

In short, § 44-404(3) does not authorize a fee award to Tackett. But even if it did, the superior court acted well within its discretion in declining to award attorneys' fees under these circumstances.

II. The superior court had ample bases on which to award Risas its costs.

The superior court also did not "exceed[] the bounds of reason" when it awarded Risas its costs as the prevailing party. *Warner*, 143 Ariz. at 571 (citation omitted).

A. The consent decree and money judgment in Risas's favor gave the superior court a reasonable basis to award costs to Risas.

Here, like with attorneys' fees, both the agreement (APP186 [IR-52 at 2, ¶ 9]) and the controlling statute (A.R.S. § 12-341) authorize the "prevailing party" or the "successful party" to recover costs (and again, neither side contends that those terms have different meanings).

Arizona courts apply the same principles to determine the successful party in both the attorney fees and costs contexts. As with attorneys' fees, "[t]he trial court has substantial discretion to determine who is a 'successful party'" when awarding costs. *Assyia*, 229 Ariz. at 223, ¶ 32.

The superior court had ample discretion to find that Risas prevailed, when considering "the overall outcome of the case" and the "totality of the litigation." *Murphy*, 229 Ariz. at 134, ¶¶ 35-36. As the superior court recognized, Risas "got the injunctive relief they particularly sought, and also got the only money that changed hands." APP197 [IR-130 at 1]. More

particularly, Risas successfully enjoined Tackett from using Risas's confidential information and soliciting its employees for the full length of those obligations in the agreement. And it got a money judgment for more than $80,000.

In *Assyia*, this Court affirmed an award of costs when a plaintiff "received a monetary judgment," even though the defendant tendered funds without a merits ruling from the superior court. *Assyia*, 229 Ariz. at 224, ¶ 33. This Court explained that the defendant's "complaint that the matter was resolved by settlement is both unavailing and, to some extent, inaccurate . . . ." *Id.* Here, Risas likewise obtained a "monetary judgment" and although Tackett stipulated to it, it was not an ordinary settlement because Tackett stipulated to *judgment*, not just a contractual settlement agreement. And as in *Arizona Biltmore*, Risas "secured a substantial judgment and many of [its] claims were directed at the relief it ultimately recovered." *Ariz. Biltmore*, ___ Ariz. at ___, 2020 WL 3428202 at *7, ¶ 40.

These facts gave the superior court a "reasonable basis" to award costs. *Ariz. Biltmore*, ___ Ariz. at ___, 2020 WL 3428202 at *7, ¶ 39 (quotation marks omitted). (*See also* Argument §§ I.A-B, above.)

B. Tackett's arguments to the contrary ignore the law and the record.

Tackett's arguments concerning the award of costs either misstate the law, improperly ask the appellate court to reweigh the facts, or repeat the same flawed arguments Tackett asserted in connection with attorneys' fees.

1. The superior court properly considered the entire case when awarding costs.

Tackett first argues (at 36-37) that the superior court abused its discretion in considering the entire litigation, instead of just the contract claim, because the agreement has a cost-shifting provision. This argument fails for several reasons.

First, the superior court explicitly considered "the outcome of the various claims," APP197 [IR-130 at 1], as permitted under Arizona law when considering "the overall outcome of the case" and the "totality of the litigation." *Murphy*, 229 Ariz. at 134, ¶¶ 35-36. Tackett suggests that the superior court had to make a separate costs award for costs arising out of the agreement versus costs awarded under A.R.S. § 12-341. But the agreement does not require the superior court to depart from this standard test for determining the prevailing party. Tellingly, Tackett cites no Arizona case for the proposition that a contractual cost-shifting provision requires the

court to award costs claim-by-claim rather than determining who prevailed in the litigation. Moreover, as explained in Argument § II.A, above, the superior court had reasonable bases for considering all of the relief when determining the prevailing party.

Second, Tackett ignores that Risas did obtain relief in an "action at law or in equity . . . to enforce . . . the terms of th[e] Agreement." APP186 (agreement) [IR-52 at 2, ¶ 9]. Risas filed an action seeking equitable relief in accordance with the terms of the agreement, and it achieved that relief in the enforceable consent decree. (*See* Argument §§ I.B.1.a-b.) Thus, the superior court had a reasonable basis for finding Risas the prevailing party under the terms of the parties' agreement.

2. Risas ignores the standard of review by asking the court to reweigh the facts.

Although Tackett (at 21) recognizes that this Court reviews the superior court's prevailing-party finding for abuse of discretion, it nevertheless explicitly invites the court to ignore that standard. Tackett contends (at 37) that "the trial court gave *undue weight* to the fiduciary duty award and Consent Decree in determining the 'successful party' under A.R.S. § 12-341."

This Court should not reweigh the facts when reviewing for abuse of discretion. *See, e.g.*, *Kaibab Indus. v. ICA*, 196 Ariz. 601, 608, ¶ 21 (App. 2000) ("Essentially, Lumbermen's asks that we re-weigh the evidence. This we cannot do.").

Tackett asserts (at 37) that "the fact that Risas was awarded money judgment under its fiduciary duty claim is not dispositive—which is what the trial court implied in stating that Risas 'got the only money that changed hands.'" Tackett, however, omitted the rest of that sentence, where the superior court confirms that it considered the outcome of all claims, including not only the money judgment, but also the injunctive relief: "In looking at the *outcome of the various claims* to determine who the prevailing party in the case is, the balance is clearly with Plaintiffs, who got the *injunctive relief* they particularly sought, and also got the only money that changed hands." APP197 [IR-130 at 1] (emphases added). Contrary to Tackett's assertion, the superior court did not narrowly focus on money.

3. Contrary to Tackett's contention, the superior court did not apply the "net judgment" test.

Tackett claims (at 37) that "[t]he trial court erred in its decision to apply the net judgment test." But the superior court did not apply the "net

judgment" test, and Tackett does not explain why he believes the court did so. The superior court never cited that test. Instead, it explicitly considered "the outcome of the various claims," and also considered "the injunctive relief," demonstrating that it did not apply the net judgment test. APP197 [IR-130 at 1]. In denying Tackett's motion for reconsideration, the superior court further confirmed that it applied the "total[ity] of the litigation" standard. APP201 [IR-141 at 1]. On top of that, neither side told the superior court to apply the "net judgment" test, which further confirms that the superior court did not apply the wrong standard. *See, e.g.*, IR-113 (Risas: "the net judgment rule does not apply").

4. The law does not require the superior court to determine the "major issue," and in any event the superior court did not abuse its discretion.

Tackett asserts (at 38) that "[t]he totality of the litigation test *requires* a determination of who succeeded on the 'major issue to be decided in this litigation.'" (Emphasis added.) This argument fails for several reasons.

First, Tackett waived the issue in the superior court. In the primary briefing on costs, he used the term "major issue" only once, inside a parenthetical in a footnote. IR-119 at 4 n.7. He never told the superior court that it had to determine the "major issue," or that the "major issue"

controlled the prevailing-party analysis. He first raised the issue in his motion for reconsideration. *See* IR-132 at 10. But the superior court did not need to consider an issue raised for the first time in a motion for reconsideration. *Evans Withycombe, Inc. v. W. Innovations, Inc.*, 215 Ariz. 237, 240, ¶ 15 (App. 2006) (holding arguments raised for the first time in a motion for reconsideration generally are not considered on appeal).

Second, Tackett's argument—that the totality-of-the-litigation test "*requires*" determining the "major issue"—is wrong as a matter of law. Tackett cites only *Schwartz v. Farmers Ins. Co.*, 166 Ariz. 33 (App. 1990) for that proposition (at 38). But *Schwartz* does not purport to require courts to decide the major issue. Instead, the opinion finds that the superior court "did not abuse its discretion" in determining the prevailing party when one party won "the major issue" (a significant bad faith claim with risk of punitive damages) over a comparatively insignificant $2,000 claim. Considering the "major issue" is just one way among many that the superior court can assess "the overall outcome of the case" and the "totality of the litigation." *Murphy*, 229 Ariz. at 134, ¶¶ 35-36. Here, the superior court did not abuse its discretion in considering "the outcome of the various claims,"

including both the injunctive relief and the money judgment. APP197 [IR-130 at 1].

Moreover, even if the "major issue" controlled the prevailing-party determination, the superior court still did not abuse its discretion. The superior court had ample bases to find that the major issues were whether Tackett could use Risas's confidential information, poach its employees, and start a competing company while working for (and being paid by) Risas. Risas obtained significant relief on all three major issues by successfully enjoining Tackett from using its confidential information, enjoining him from poaching its employees, and recovering every penny that it paid to him (or on his behalf) while he started his competing company.

Here, too, Tackett claims (at 38) that the consent decree "was not relevant to this analysis," but of course it was. The consent decree gave Risas the injunctive relief—enforceable by contempt—that it sought. (*See* Argument § I.B.1.a, above.)

At bottom, Tackett invites this Court to substitute its own judgment for the superior court's, even though this superior court judge presided over the case from start to finish. *Warner*, 143 Ariz. at 571 (recognizing the trial court's "superior understanding of the litigation"). In doing so, Tackett

attempts to construe the claims in his favor by, for example, claiming that Risas sought "elimination" of his businesses, and that some claims were more important than others. But when "reviewing [the] trial court's fee award," this Court must "view the record in the light most favorable to sustaining the trial court's decision." *Solimeno v. Yonan*, 224 Ariz. 74, 82, ¶ 36 (App. 2010).

In a footnote (at 40 n.20), Tackett quibbles with the fact that judgment awards costs to both named plaintiffs, Risas Holdings LLC and Risas Dental Management, LLC. The amount of taxable costs would not change, of course, and Tackett does not contend otherwise. The superior court's minute entry awarding costs ruled that "Plaintiff is awarded $12,170.85" in taxable costs, without specifying which plaintiff. APP198 [IR-130 at 2]. If Tackett thought the judgment should be entered only in favor of one of the Risas entities, he had to object to the proposed form of judgment on that basis. Ariz. R. Civ. P. 58(a)(2)(B)(i). He did not do so, *see* IR-133 (Tackett's objections to proposed form of judgment), and this Court should affirm.

CONCLUSION

The Court should affirm.

RESPECTFULLY SUBMITTED this 27th day of July, 2020.

OSBORN MALEDON, P.A.

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APPENDIX
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RISAS HOLDINGS LLC VS TACKETT ET AL

AMENDED

Electronic Index of Record
MAR Case # CV2016-001841

No.	Document Name	Filed Date
1.	PLAINTIFF'S ORIGINAL COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION	Mar. 4, 2016
2.	CERTIFICATE OF COMPULSORY ARBITRATION	Mar. 4, 2016
3.	CIVIL COVERSHEET	Mar. 4, 2016
4.	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND REQUEST FOR EVIDENTIARY HEARING ON PRELIMINARY INJUNCTION	Mar. 4, 2016
5.	DECLARATION OF JEFF ADAMS IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND REQUEST FOR EVIDENTIARY HEARING ON PRELIMINARY INJUNCTION	Mar. 4, 2016
6.	PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION	Mar. 4, 2016
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8.	CERTIFICATE OF SERVICE	Mar. 7, 2016
9.	ORDER FOR RETURN HEARING	Mar. 7, 2016
10.	**ME: HEARING SET [03/08/2016]**	**Mar. 11, 2016**
11.	(PART 1 OF 5) PLAINTIFFS' FIRST AMENDED COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION	Mar. 15, 2016
12.	(PART 2 OF 5) PLAINTIFFS' FIRST AMENDED COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION	Mar. 15, 2016
13.	(PART 3 OF 5) PLAINTIFFS' FIRST AMENDED COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION	Mar. 15, 2016
14.	(PART 4 OF 5) PLAINTIFFS' FIRST AMENDED COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION	Mar. 15, 2016
15.	(PART 5 OF 5) PLAINTIFFS' FIRST AMENDED COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION	Mar. 15, 2016

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No.	Document Name	Filed Date
16.	(PART 1 OF 2) MOTION TO DISMISS FIRST AMENDED COMPLAINT	Apr. 4, 2016
17.	(PART 2 OF 2) MOTION TO DISMISS FIRST AMENDED COMPLAINT	Apr. 4, 2016
18.	CREDIT MEMO	Apr. 5, 2016
19.	**ME: NOTICE OF ASSIGNMENT TO COMMERCIAL COURT [04/09/2016]**	**Apr. 13, 2016**
20.	STIPULATION TO EXTEND THE TIME FOR PLAINTIFFS TO RESPOND TO DEFENDANT'S MOTION TO DISMISS	Apr. 25, 2016
21.	**ME: HEARING VACATED [04/26/2016]**	**Apr. 28, 2016**
22.	[PROPOSED] ORDER GRANTING STIPULATION TO EXTEND THE TIME FOR PLAINTIFFS TO RESPOND TO DEFENDANT'S MOTION TO DISMISS	May. 2, 2016
23.	SECOND STIPULATION TO EXTEND THE TIME FOR PLAINTIFFS TO RESPOND TO DEFENDANT'S MOTION TO DISMISS	May. 2, 2016
24.	(PART 1 OF 2) STIPULATION FOR ENTRY OF CONSENT DECREE	May. 5, 2016
25.	(PART 2 OF 2) STIPULATION FOR ENTRY OF CONSENT DECREE	May. 5, 2016
26.	PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO DISMISS FIRST AMENDED COMPLAINT	May. 9, 2016
27.	(PART 1 OF 2) MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT	May. 9, 2016
28.	(PART 2 OF 2) MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT	May. 9, 2016
29.	(PART 1 OF 2) REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT	May. 23, 2016
30.	(PART 2 OF 2) REPLY IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT	May. 23, 2016
31.	RESPONSE IN OPPOSITION TO MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT	May. 23, 2016
32.	[PROPOSED] ORDER GRANTING SECOND STIPULATION TO EXTEND THE TIME FOR PLAINTIFFS TO RESPOND TO DEFENDANT'S MOTION TO DISMISS	May. 24, 2016

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No.	Document Name	Filed Date
33.	[PROPOSED] ORDER GRANTING STIPULATION FOR ENTRY OF CONSENT DECREE	May. 24, 2016
34.	APPLICATION FOR SUBSTITUTION OF COUNSEL (WITH CONSENT)	Jun. 17, 2016
35.	ORDER GRANTING APPLICATION FOR SUBSTITUTION OF COUNSEL	Jun. 29, 2016
36.	**ME: ORAL ARGUMENT SET [07/08/2016]**	**Jul. 11, 2016**
37.	**ME: 100 DAY NOTICE [07/20/2016]**	**Jul. 20, 2016**
38.	**ME: ORDER ENTERED BY COURT [08/04/2016]**	**Aug. 5, 2016**
39.	(PART 1 OF 2) PLAINTIFF'S SECOND AMENDED COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION	Aug. 5, 2016
40.	(PART 2 OF 2) PLAINTIFF'S SECOND AMENDED COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION	Aug. 5, 2016
41.	**ME: 150 DAY MINUTE ENTRY [08/06/2016]**	**Aug. 10, 2016**
42.	ANSWER	Aug. 12, 2016
43.	**ME: HEARING SET [08/31/2016]**	**Sep. 9, 2016**
44.	STIPULATION REGARDING INJUNCTIVE RELIEF	Sep. 14, 2016
45.	STIPULATION FOR ENTRY OF STIPULATED PROTECTIVE ORDER	Sep. 22, 2016
46.	JOINT REPORT	Sep. 22, 2016
47.	SCHEDULING ORDER	Sep. 30, 2016
48.	STIPULATED PROTECTIVE ORDER	Sep. 30, 2016
49.	NOTICE OF SUBSTITUTION OF COUNSEL WITHIN FIRM	Feb. 17, 2017
50.	CONSENT TO FILE THIRD AMENDED COMPLAINT	Mar. 27, 2017
51.	(PART 1 OF 2) PLAINTIFFS' THIRD AMENDED COMPLAINT	Mar. 27, 2017
52.	(PART 2 OF 2) PLAINTIFFS' THIRD AMENDED COMPLAINT	Mar. 27, 2017
53.	STIPULATION TO AMEND SCHEDULING ORDER	Mar. 27, 2017

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No.	Document Name	Filed Date
54.	AMENDED SCHEDULING ORDER	Apr. 4, 2017
55.	DEFENDANT'S ANSWER TO THIRD AMENDED COMPLAINT	Apr. 17, 2017
56.	(PART 1 OF 2) APPLICATION FOR ORDER TO SHOW CAUSE	Jun. 20, 2017
57.	(PART 2 OF 2) APPLICATION FOR ORDER TO SHOW CAUSE	Jun. 20, 2017
58.	**ME: HEARING SET [06/27/2017]**	**Jun. 28, 2017**
59.	**ME: HEARING RESET [07/07/2017]**	**Jul. 10, 2017**
60.	**ME: HEARING SET [07/26/2017]**	**Jul. 27, 2017**
61.	**ME: HEARING RESET [08/02/2017]**	**Aug. 3, 2017**
62.	**ME: HEARING RESET [09/12/2017]**	**Sep. 14, 2017**
63.	JOINT STIPULATION TO WITHDRAW APPLICATION FOR ORDER TO SHOW CAUSE	Oct. 3, 2017
64.	ORDER TO WITHDRAW APPLICATION FOR ORDER TO SHOW CAUSE AND TO VACATE HEARING	Oct. 6, 2017
65.	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Oct. 27, 2017
66.	(PART 1 OF 2) STATEMENT OF FACTS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Oct. 28, 2017
67.	(PART 2 OF 2) STATEMENT OF FACTS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Oct. 28, 2017
68.	NOTICE OF FIRST STIPULATED EXTENSION OF DEADLINE TO RESPOND TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Nov. 20, 2017
69.	NOTICE OF APPEARANCE OF ATTORNEY WITHIN SAME FIRM	Dec. 8, 2017
70.	***SEALED*** ORIGINAL SEALED DOCUMENT (PLAINTIFFS RESPONSE TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT)	Jan. 11, 2018
71.	***SEALED*** (PART 1 OF 2) ORIGINAL SEALED DOCUMENT (PLAINTIFFS CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT)	Jan. 11, 2018

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No.	Document Name	Filed Date
72.	***SEALED*** (PART 2 OF 2) ORIGINAL SEALED DOCUMENT (PLAINTIFFS CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT)	Jan. 11, 2018
73.	(PART 1 OF 6) DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS' CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Jan. 30, 2018
74.	(PART 2 OF 6) DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS' CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Jan. 30, 2018
75.	(PART 3 OF 6) DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS' CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Jan. 30, 2018
76.	(PART 4 OF 6) DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS' CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Jan. 30, 2018
77.	(PART 5 OF 6) DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS' CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Jan. 30, 2018
78.	(PART 6 OF 6) DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS' CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Jan. 30, 2018
79.	REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Jan. 30, 2018
80.	**ME: ORAL ARGUMENT SET [03/01/2018]**	**Mar. 2, 2018**
81.	**ME: ORAL ARGUMENT RESET [03/07/2018]**	**Mar. 8, 2018**
82.	**ME: HEARING [04/17/2018]**	**Apr. 23, 2018**
83.	TACKETT DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT	Jan. 7, 2019

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No.	Document Name	Filed Date
84.	(PART 1 OF 3) SUPPLEMENTAL STATEMENT OF FACTS IN SUPPORT OF TACKETT DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT	Jan. 7, 2019
85.	(PART 2 OF 3) SUPPLEMENTAL STATEMENT OF FACTS IN SUPPORT OF TACKETT DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT	Jan. 7, 2019
86.	(PART 3 OF 3) SUPPLEMENTAL STATEMENT OF FACTS IN SUPPORT OF TACKETT DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT	Jan. 7, 2019
87.	(PART 1 OF 4) PLAINTIFF'S SUPPLEMENTAL CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT	Feb. 11, 2019
88.	(PART 2 OF 4) PLAINTIFF'S SUPPLEMENTAL CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT	Feb. 11, 2019
89.	(PART 3 OF 4) PLAINTIFF'S SUPPLEMENTAL CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT	Feb. 11, 2019
90.	(PART 4 OF 4) PLAINTIFF'S SUPPLEMENTAL CONTROVERTING STATEMENT OF FACTS AND ADDITIONAL FACTS IN RESPONSE TO DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT	Feb. 11, 2019
91.	PLAINTIFF'S RESPONSE TO DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT	Feb. 11, 2019
92.	REPLY IN SUPPORT OF TACKETT DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT	Mar. 4, 2019
93.	(PART 1 OF 2) TACKETT DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFF'S ADDITIONAL STATEMENT OF FACTS IN RESPONSE TO DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT	Mar. 4, 2019
94.	(PART 2 OF 2) TACKETT DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFF'S ADDITIONAL STATEMENT OF FACTS IN RESPONSE TO DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT	Mar. 4, 2019
95.	**ME: ORAL ARGUMENT SET [03/18/2019]**	**Mar. 20, 2019**
96.	(PART 1 OF 3) REQUEST FOR RULE 56(D) RELIEF AND FOR EXPEDITED HEARING	Mar. 27, 2019

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No.	Document Name	Filed Date
97.	(PART 2 OF 3) REQUEST FOR RULE 56(D) RELIEF AND FOR EXPEDITED HEARING	Mar. 27, 2019
98.	(PART 3 OF 3) REQUEST FOR RULE 56(D) RELIEF AND FOR EXPEDITED HEARING	Mar. 27, 2019
99.	**ME: ORAL ARGUMENT SET [03/28/2019]**	**Mar. 29, 2019**
100.	NOTICE OF SUBMISSION OF LEGAL AUTHORITY	Apr. 2, 2019
101.	**ME: TRIAL SETTING [04/01/2019]**	**Apr. 3, 2019**
102.	DEFENDANTS' MOTION FOR A BENCH TRIAL	Apr. 12, 2019
103.	(PART 1 OF 2) PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR A BENCH TRIAL	May. 1, 2019
104.	(PART 2 OF 2) PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR A BENCH TRIAL	May. 1, 2019
105.	DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR A BENCH TRIAL	May. 13, 2019
106.	**ME: ORDER ENTERED BY COURT [05/16/2019]**	**May. 20, 2019**
107.	DEFENDANTS' MOTION IN LIMINE TO PRECLUDE EVIDENCE AND ARGUMENT REGARDING: (1) TRADE SECRETS; (2) ECONOMIC HARM AND POST-JANUARY 2016 BENEFITS; AND (3) FRUSTRATION OF PROOF	Aug. 30, 2019
108.	DEFENDANTS' MOTION IN LIMINE TO PRECLUDE EVIDENCE AND ARGUMENT REGARDING: (1) TRADE SECRETS; (2) ECONOMIC HARM AND POST-JANUARY 2016 BENEFITS; AND (3) FRUSTRATION OF PROOF	Aug. 30, 2019
109.	SEPARATE STATEMENT CERTIFYING GOOD FAITH CONSULTATION	Aug. 30, 2019
110.	STIPULATION RE: COUNT THREE AND SCHEDULE	Sep. 13, 2019
111.	NOTICE OF CHANGE OF NAME AND ADDRESSES	Sep. 23, 2019
112.	ORDER REGARDING COUNT THREE AND SCHEDULING	Sep. 27, 2019
113.	(PART 1 OF 2) PLAINTIFFS' APPLICATION FOR COSTS	Oct. 11, 2019
114.	(PART 2 OF 2) PLAINTIFFS' APPLICATION FOR COSTS	Oct. 11, 2019

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No.	Document Name	Filed Date
115.	DECLARATION IN SUPPORT OF DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 11, 2019
116.	DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 11, 2019
117.	VERIFIED REQUEST FOR AWARD OF TAXABLE COSTS	Oct. 11, 2019
118.	PLAINTIFFS' OBJECTION TO DEFENDANTS' VERIFIED REQUEST FOR AWARD OF TAXABLE COSTS	Oct. 23, 2019
119.	DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR COSTS	Oct. 23, 2019
120.	(PART 1 OF 2) PLAINTIFFS' RESPONSE TO DEFENDANTS' APPLICATION FOR ATTORNEYS FEES AND COSTS	Oct. 30, 2019
121.	(PART 2 OF 2) PLAINTIFFS' RESPONSE TO DEFENDANTS' APPLICATION FOR ATTORNEYS FEES AND COSTS	Oct. 30, 2019
122.	(PART 1 OF 2) REPLY MEMORANDUM SUPPORTING PLAINTIFFS' APPLICATION FOR COSTS	Nov. 4, 2019
123.	(PART 2 OF 2) REPLY MEMORANDUM SUPPORTING PLAINTIFFS' APPLICATION FOR COSTS	Nov. 4, 2019
124.	REPLY IN SUPPORT OF VERIFIED REQUEST FOR AWARD OF TAXABLE COSTS	Nov. 4, 2019
125.	DECLARATION OF BRYAN J. GOTTFREDSON	Nov. 12, 2019
126.	(PART 1 OF 2) SUPPLEMENTAL DECLARATION IN SUPPORT DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Nov. 12, 2019
127.	(PART 2 OF 2) SUPPLEMENTAL DECLARATION IN SUPPORT DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Nov. 12, 2019
128.	DEFENDANTS' REPLY IN SUPPORT OF THEIR APPLICATION FOR ATTORNEYS' FEES AND COSTS	Nov. 12, 2019
129.	**ME: ORAL ARGUMENT SET [11/13/2019]**	**Nov. 14, 2019**
130.	**ME: RULING [11/19/2019]**	**Nov. 20, 2019**
131.	NOTICE OF LODGING OF PROPOSED FORM FINAL JUDGMENT	Nov. 27, 2019
132.	MOTION FOR RECONSIDERATION OF RULING OF 11/19/19	Dec. 5, 2019

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No.	Document Name	Filed Date
133.	DEFENDANTS' OBJECTION TO PLAINTIFFS' PROPOSED FINAL JUDGMENT	Dec. 11, 2019
134.	**ME: RESPONSE/REPLY TIMES SET [12/16/2019]**	**Dec. 17, 2019**
135.	REPLY MEMORANDUM SUPPORTING PLAINTIFFS' PROPOSED FINAL JUDGMENT	Dec. 20, 2019
136.	RESPONSE OPPOSING DEFENDANTS' MOTION FOR RECONSIDERATION OF RULING OF 11/19/19	Jan. 10, 2020
137.	FINAL JUDGMENT	Jan. 15, 2020
138.	NOTICE OF APPEAL	Feb. 12, 2020
139.	APPLICATION FOR WRIT OF GARNISHMENT (NON-EARNINGS)	Mar. 6, 2020
140.	APPLICATION FOR WRIT OF GARNISHMENT (NON-EARNINGS)	Mar. 6, 2020
Record amended on Thursday, June 25, 2020 @ 1:39 PM		
141.	**ME: JUDGMENT SIGNED [01/15/2020]**	**Jan. 16, 2020**
142.	AFFIDAVIT OF SERVICE	Mar. 12, 2020
143.	AFFIDAVIT OF SERVICE	Mar. 12, 2020
144.	NOTICE OF WITHDRAWAL OF COUNSEL WITHIN FIRM	Mar. 16, 2020
145.	PETITION FOR JUDGMENT DEBTOR BRANDON TACKETT TO APPEAR FOR DEBTOR'S EXAMINATION	Mar. 16, 2020
146.	ANSWER TO WRIT OF GARNISHMENT	Mar. 17, 2020
147.	GARNISHEE'S ANSWER (NON-EARNINGS) (A.R.S. 12-1578.01 & -1579)	Mar. 18, 2020
148.	COURT OF APPEALS APPELLATE CLERK NOTICE	Mar. 20, 2020
149.	COURT OF APPEALS RECEIPT	Mar. 20, 2020
150.	COURT OF APPEALS RECEIPT	Mar. 20, 2020
151.	ELECTRONIC INDEX OF RECORD	Mar. 20, 2020
152.	ORDER GRANTING PETITION FOR JUDGMENT DEBTOR BRANDON TACKETT'S DEBTOR'S EXAMINATION	Mar. 27, 2020

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No.	Document Name	Filed Date
Record amended on Thursday, June 25, 2020 @ 1:39 PM		
153.	APPLICATION FOR GARNISHMENT JUDGMENT AGAINST BANK OF AMERICA N.A.	Apr. 15, 2020
154.	APPLICATION FOR GARNISHMENT JUDGMENT AGAINST WELLS FARGO BANK, N.A.	Apr. 15, 2020
155.	GARNISHMENT JUDGMENT AGAINST BANK OF AMERICA, N.A. (NON-EARNINGS) (A.R.S. 12-1584)	Apr. 21, 2020
156.	GARNISHMENT JUDGMENT AGAINST WELLS FARGO BANK, N.A.	Apr. 21, 2020
157.	**ME: HEARING CONTINUED [06/02/2020]**	**Jun. 3, 2020**

APPEAL COUNT: 1

RE: CASE: 1 CA-CV 20-0150

DUE DATE: 03/12/2020

CAPTION: RISAS HOLDINGS LLC VS TACKETT ET AL

EXHIBIT(S): NONE

LOCATION ONLY: NONE

SEALED DOCUMENT: ORIGINAL SEALED DOCUMENT INCLUDED IN INDEX OF RECORD

SEALED DOCUMENT: FILED 01/11/2018 - CD - NATIVE ELECTRONIC COPY OF EXHIBIT 3 TO PLAINTIFFS CONTROVERTING STATEMENT OF FACTS

DEPOSITION(S): NONE

TRANSCRIPT(S): NONE

COMPILED BY: fuentesi on March 20, 2020; [2.5-17026.63]
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CERTIFICATION: I, JEFF FINE, Clerk of the Superior Court of Maricopa County, State of Arizona, do hereby certify that the above listed Index of Record, corresponding electronic documents, and items denoted to be transmitted manually constitute the record on appeal in the above-entitled action.

The bracketed [date] following the minute entry title is the date of the minute entry.

CONTACT INFO: Clerk of the Superior Court, Maricopa County, Appeals Unit, 175 W Madison Ave, Phoenix, AZ 85003; 602-372-5375

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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

RISAS HOLDINGS LLC,

Plaintiff,

v.

BRANDON TACKETT

Defendant.

Civ. No. CV2016-001841

PLAINTIFF'S ORIGINAL COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION

Plaintiff Risas Holdings LLC ("Risas" or "Plaintiff") hereby files its Original Complaint and Application for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction against Defendant Brandon Tackett (hereinafter "Tackett" or "Defendant") requesting damages and injunctive relief, and in support thereof states as follows:

I. THE PARTIES

1. Plaintiff Risas Holdings LLC is an Arizona limited liability company that conducts business in Arizona.

2. Defendant Brandon Tackett is an individual who resides at 10531 E. Evergreen St., Mesa, Arizona 85207.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction because the amount in controversy and relief requested herein are within the jurisdictional limits of this Court.

4. Venue is proper in Maricopa County, Arizona, pursuant to ARIZ. REV. STAT. § 12-241.01(A) because it is the county in which the Defendant resides.

III. CONDITIONS PRECEDENT

5. Any and all conditions precedent to the filing of this suit and the prosecution of the claims asserted herein have been performed or have occurred.

IV. FACTUAL BACKGROUND

A. Defendant Enters Into an Employment Relationship with Risas, Signs Two Stock Bonus Appreciation Plans Including a Non-Compete in Exchange for Profit and Equity Participation and Appreciation in the Plaintiff as Well as a Confidentiality and Non-Solicitation Agreement.

6. Risas is a management company that provides non-clinical business support services to affiliated dental practices in the Phoenix area.

7. In the summer of 2013, Defendant applied and was ultimately accepted for a position as support center director of Risas and then accepted a second new position as marketing director of Risas in 2014. Pursuant to his job as marketing director, Defendant was placed in a position of trust and confidence as a member of the management team. This meant that Defendant had access to Risas's most sensitive information, including its trade secrets.

8. On or about December 11, 2013, in connection with his employment as marketing director, Defendant entered into an Employee Confidentiality and Non-Solicitation Agreement with Risas (the "Confidentiality Agreement"). The Confidentiality Agreement is attached hereto as **Exhibit A**.

9. Pursuant to Section One of the Confidentiality Agreement, Defendant specifically acknowledged and agreed that any confidential information learned by him in the course of his engagement with Risas was and would remain the property of Risas. Defendant further acknowledged in Section One that any disclosure of any confidential information by him would result in irreparable injury and damage to Risas. Additionally, Defendant specifically acknowledged in Section One that the "confidential information" belonging to Risas included, without limitation, (1) information related to the business, services, trade secrets, contractors,

suppliers, products, or sales of Risas or its affiliates or any of their respective patients and (2) any information contained in the RISAS WAY manual, proprietary Google Drive files, and emails.

10. Pursuant to Section Two of the Confidentiality Agreement, Defendant specifically agreed not to disclose, allow to be disclosed, or use any Risas Confidential Information in competition with Risas for a period of five years following the termination of Defendant's engagement with Risas. Specifically, Section Two provides the following:

> 2. **Covenant Not-to-Divulge Confidential Information**. Employee acknowledges and agrees that Employer and its affiliates are entitled to prevent the disclosure of Confidential Information. As a portion of the consideration for the employment of Employee and for the compensation being paid to Employee by Employer, Employee agrees at all times during Employee's employment and for five years thereafter to hold in strict confidence and not to disclose or allow to be disclosed to any person, firm or corporation, other than to persons engaged by Employer and its affiliates to further the business of Employer and its affiliates, and not to use except in the pursuit of the business of Employer and its affiliates, the Confidential Information, without the prior written consent of Employer, including Confidential Information, without prior consent of Employer, including Confidential Information developed by Employee.

11. Additionally, Defendant specifically agreed to return all documents, data, and other information pertaining to any Confidential Information he received once his employment at Risas ended. This included any documents, literature, samples, demonstration models, office equipment or other information, or any reproduction or excerpt thereof, containing or pertaining to any Confidential Information.

12. Furthermore, Defendant agreed in Section Four of the Confidentiality Agreement not to compete with Risas for a period of two years after the termination of his relationship with Risas by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas employee to leave his or her employment with Risas, either for Defendant or any other entity. Specifically, Section Four provides the following:

> 4. **Non-Solicitation**. Employee further agrees that for a period of twenty-four (24) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, that Employee shall not either directly or indirectly solicit, induce, recruit or encourage any of the

Company's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of the Company, either for myself or for any other person or entity.

13. In addition to the Confidentiality Agreement, on January 22, 2014, Defendant entered into a Stock Bonus Appreciation Plan Participant Agreement with Risas (the "First Participant Agreement"). A copy of the First Participant Agreement is attached hereto as **Exhibit B**. On May 1, 2014, Defendant entered into the exact same Stock Bonus Appreciation Plan Participant Agreement with Risas (the "Second Participant Agreement" and collectively the "Participant Agreements"). A copy of the Second Participant Agreement is attached hereto as **Exhibit C**. Pursuant to Section VI of the Participant Agreements, Defendant specifically agreed for a period of two years after termination of his relationship with Risas "not to disclose, directly or indirectly, the Confidential Information [of Risas] to any third person or entity, other than representatives or agents of the Company, and to treat all such information as confidential and proprietary property of the Company."

B. Defendant Unlawfully Uses Risas's Confidential Information To Open A Competing Business And Solicits Risas's Employees In Violation Of His Contractual Agreement.

14. Defendant resigned from Risas on January 6, 2016. Plaintiff had extensive conversations with Defendant to remind him of the obligations he accepted when signing both the Confidentiality Agreement and the Participation Agreements. Plaintiff also offered Defendant the opportunity to remain on Plaintiff's payroll until January 15, 2016, as a good-faith gesture and Defendant accepted the offer.

15. After the termination of his relationship with Risas, and despite entering into the Confidentiality Agreement and the Participant Agreements, Risas became aware that Defendant had started a business called SOMOS that directly competes with Risas. Defendant improperly withheld and is currently in unauthorized possession of Confidential Information belonging to Risas, including the RISAS WAY manual and other information related to the business including but not limited to suppliers, employees, and doctors, and other trade secrets of Risas. Moreover, Defendant is currently using this improperly retained Confidential Information in connection

with the operation of a business that directly competes with Risas. Furthermore, Defendant has made several representations to various entities and individuals that appear to indicate Defendant believes that he is entitled to the use of this Confidential Information. Defendant is also falsely stating that he created much of Risas's proprietary systems and is directly referencing his past employment with Risas when contacting Risas's relationships for the benefit of SOMOS. This is in spite of the fact that Defendant signed multiple agreements acknowledging the contrary to be true.

16. In addition, Defendant is currently actively recruiting doctors and other medical professionals away from Risas to work for his competing business and its affiliates in clear violation of Section Four of the Confidentiality Agreement. Risas first became aware of these solicitations when Gilbert Ochoa contacted Risas to admit that Defendant had contacted Mr. Ochoa in order to hire him. As a result of this direct solicitation by Defendant, Mr. Ochoa informed Risas that he was firing them as a client in order to perform work for SOMOS. A true and correct copy of this email exchange has been attached as **Exhibit D**. Additionally, Defendant has recruited and/or solicited Dr. Tina Keyhani (former Risas referral oral surgeon), Eric Vega (former Risas Dental Assistant), Denise Rico (former Risas Dental Assistant), and Dr. Wyatt Dannels (Risas Doctor being actively approached by Defendant) to affiliate with SOMOS. Defendant met each of these contacts for the first time as an employee of Risas and has leveraged his past relationship with Risas in order to hire these medical professionals by SOMOS or its affiliates, all in violation of Defendant's Confidentiality Agreement with Risas.

17. Finally, Defendant is also actively seeking expertise and services from, soliciting, and is attempting to recruit Keith Gauzza (Henry Schein Dental Supplies Special Markets Representative), Aaron Call (Henry Schein Dental Supplies Representative), Rich Andrus (Menlo Partners Real Estate Advisors), and Andrew DeCarlo (videographer) to supply SOMOS or its affiliates with dental equipment and/or professional services. Again, Defendant met each of these contacts for the first time as an employee of Risas, and he is using his past relationships and his knowledge of Risas's confidential and proprietary vendor expertise and price discount

information in order to obtain an improper advantage for his business that is in direct competition with Risas, all in violation of his Confidentiality Agreement with Risas.

V. CAUSES OF ACTION

COUNT ONE: BREACH OF CONTRACT

18. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

19. Plaintiff and Defendant entered into three contracts: the Participant Agreements and the Confidentiality Agreement. Defendant breached the agreements in material fashion, as more particularly pled in the preceding paragraphs. Plaintiff has sustained monetary damage, loss, or injury as a result of Defendant's breach of these Agreements, in an amount to be determined at trial.

20. Plaintiff retained counsel to pursue its claim and seeks recovery of reasonable attorneys' fees as authorized by ARIZ. REV. STAT. § 12-241.01(A) and Section 9 of the Confidentiality Agreement.

COUNT TWO: VIOLATION OF ARIZONA'S UNIFORM TRADE SECRETS ACT (ARIZ. REV. STAT. §§ 44-401 TO 44-407)

21. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

22. Plaintiff has expended substantial time, effort, and resources in developing its intellectual property, including its suppliers, pricing, contractors, employees, medical professionals, trademarks, and trade name (the "Risas Intellectual Property"), and promoting its professional services. Plaintiff has built a nationwide reputation and notoriety in the Risas Intellectual Property associated with the services provided by its affiliated practices. Plaintiff considers its intellectual property, including the "Risas" trade name and the RISAS WAY manual, to be among its most valuable assets and devotes significant resources to ensure that its rights are not infringed. This protection includes, but is not limited to, the requirement that Defendant enter into the Participant Agreements and the Confidentiality Agreement. As more particularly pled in the preceding paragraphs, Defendant clearly misappropriated Plaintiff's trade

secrets. As a result, Plaintiff has sustained monetary damage, loss, or injury due to the Defendant's misappropriation of these trade secrets, in an amount to be determined at trial.

23. Due to the fact that Defendant's misappropriation was both willful and malicious, Plaintiff seeks attorneys' fees pursuant to ARIZ. REV. STAT. § 44-404.

VI. APPLICATION FOR PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION

24. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

25. As reflected above, Defendant's wrongful acts have caused, and are continuing to cause, irreparable injury to Plaintiff, for which there is no adequate remedy at law.

26. Plaintiff has established a substantial likelihood of success on the merits in this matter.

27. The harm faced by Plaintiff outweighs any harm that would be sustained by Defendant if the preliminary injunction were granted; indeed, the continued damage to Risas through the solicitation of its employees, the improper direct competition posed by SOMOS, and the misappropriation of the Risas Intellectual Property greatly exceeds any harm Defendant could conceivably suffer.

28. Moreover, the issuance of a preliminary injunction would not adversely affect the public interest. To the contrary, public interest is served by enforcing contractual agreements such as the Participant Agreements and the Confidentiality Agreement.

29. Plaintiff is willing to post a bond should the Court deem it necessary.

30. Therefore, Plaintiff asks this Court to (a) enter a temporary restraining order, (b) enter a preliminary injunction, from now until such time as there is a trial on the merits, and subsequently (c) enter a permanent injunction, after a trial on the merits, requiring Defendant (and his agents, assigns, representatives, or any person who is participating or is in active concert with him), after receipt of actual notice of this Court's order by personal service, telecopy, email, or otherwise, to do the following:

a. immediately refrain from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendant's business;

b. immediately return to Risas all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendant's possession, custody, or control;

c. immediately refrain from competing with Risas in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas employee to leave his or her employment with Risas, in violation of Defendant's obligations in the Confidentiality Agreement;

d. immediately refrain from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property; and

e. immediately refrain from deleting, destroying, or altering any evidence of Defendant's disclosure of Risas's Confidential Information or any other evidence, including but not limited to any emails, text messages, voicemail messages, or other written or recorded communications, regarding the Confidential Information.

VII. PRAYER FOR RELIEF

Risas respectfully requests that the Court award judgment against Defendant Brandon Tackett and grant Risas the following:

A. Actual, direct, exemplary, and consequential damages;

B. Pre-judgment interest and interest on the judgment;

C. Attorneys' fees, expenses, and costs;

D. A temporary restraining order compelling the following:

1. immediately restrain Defendant from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendant's business;

2. order Defendant to immediately return to Risas all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendant's possession, custody, or control;

3. immediately restrain Defendant from competing with Risas in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas employee to leave his or her employment with Risas, in violation of Defendant's obligations in the Confidentiality Agreement;

4. immediately restrain Defendant from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property; and

5. immediately restrain Defendant from deleting, destroying, or altering any evidence of Defendant's disclosure of Risas's Confidential Information or any other evidence, including but not limited to any emails, text messages, voicemail messages, or other written or recorded communications, regarding the Confidential Information;

E. A preliminary injunction compelling the following:

1. immediately restrain Defendant from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendant's business;

2. order Defendant to immediately return to Risas all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendant's possession, custody, or control;

3. immediately restrain Defendant from competing with Risas in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas employee to leave his or her employment with Risas, in violation of Defendant's obligations in the Confidentiality Agreement;

4. immediately restrain Defendant from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property; and

5. immediately restrain Defendant from deleting, destroying, or altering any evidence of Defendant's disclosure of Risas's Confidential Information or any other evidence, including but not limited to any emails, text messages, voicemail messages, or other written or recorded communications, regarding the Confidential Information;

F. A permanent injunction compelling the following:

1. immediately and permanently restrain Defendant from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendant's business;

2. order Defendant to return to Risas all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendant's possession, custody, or control;

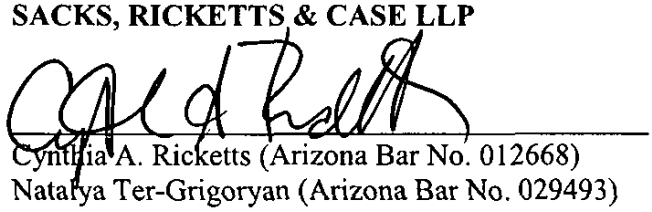
3. immediately and permanently restrain Defendant from competing with Risas in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas employee to leave his or her employment with Risas, in violation of Defendant's obligations in the Confidentiality Agreement; and

4. immediately and permanently restrain Defendant from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property.

G. Such other and further relief to which it may show itself to be justly entitled, at law or in equity.

RESPECTFULLY SUBMITTED this 4th day of March, 2016.

SACKS, RICKETTS & CASE LLP



Cynthia A. Ricketts (Arizona Bar No. 012668)
Natalya Ter-Grigoryan (Arizona Bar No. 029493)
SACKS, RICKETTS & CASE LLP
2800 N. Central Avenue, Suite 1230
Phoenix, AZ 85004

Attorneys for Plaintiff

VERIFICATION

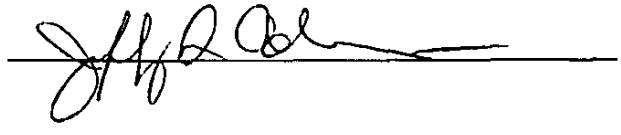
STATE OF ARIZONA)
)
County of Maricopa)

1. I, Jeffrey DAdamo, am the Manager of Risas Holdings LLC, the Plaintiffs in this matter.

2. I have read the forgoing Verified Complaint, know the contents thereof, and state that it is true based on my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 3rd day of March, 2016.



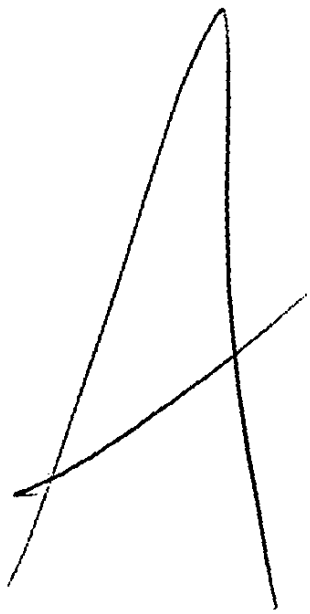


EXHIBIT A

Tackett

EMPLOYEE CONFIDENTIALITY AND NON-SOLICITATION

This Employee Confidentiality Agreement (the "Agreement") is entered into as of the Effective Date set forth on the signature page below, between **RISAS DENTAL MANAGEMENT LLC and all affiliated PRACTICES dba Risas Dental and Braces** ("Employer," "Company" or "RISAS"), and the undersigned employee of RISAS ("Employee").

WITNESSETH:

WHEREAS, Employer desires to employ or continue to employ Employee and Employee desires to continue such employment; and

WHEREAS, Employee will, as employee of Employer, have access to confidential information with respect to Employer and its affiliates;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and for other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Acknowledgment of Proprietary Interest. Employee recognizes the proprietary interest of Employer and its affiliates in any Confidential Information (as hereinafter defined) of Employer and its affiliates (defined below). Employee acknowledges and agrees that any and all Confidential Information learned by Employee during the course of Employee's engagement by Employer or otherwise, whether developed by Employee alone or in conjunction with others or otherwise, will be and is the property of Employer and its affiliates. In connection with Employee's employment by Company, Employee acknowledges and agrees that Employee will come into contact with such Company Confidential Information. Employee further acknowledges and understands that Employee's disclosure of any Confidential Information and/or proprietary information will result in irreparable injury and damage to Employer and its affiliates, including without limitation information derived from reports, investigations, experiments, research, work in progress, drawings, designs, plans, proposals, codes, marketing and sales programs, client lists, client mailing lists, financial projections, cost summaries, pricing formulae, manuals, and all other concepts, ideas, materials, or information prepared or performed for or by Employer or its affiliates. "Confidential Information" shall mean and includes all information relating to the Company, whether written or oral, including without limitation (i) information relating to the business, property, operations, finances and personnel of the Company; (ii) information not generally known to the public; (iii) information contained in any of the Company's manuals and guidebooks and (iv) any information generated or derived by the Company or its representatives and affiliates that contains, reflects or is derived from any such information. "Confidential Information" also specifically includes (x) information related to the business, services, trade secrets, products or sales of Employer or its affiliates, or any of their respective patients and (y) information contained in The RISAS Way manual, proprietary Google Drive files, and emails other than information which may otherwise be publicly available. An "affiliate" of any party hereto will mean the person controlling, controlled by or under control with such party.

2. Covenant Not-to-Divulge Confidential Information. Employee acknowledges and agrees that Employer and its affiliates are entitled to prevent the disclosure of Confidential Information. As a portion of the consideration for the employment of Employee and for the compensation being paid to Employee by Employer, Employee agrees at all times during Employee's employment and for five years thereafter to hold in strict confidence and not to disclose or allow to be disclosed to any person, firm or corporation, other than to persons engaged by Employer and its affiliates to further the business of Employer and its affiliates, and not to use except in the pursuit of the business of Employer and its affiliates, the Confidential Information, without the prior written consent of Employer, including Confidential Information, without prior consent of Employer, including Confidential Information developed by Employee.

3. Return of Material at Termination. In the event of any termination or cessation of Employee's employment with Employer for any reason whatsoever, Employee will promptly deliver to Employer all documents, data and other information pertaining to Confidential Information. Employee will not take any documents, literature, samples, demonstration models, office equipment or other information, or any reproduction or excerpt thereof, containing or pertaining to any Confidential Information.

4. Non-Solicitation. Employee further agrees that for a period of twenty-four (24) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, that Employee shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of the Company, either for myself or for any other person or entity.

5. No Grant of License. The Confidential Information shall remain the property of the Company, and no license or assignment, by implication, estoppel or otherwise, is granted by the Company to Employee to make, have made, use, or sell

any product using the Confidential Information, or a license under any patent, patent application, utility model, copyright, trade secret, trademark, service mark or any other similar industrial or intellectual property right..

6. Injunctive Relief. Employee recognizes and acknowledges that in the event of any default in, or breach of any of the terms, conditions, or provisions of this Agreement (either actual or threatened) by Employee, Employer's and its affiliates' remedies at law will be inadequate and its damages maybe difficult to ascertain. Accordingly, Employee agrees that in such event, Employer and its affiliates will have the right of specific performance and/or injunctive relief in addition to any and all other remedies and rights at law or in equity, and such rights and remedies will be accumulative.

7. Other Agreements and Assignment. This Agreement embodies the entire agreement between the parties regarding Confidential Information and supersedes all prior oral or written understanding or agreements between the parties hereto. This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing herein, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever hereunder. Any assignment of this Agreement by either party without the prior written consent of the other party shall be void.

8. Not an Employment Agreement. The Employee and the Company acknowledge and agree that this Agreement is not intended to and should not be construed to grant the Employee any right to employment with the Company.

9. Governing Law; Venue. This Agreement and the rights and obligations of the parties hereto will be governed, construed and enforced in accordance with the laws of the State of Arizona, without regard to the principals of conflicts of law thereof. The parties agree that this Agreement shall be performable in Phoenix, Arizona. EACH PARTY KNOWINGLY, WILLINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, COUNTERCLAIM OR OTHER PROCEEDING, TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS AGREEMENT. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which he or it may be entitled.

10. Enforceability. If, for any reason, any provision contained in this Agreement should be held invalid in part by court of competent jurisdiction, then it is the intent of each of the parties hereto that the balance of this Agreement be enforced to the fullest extent permitted by applicable law. Accordingly, should a court of competent jurisdiction determine that the scope of any covenant is too broad to be enforced as written, it is the intent of each of the parties that the Court should reform such covenant to such narrower scope as it determines enforceable, to the broadest extent possible.

11. Waiver of Breach. The waiver by any party hereto of a breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach by any party.

12. Captions. The captions in this Agreement are for convenience of reference only and will not limit or otherwise affect any of the terms or provisions hereof

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute as the same instrument, but only one of which need be produced.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties hereto have executed this Confidentiality Agreement effective as of the 11 day of Dec., 2013 (the "Effective Date").

EMPLOYER:

RISAS DENTAL MANAGEMENT LLC
and affiliated PRACTICES

By: _____
Printed Name: Brandon Tackett
Title: _____

EMPLOYEE:

By: _____
Printed Name: Brandon Tackett

Employee Address and Information for Notices:

10531 E. Evergreen St.
Mesa, AZ 85207

Attn: _____
Phone: (480) 510-8585
Fax: _____
Email: brandontackett92@gmail.com

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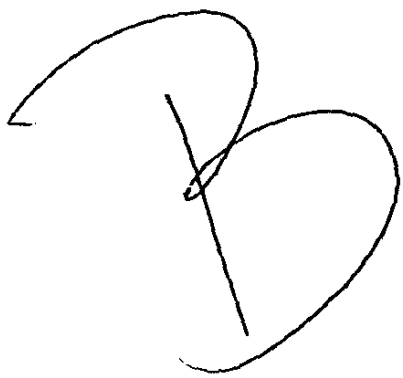

EXHIBIT B

Tackett
1/14

PARTICIPANT AGREEMENT

This Incentive Plan Participant Agreement (this "Agreement") is made as of January 22, 2014 (the "Effective Date") by and between RISAS HOLDINGS LLC, an Arizona Limited Liability Company ("Company") and Brandon Tackett ("Participant") (each a "Party" and collectively, the "Parties").

WITNESSETH

WHEREAS, Company has created a Stock Appreciation Bonus Plan (the "Plan"), attached hereto as Exhibit A; and

WHEREAS, Participant has achieved the Threshold Performance Measures and is an Eligible Participant; and

WHEREAS, Participant desires to and agrees to participate in the Plan pursuant to the terms and conditions of this Agreement and the Plan.

NOW, THEREFORE, for and in consideration of the promises and covenants herein contained, Company and Participant hereby agree as follows:

I. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings specified for such terms in the Plan.

II. Participation. The Participant is hereby deemed to be a Participant (as defined in the Plan) of the Plan and subjects himself or herself to the terms and conditions of the Plan and this Agreement.

III. Commencement.

A. Upon execution of this Agreement, the Participant will be eligible to receive a Performance Award for achieving the Threshold Performance Measures, subject to the terms of the Plan. Further, upon the execution of this Agreement, the Participant will also be eligible to receive additional Performance Awards for achieving the Performance Measures for the Performance Periods within which is the Effective Date.

B. The Participant acknowledges and agrees that the Plan in no way has established or obligates the Company to establish specific Performance Periods, including, but not limited to, Performance Periods for the calendar month and calendar year of the Effective Date. Collections or Doctor Pretax Payments prior to the commencement of Performance Periods will not be tallied for Performance Measures achievement.

C. The Participant acknowledges and agrees to not cause Collections in an untimely manner for the purpose of receiving a Performance Award. Collections made in an untimely manner shall include, but not be limited to, Collections made not in accordance with the Practice's ordinary Collection practices. Further, the Participant acknowledges and agrees that the Company may discount such untimely Collections when it tallies Performance Measures and Threshold Performance Measures achievement which may cause Participant to not be an Eligible Participant.

IV. Separate from Employment Agreement.

A. The Participant agrees and acknowledges that this Agreement is not an employment agreement and that the execution of this Agreement, participation in the Plan or the grant of a Performance Award to the Participant do not constitute assurance of continued employment for any period.

B. The Participant agrees and acknowledges that (i) this Agreement does not constitute an amendment or otherwise provide additional terms to or limit the terms of any employment agreement or professional services agreement the Participant may have with the Company or its Affiliates, and (ii) any breach of this Agreement by the Company will not be deemed a beach of such employment agreement by the Company, its Affiliates or the Practice.

V. Termination.

A. The Parties may terminate this Agreement at any time and for any reason.

B. This Agreement will terminate automatically upon the termination of the Participant's employment, independent contract, retirement or retirement arrangements with the Company or its Affiliates.

C. Participant's right to Performance Awards upon the termination of this Agreement is subject to the terms of the Plan.

VI. Confidential Information.

Participant acknowledges that the terms of this Agreement and the Plan constitute confidential information ("Confidential Information"). Participant acknowledges that the Company's business is extremely competitive, dependent in part upon the maintenance of secrecy, and that any disclosure of the Confidential Information would result in serious irreparable harm to the Company. Participant agrees: not to disclose, directly or indirectly, the Confidential Information to any third person or entity, other than representatives or agents of the Company, and to treat all such information as confidential and proprietary property of the Company. This Section shall survive the termination of this Agreement for a period of two years.

VII. Assignment. No Party shall have the right to assign this Agreement; provided, however, that Company may assign this Agreement in whole or in part to any of its Affiliates.

VIII. Amendments. This Agreement may not be amended or modified at any time except by action of both Company and Participant in writing.

IX. Disputes. Any controversy, dispute, or claim arising out of, in connection with, or in relation to, the interpretation, performance or breach of this Agreement shall be settled exclusively by the mediation and arbitration terms provided in the Plan.

X. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to the conflict of law principles thereof.

XI. Severability. If any provision of this Agreement or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect and the invalid provision shall be reformed or modified to a valid provision which most reflects the original intent of the Parties.

XII. Headings. The headings herein are inserted only as a matter of convenience and reference, and in no way define, limit or describe the scope of this Agreement or the intent of the provisions thereof.

XIII. Waiver. No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

XIV. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements or understandings, oral or written, except as expressly set forth herein.

XV. Conflicts. In the event of a conflict between the terms of this Agreement and the Plan, the terms of the Plan shall prevail.

XVI. Counterparts and Facsimile Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument. Any copy of this Agreement containing a facsimile signature page shall be deemed an original.

Vesting shall be calculated from January 1st, 2014 for 500 equivalent membership units.

IN WITNESS WHEREOF, Company and the Participant have caused this Agreement to be executed individually or by their duly appointed representatives as of the day, month and year first above written.

COMPANY
By: RISAS Holdings LLC

By: _____
Name: Jeffrey D. Adams or Nicolas J. Porter
Title: Managers

PARTICIPANT

By: _____
Name: Brandon Tackett

EXHIBIT A

STOCK APPRECIATION BONUS PLAN

OF

RISAS HOLDINGS LLC

ARTICLE I.
General

Section 1.1 Purpose of the Plan. This Stock Appreciation Bonus Plan (this "Plan") of Risas Holdings LLC, an Arizona limited liability company, is intended to advance the best interests of the Company, its Contractors, Affiliates and its Members in order to attract, retain and motivate key Company Contractors and Teammmates by providing them with additional incentives through Performance Awards.

Section 1.2 Definitions. For purposes of this Plan, the following definitions shall apply:

(a) Affiliate. An "Affiliate" of the Company means any affiliated entity, subsidiary or parent of the Company, including, but not limited to, the Practices.

(b) Annual Performance Period. "Annual Performance Period" means a Performance Period which begins on January 1 of a calendar year and concludes on December 31 of the same calendar year.

(c) Annual Threshold Measures. "Annual Threshold Measures" has its meaning set forth in Section 2.1.

(d) Cause. "Cause" shall mean:

(i) the willful and continued failure by the Participant to substantially perform his duties as described in the Professional Service Agreement or The Risas Way with the Company or its Affiliate (other than any such failure resulting from the Participant's Disability or inability), within a reasonable period of time after a written demand for substantial performance is delivered to the Participant by the Managers of the Participant's employer, which demand specifically identifies the manner in which the Managers of the Participant's employer believes that the Participant has not substantially performed his duties;

(ii) the failure by the Participant to conform to the Company's Professional Services Confidentiality Agreement as a Participant or during the Payout; or

(iii) the willful engaging by the Participant in conduct that is demonstrably and materially injurious to the Company or its Affiliate, including direct competition, as a Participant or during the Payout, monetarily or otherwise;

For purposes of the Plan, no act, or failure to act, on the Participant's part shall be deemed "willful" unless done, or omitted to be done, by the Participant not in good faith and without reasonable belief that the Participant's action or omission was in the best interest of the Company.

(e) Code. "Code" shall mean the Internal Revenue Code of 1986, as amended.

(f) Collections. "Collections" shall mean cash, debit or credit card, electronic funds transfer, or check remitted to the Company or its Affiliates for dental services performed to the benefit of a specific doctor.

(g) Company. "Company" means Risas Holdings LLC and its successors and assigns.

(h) Company Distributions. "Company Distributions" shall mean proportionate cash receipts from the Company to its members, assuming all Performance Awards were outstanding as Company membership units when the Company approves as issued such payouts.

(i) Contractor(s). "Contractor(s)" shall mean professionals working with the Company or its Affiliates under a professional services agreement or other contract.

(j) Disability. "Disability" shall mean, except as otherwise determined by the Managers, a condition that renders the Participant unable, by reason of a medically determinable physical or mental impairment, to engage in any substantial gainful activity, which condition, in the opinion of a physician selected by the Managers, is expected to have a duration of not less than 120 days.

(k) Distributions. "Distributions" shall mean fully diluted proportional share of Risas Holdings LLC membership payouts using the Plan's equivalent unit allocations for all Participants.

(l) Eligible Participant or Participant. An "Eligible Participant," or "Participant" has its meaning set forth in Section 1.4 of the Plan.

(m) Employee(s). "Employee" shall mean any employee of the Company or its Affiliates.

(n) Managers. "Managers" refers to the sole manager or the collective managers of the Company.

(o) Material Adverse Event. "Material Adverse Event" shall mean a specific documentable event that reduces the value of the Company by more than 20% prior to or during the Payout Period.

(p) Monthly Payouts. "Monthly Payouts" shall mean proportional distributions paid monthly based on the fully diluted equivalent ownership represented by the Performance Award.

(q) Monthly Performance Period. "Monthly Performance Period" means a Performance Period which begins on the first day of a calendar month and ends on the last day of such month.

(r) Monthly Threshold Measures. "Monthly Threshold Measures" has its meaning set forth in Section 2.1.

(s) Ownership Event. "Ownership Event" shall mean any transaction changing ownership for more than 50% of the outstanding membership in the Company, including but not limited to an acquisition by an unassociated third party or entity, a merger with an unassociated third party or entity an asset sale, a consolidation of the Company, or any other similar event resulting in a change of control of the Company.

(t) Participant Agreement. A "Participant Agreement" refers to the Incentive Plan Participant Agreement entered into by each Participant in connection with the implementation of this Plan.

(u) Payout(s). "Payout(s)" shall mean cash compensation paid to Participants when the Participant terminates its relationship with the company or its Affiliates or cashes in its Performance Awards for adding to the appreciation of the Company's valuation.

(v) Payout Valuation. "Payout Valuation" shall have the meaning set forth in Section 3.3.

(w) Performance Award. "Performance Award" has its meaning set forth in Section 2.1.

(x) Performance Measures. "Performance Measures" means the objectives established by the Managers pursuant to Section 2.1(b) as changed from time to time.

(y) Performance Period. "Performance Period" means the period over which the performance of a holder of a Performance Award is measured.

(z) Plan. "Plan" means this Stock Appreciation Bonus Plan of Risas Holdings LLC.

(aa) Retirement. "Retirement" shall mean retirement from the Company or its Affiliates.

(bb) Termination. "Termination" shall mean ending affiliation as Employee(s) or Contractor(s) with the Company or its Affiliates.

(cc) Threshold Performance Measures. "Threshold Performance Measures" has its meaning set forth in Section 2.1.

(dd) Vesting". "Vesting" shall have the meaning set forth is Section 3.1.

(ee) Withdrawal. "Withdrawal" shall mean both parties mutually agreeing to end the Performance Award.

Section 1.3 Administration of the Plan.

(a) The Plan shall be administered by the Managers. The Managers shall have authority to interpret conclusively the provisions of the Plan, to adopt such rules and regulations for carrying out the Plan as they may deem advisable, to decide conclusively all questions of fact arising in the application of the Plan, to establish performance criteria in respect of Performance Awards under the Plan, to certify that Plan requirements have been met for any Participant in the Plan, to submit such matters as they may deem advisable to the Company's members for their approval, and to make all other determinations and take all other actions necessary or desirable for the administration of the Plan. The Managers are expressly authorized to adopt rules and regulations limiting or eliminating their discretion in respect of certain matters as they may deem advisable to comply with or obtain preferential treatment under any applicable tax or other law rule, or regulation. All decisions and acts of the Managers shall be final and binding upon all affected Participants.

(b) The Managers shall designate the Eligible Participants, if any, to be granted Performance Awards and the amount of such Performance Awards and the time when such Performance Awards will be granted. All Performance Awards granted under the Plan shall be on the terms and subject to the conditions determined by the Managers consistent with the Plan.

Section 1.4 Eligible Participants. Employees or Contractors who (i) professionally associates with the Company or its Affiliates, and (ii) achieve the Threshold Performance Measures, are eligible to become Participants and earn Performance Awards under this Plan (such Contractors or Employees being "Eligible Participants"). Eligible Participants must execute a Participant Agreement in order to be eligible to receive Performance Awards under the Plan.

Section 1.5 Other Compensation Programs. Nothing contained in the Plan shall be construed to preempt or limit the authority of the Company to exercise its corporate rights and powers, including, but not by way of limitation, the right of the Company (i) to grant incentives for proper corporate purposes otherwise than under the Plan to any Employee, Contractors. manager, officer, director or other person or entity or (ii) to grant incentive awards to, or assume incentive awards of, any person or entity in connection with a change of control of the Company.

ARTICLE II.
Performance Awards

Section 2.1 Terms and Conditions of Performance Awards. The Managers shall be authorized to grant awards which are intended to be "stock-appreciation-based

compensation" ("Performance Awards") and which are payable in cash. Managers may amend the terms for Performance Awards at any time prior to an award being issued.

(a) Performance Periods. The Managers may establish with respect to each Performance Award a Performance Period over which the performance of a Participant shall be measured. Performance Awards may be awarded based on performance for (x) Annual Performance Periods or (y) Monthly Performance Periods. Annual Performance Periods and Monthly Performance Periods may overlap for the same Participant. The Managers may establish Performance Periods at their own discretion and are not required to establish a Performance Period for any specific time.

(b) Performance Measures. The Managers shall establish a minimum level of acceptable achievement for the Participant to be granted a Performance Award. Each Performance Award shall be contingent upon the performance and achievement of the Performance Measures fixed by the Managers.

(c) Threshold Performance Measures. Pursuant to Section 1.4 of this Plan, a prerequisite to being deemed an Eligible Participant is the achievement of certain Threshold Performance Measures. The "Threshold Performance Measures" are either:

(i) As deemed appropriate for specific Company Employees or Contractors at the discretion of the Managers;

(ii) The generation of $100,000 in Collections for the first time within a Monthly Performance Period at the discretion of the Managers ("Monthly Threshold Measures"), or

(iii) The generation of $960,000 in Collections by a doctor within an Annual Performance Period at the discretion of the Managers ("Annual Threshold Measures").

(d) Performance Awards. Upon achievement of the Threshold Performance Measures and the execution of a Participant Agreement, the Participant will be granted a Performance Award. Though the Managers retain the right to amend Performance Awards criteria prior to their issuance at any time, the initial Performance Awards will be:

(i) As deemed appropriate for specific Company Employees or Contractors set as a specific number of units based on the equivalent initial stock value for Risas Holdings LLC at the discretion of the Managers;

(ii) The specific number of units based on the approximate estimated initial stock value of $5,000 in Risas Holdings LLC for achieving the Monthly Threshold Measures at the discretion of the Mangers, and

(iii) The specific number of units based on the approximate estimated initial stock value of $10,000 in Risas Holdings LLC for achieving the Annual Threshold Measures at the discretion of the Managers.

(e) Multiple Performance Award Eligibility. Participants will be eligible to collect Performance Awards for achieving the Performance Measures for subsequent or overlapping Performance Periods. Each Performance Period is to be measured independently of all other Performance Periods on a rolling basis. Though the Managers retain the right to amend the Performance Measures and Performance Awards any time prior to their issuance, the Performance Measures for Monthly Performance Periods and Annual Performance Periods are initially set to be the Monthly Threshold Measures and Annual Threshold Measures, respectively.

(f) No Partial Performance Awards. Unless the Managers choose otherwise, in their sole discretion, the Participant will not receive or be deemed to have earned any partial Performance Award for achieving a portion of the Performance Measures for a certain Performance Period.

(g) Allocation. Following the end of each Performance Period, the Managers will determine at their sole discretion whether a Participant has earned a Performance Award, based on the Participant's achievement of the Performance Measures for such Performance Period. The Company will allocate the units for each Performance Award earned in a Monthly Performance Period within 90 days following Monthly Performance Period. Each Performance Award earned over an Annual Performance Period will be allocated within 120 days following the end of the Annual Performance Period. The Managers will have the final say as to whether any Participant has rightfully earned a Performance Award. In the event the Managers are unable to determine whether a Participant has achieved the Performance Measures, the Managers may withhold allocation of the Performance Award until they are able to make such determination and the payments for such Performance Awards may be delayed until the Performance Period following such determination.

(h) Termination of Employment or Contractor Agreement, Retirement, or Withdrawal. Participants (Contractors or Employees) whose services to the Company or its Affiliates which ends through Termination, Retirement, or Withdrawal, will no longer be eligible to receive new Performance Awards and Vesting in this Plan will end. In the event a Participant has vested pursuant to Article III on a Performance Award prior to the Termination, Retirement or Withdrawal, the Participant will be eligible to receive Payouts under the provision of Section 3.3, unless the Participant was terminated for Cause, in which case no Payout will be paid.

(i) Member Rights. The grant of a Performance Award to a Participant shall not, as such, cause such Participant to become and have the rights of a member of the Company or his Practice.

(j) Performance-Based Compensation. Performance Awards are intended to be "stock-appreciation-based compensation," and the grant of the Performance Award and the establishment of the Performance Measures shall be made during the period required under Section 162(m) of the Code.

ARTICLE III.
Vesting, Valuation and Payout

Section 3.1 Vesting. Performance Awards will vest independently at 60% at its 3rd anniversary and 100% at its 5th anniversary for each independent Performance Award. Prior to Vesting and during years four and five as partial Vesting, the unvested individual Performance Awards will have no value to the Participant and will not be entitled to any Payout.

Section 3.2 Distributions. Each month after a Performance Award has been issued and up until the Performance Award is set for Payout, the Participant of each Performance Award shall receive Distributions in proportion and timing of the Participant's prorate share of fully diluted Company Distributions. Managers have sole discretion to set Distributions based on financial results and cash needs of the Company.

Section 3.3 Payout Valuation. Payouts for this Plan shall be based on the equivalent prorate fully diluted ownership valuation represented by the Performance Award in Risas Holdings LLC using eight times (8x) trailing Earnings Before Taxes, Interest, Depreciation and Amortization ("EBITDA"), less total outstanding debt of the Company and its Affiliates. The Payout Valuation will be set at the time of the requested payout or termination as Contractors or Employees of the Company or it Affiliates, unless (i) the Company has suffered a Material Adverse Event, or (ii) the Company is party to an Ownership Event that is materially different than this Payout Valuation. In the event of (i), Managers will set a new Payout Valuation based on their sole discretion and information at the time of Payout. In the event of (ii), Managers will set a new Payout Valuation based on the equivalent value used in the Ownership Event.

Section 3.4 Payout Period. Payout Valuation are payable without interest in eight (8) equal quarterly installments beginning within 90 days of the request for payout, termination of employment or professional services agreement. At the sole discretion of the Managers, payments may be accelerated.

ARTICLE IV.
Additional Provisions

Section 4.1 Amendments. The Managers may at any time and from time to time and in any respect amend or modify the Plan prior to any issuance of each specific Performance Award.

Section 4.2 Beneficiary. A Participant may file with the Company a written designation of beneficiary, on such form as may be prescribed by the Managers, to receive any Performance Awards that become deliverable to the Participant pursuant to the Plan after the Participant's death. A Participant may, from time to time, amend or revoke a designation of beneficiary. If no designated beneficiary survives the Participant, the Participant's estate shall be deemed to be the Participant's beneficiary.

Section 4.3 Transferability. Except as expressly provided in the Plan or as may be permitted by the Managers, no Performance Award under the Plan shall be assignable or transferable by the holder thereof except by will or by the laws of descent and distribution.

Section 4.4 Non-uniform Determinations. Determinations by the Managers under the Plan (including, without limitation, determinations of the persons to receive Performance Awards; the form, amount and timing of such Performance Awards; the terms and provisions of such Performance Awards and the agreements evidencing same; and provisions with respect to termination of employment) need not be uniform and may be made by the Managers selectively among persons who receive, or are eligible to receive, Performance Awards under the Plan, whether or not such persons are similarly situated.

Section 4.5 No Guarantee of Employment. No action of the Company in establishing the Plan, no action taken under the Plan by the Managers and no provision of the Plan itself shall be construed to grant any person the right to remain in the employ of or continue to provide services to the Company or any of its Affiliates for any period of specific duration. The grant of a Performance Award under the Plan shall not constitute an assurance of continued employment for any period.

Section 4.6 Duration and Termination.

(a) The Plan shall be of unlimited duration, unless otherwise terminated or changed pursuant to the terms of the Plan and the Participant Agreement.

(b) The Managers may suspend, discontinue or terminate the Plan at any time. Such action shall not impair any of the rights of any Participant who earned a Performance Award prior to the date of the Plan's suspension, discontinuance or termination without the holder's written consent.

Section 4.7 Effective Date. The Plan shall be effective as of January 1, 2013, subject to approval of a majority of the Company's members present and eligible to vote at a meeting of the members of the Company at which a quorum is present or through the execution of a written consent in the manner described in the Company's operating agreement.

Section 4.8 Section 409A. Notwithstanding anything herein to the contrary, (i) if, at the time of a Participant's termination of employment with the Company and its Affiliates, the Participant is a "specified employee" as defined in Section 409A of the Internal Revenue Code and the deferral of the commencement of any payments or benefits otherwise payable hereunder as a result of such termination of employment is necessary in order to prevent any accelerated or additional tax under Section 409A of the Code, then the Company will defer the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to the Participant) until the date that is six months following the Participant's termination of employment with Company and its Affiliates (or the earliest date as is permitted under Section 409A of the Code without the imposition of any accelerated or additional tax) and (ii) if any other payments or benefits due to the Participant hereunder could cause the application of an accelerated or additional tax under Section 409A of the Code, such payments or benefits shall be deferred if deferral will avoid such acceleration or additional tax, or otherwise such payment or other benefits shall be restructured, to the extent possible, in a manner, reasonably determined by the Managers, that

does not cause such an accelerated or additional tax and that preserves, to the greatest extent possible, the value (both in amount and considering promptness of payment), of such payment or other benefits to the Participant. In the event that payments under this Plan are deferred pursuant to this Section in order to prevent any accelerated tax or additional tax, then such payments shall be paid at the time specified in this Section 3.4 without interest. The Company shall consult with the Participant in good faith regarding the implementation of this Section; provided that neither the Company, any of its Affiliates, nor any of their respective employees or representatives shall have any liability to the Participant with respect thereto.

Section 4.9 Dispute Resolution.

(a) Confidential Mediation. Any controversy, dispute, or claim arising out of, in connection with, or in relation to, the interpretation, performance or breach of this Plan or a Participant Agreement that cannot be resolved within twenty (20) days of written notification by one party to the other that a dispute has occurred shall be initially redressed by mediation. The mediation shall be scheduled with or without the involvement of legal counsel and held at a location in the city where the Company is located as mutually agreed to by the parties and shall take place within thirty (30) days of notice of said mediation being sent to the parties. The cost of the mediation shall be borne equally by the parties, and such mediation shall engage a sole mediator selected from the panel of mediators of the American Arbitration Association ("AAA"). The parties shall attempt in good faith to agree upon a mediator, and if there is no agreement, the mediator shall be selected by the AAA. The parties agree to keep the proceedings of the mediation, all events leading up to the mediation and the outcome of the mediation confidential. Should mediation fail to resolve the Parties' differences, the Parties agree to submit their dispute to arbitration in accordance with the procedures set forth in Section 3.9(b).

(b) Confidential Binding Arbitration. Should the mediation procedures set forth in Section 3.9(a) fail to resolve the parties' differences, the parties agree to submit their dispute to arbitration in accordance with the commercial rules of the AAA then in effect. The arbitration shall be held either at (i) at the AAA office in the city where the Company is located, or (ii) if there is no AAA office in the city where the Company is located, then at the AAA office geographically closest to the Company. The arbitration shall be before a sole arbitrator agreed to by the parties and selected from the panel of arbitrators of the AAA. The parties shall attempt in good faith to agree upon an arbitrator, and if there is no agreement, then the selection of the arbitrator shall be made by the AAA. The arbitrator shall award the prevailing party its reasonable attorneys' fees and costs. The parties agree to keep the proceedings of the arbitration, all events leading up to the arbitration and the outcome of the arbitration confidential. It is the intent of the parties that this Section provides a broad arbitration clause and is intended to include claims and causes of action regarding, arising out of, or relating to this Plan or such Participant's Participant Agreement whether arising in contract, tort, statute, regulation, common law or otherwise. The Parties submission and agreement to arbitrate shall be specifically enforceable, and the judgment of the arbitrator granting an award to a party may be entered in any court having jurisdiction thereof.

Section 4.10 Exclusive Agreement. This Plan document and the applicable Participant Agreement constitute the full and complete agreement between each Participant and the Company regarding the subject matter described herein and therein.

Section 4.11 Governing Law. The laws of the State of Arizona shall govern all questions concerning the construction, validity and interpretation of this Plan (including the Participant Agreement), without regard to such state's conflict of laws rules.

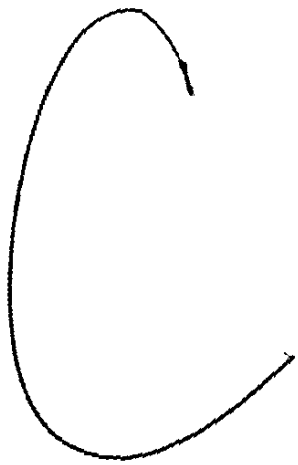

EXHIBIT C

Tackett

May 14

PARTICIPANT AGREEMENT

This Incentive Plan Participant Agreement (this "Agreement") is made as of May 1, 2014 (the "Effective Date") by and between Risas Holdings LLC, an Arizona Limited Liability Company ("Company") and Brandon Tackett ("Participant") (each a "Party" and collectively, the "Parties").

WITNESSETH

WHEREAS, Company has created a Stock Appreciation Bonus Plan (the "Plan"), attached hereto as Exhibit A; and

WHEREAS, Participant has achieved the Threshold Performance Measures and is an Eligible Participant; and

WHEREAS, Participant desires to and agrees to participate in the Plan pursuant to the terms and conditions of this Agreement and the Plan.

NOW, THEREFORE, for and in consideration of the promises and covenants herein contained, Company and Participant hereby agree as follows:

I. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings specified for such terms in the Plan.

II. Participation. The Participant is hereby deemed to be a Participant (as defined in the Plan) of the Plan and subjects himself or herself to the terms and conditions of the Plan and this Agreement.

III. Commencement.

A. Upon execution of this Agreement, the Participant will be eligible to receive a Performance Award for achieving the Threshold Performance Measures, subject to the terms of the Plan. Further, upon the execution of this Agreement, the Participant will also be eligible to receive additional Performance Awards for achieving the Performance Measures for the Performance Periods within which is the Effective Date.

B. The Participant acknowledges and agrees that the Plan in no way has established or obligates the Company to establish specific Performance Periods, including, but not limited to, Performance Periods for the calendar month and calendar year of the Effective Date. Collections or Doctor Pretax Payments prior to the commencement of Performance Periods will not be tallied for Performance Measures achievement.

C. The Participant acknowledges and agrees to not cause Collections in an untimely manner for the purpose of receiving a Performance Award. Collections made in an untimely manner shall include, but not be limited to, Collections made not in accordance with the Practice's ordinary Collection practices. Further, the Participant acknowledges and agrees that the Company may discount such untimely Collections when it tallies Performance Measures and Threshold Performance Measures achievement which may cause Participant to not be an Eligible Participant.

IV. Separate from Employment Agreement.

A. The Participant agrees and acknowledges that this Agreement is not an employment agreement and that the execution of this Agreement, participation in the Plan or the grant of a Performance Award to the Participant do not constitute assurance of continued employment for any period.

B. The Participant agrees and acknowledges that (i) this Agreement does not constitute an amendment or otherwise provide additional terms to or limit the terms of any employment agreement or professional services agreement the Participant may have with the Company or its Affiliates, and (ii) any breach of this Agreement by the Company will not be deemed a beach of such employment agreement by the Company, its Affiliates or the Practice.

V. Termination.

A. The Parties may terminate this Agreement at any time and for any reason.

B. This Agreement will terminate automatically upon the termination of the Participant's employment, independent contract, retirement or retirement arrangements with the Company or its Affiliates.

C. Participant's right to Performance Awards upon the termination of this Agreement is subject to the terms of the Plan.

VI. Confidential Information.

Participant acknowledges that the terms of this Agreement and the Plan constitute confidential information ("Confidential Information"). Participant acknowledges that the Company's business is extremely competitive, dependent in part upon the maintenance of secrecy, and that any disclosure of the Confidential Information would result in serious irreparable harm to the Company. Participant agrees: not to disclose, directly or indirectly, the Confidential Information to any third person or entity, other than representatives or agents of the Company, and to treat all such information as confidential and proprietary property of the Company. This Section shall survive the termination of this Agreement for a period of two years.

VII. Assignment. No Party shall have the right to assign this Agreement; provided, however, that Company may assign this Agreement in whole or in part to any of its Affiliates.

VIII. Amendments. This Agreement may not be amended or modified at any time except by action of both Company and Participant in writing.

IX. Disputes. Any controversy, dispute, or claim arising out of, in connection with, or in relation to, the interpretation, performance or breach of this Agreement shall be settled exclusively by the mediation and arbitration terms provided in the Plan.

X. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to the conflict of law principles thereof.

XI. Severability. If any provision of this Agreement or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect and the invalid provision shall be reformed or modified to a valid provision which most reflects the original intent of the Parties.

XII. Headings. The headings herein are inserted only as a matter of convenience and reference, and in no way define, limit or describe the scope of this Agreement or the intent of the provisions thereof.

XIII. Waiver. No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

XIV. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements or understandings, oral or written, except as expressly set forth herein.

XV. Conflicts. In the event of a conflict between the terms of this Agreement and the Plan, the terms of the Plan shall prevail.

XVI. Counterparts and Facsimile Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument. Any copy of this Agreement containing a facsimile signature page shall be deemed an original.

Vesting shall be calculated from May 1st, 2014 for 500 equivalent membership units.

IN WITNESS WHEREOF, Company and the Participant have caused this Agreement to be executed individually or by their duly appointed representatives as of the day, month and year first above written.

COMPANY
By: Risas Holdings LLC

By: _____
Name: Jeffrey D. Adams or Nicolas J. Porter
Title: Managers

PARTICIPANT

By: _____
Name: M. Brandon Tackett

EXHIBIT A

STOCK APPRECIATION BONUS PLAN

OF

RISAS HOLDINGS LLC

ARTICLE I.
General

Section 1.1 Purpose of the Plan. This Stock Appreciation Bonus Plan (this "Plan") of Risas Holdings LLC, an Arizona limited liability company, is intended to advance the best interests of the Company, its Contractors, Affiliates and its Members in order to attract, retain and motivate key Company Contractors and Teammmates by providing them with additional incentives through Performance Awards.

Section 1.2 Definitions. For purposes of this Plan, the following definitions shall apply:

(a) Affiliate. An "Affiliate" of the Company means any affiliated entity, subsidiary or parent of the Company, including, but not limited to, the Practices.

(b) Annual Performance Period. "Annual Performance Period" means a Performance Period which begins on January 1 of a calendar year and concludes on December 31 of the same calendar year.

(c) Annual Threshold Measures. "Annual Threshold Measures" has its meaning set forth in Section 2.1.

(d) Cause. "Cause" shall mean:

(i) the willful and continued failure by the Participant to substantially perform his duties as described in the Professional Service Agreement or The Risas Way with the Company or its Affiliate (other than any such failure resulting from the Participant's Disability or inability), within a reasonable period of time after a written demand for substantial performance is delivered to the Participant by the Managers of the Participant's employer, which demand specifically identifies the manner in which the Managers of the Participant's employer believes that the Participant has not substantially performed his duties;

(ii) the failure by the Participant to conform to the Company's Professional Services Confidentiality Agreement as a Participant or during the Payout; or

(iii) the willful engaging by the Participant in conduct that is demonstrably and materially injurious to the Company or its Affiliate, including direct competition, as a Participant or during the Payout, monetarily or otherwise;

For purposes of the Plan, no act, or failure to act, on the Participant's part shall be deemed "willful" unless done, or omitted to be done, by the Participant not in good faith and without reasonable belief that the Participant's action or omission was in the best interest of the Company.

(e) Code. "Code" shall mean the Internal Revenue Code of 1986, as amended.

(f) Collections. "Collections" shall mean cash, debit or credit card, electronic funds transfer, or check remitted to the Company or its Affiliates for dental services performed to the benefit of a specific doctor.

(g) Company. "Company" means Risas Holdings LLC and its successors and assigns.

(h) Company Distributions. "Company Distributions" shall mean proportionate cash receipts from the Company to its members, assuming all Performance Awards were outstanding as Company membership units when the Company approves as issued such payouts.

(i) Contractor(s). "Contractor(s)" shall mean professionals working with the Company or its Affiliates under a professional services agreement or other contract.

(j) Disability. "Disability" shall mean, except as otherwise determined by the Managers, a condition that renders the Participant unable, by reason of a medically determinable physical or mental impairment, to engage in any substantial gainful activity, which condition, in the opinion of a physician selected by the Managers, is expected to have a duration of not less than 120 days.

(k) Distributions. "Distributions" shall mean fully diluted proportional share of Risas Holdings LLC membership payouts using the Plan's equivalent unit allocations for all Participants.

(l) Eligible Participant or Participant. An "Eligible Participant," or "Participant" has its meaning set forth in Section 1.4 of the Plan.

(m) Employee(s). "Employee" shall mean any employee of the Company or its Affiliates.

(n) Managers. "Managers" refers to the sole manager or the collective managers of the Company.

(o) Material Adverse Event. "Material Adverse Event" shall mean a specific documentable event that reduces the value of the Company by more than 20% prior to or during the Payout Period.

(p) Monthly Payouts. "Monthly Payouts" shall mean proportional distributions paid monthly based on the fully diluted equivalent ownership represented by the Performance Award.

(q) Monthly Performance Period. "Monthly Performance Period" means a Performance Period which begins on the first day of a calendar month and ends on the last day of such month.

(r) Monthly Threshold Measures. "Monthly Threshold Measures" has its meaning set forth in Section 2.1.

(s) Ownership Event. "Ownership Event" shall mean any transaction changing ownership for more than 50% of the outstanding membership in the Company, including but not limited to an acquisition by an unassociated third party or entity, a merger with an unassociated third party or entity an asset sale, a consolidation of the Company, or any other similar event resulting in a change of control of the Company.

(t) Participant Agreement. A "Participant Agreement" refers to the Incentive Plan Participant Agreement entered into by each Participant in connection with the implementation of this Plan.

(u) Payout(s). "Payout(s)" shall mean cash compensation paid to Participants when the Participant terminates its relationship with the company or its Affiliates or cashes in its Performance Awards for adding to the appreciation of the Company's valuation.

(v) Payout Valuation. "Payout Valuation" shall have the meaning set forth in Section 3.3.

(w) Performance Award. "Performance Award" has its meaning set forth in Section 2.1.

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(y) Performance Period. "Performance Period" means the period over which the performance of a holder of a Performance Award is measured.

(z) Plan. "Plan" means this Stock Appreciation Bonus Plan of Risas Holdings LLC.

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(bb) Termination. "Termination" shall mean ending affiliation as Employee(s) or Contractor(s) with the Company or its Affiliates.

(cc) Threshold Performance Measures. "Threshold Performance Measures" has its meaning set forth in Section 2.1.

(dd) Vesting". "Vesting" shall have the meaning set forth is Section 3.1.

(ee) Withdrawal. "Withdrawal" shall mean both parties mutually agreeing to end the Performance Award.

Section 1.3 Administration of the Plan.

(a) The Plan shall be administered by the Managers. The Managers shall have authority to interpret conclusively the provisions of the Plan, to adopt such rules and regulations for carrying out the Plan as they may deem advisable, to decide conclusively all questions of fact arising in the application of the Plan, to establish performance criteria in respect of Performance Awards under the Plan, to certify that Plan requirements have been met for any Participant in the Plan, to submit such matters as they may deem advisable to the Company's members for their approval, and to make all other determinations and take all other actions necessary or desirable for the administration of the Plan. The Managers are expressly authorized to adopt rules and regulations limiting or eliminating their discretion in respect of certain matters as they may deem advisable to comply with or obtain preferential treatment under any applicable tax or other law rule, or regulation. All decisions and acts of the Managers shall be final and binding upon all affected Participants.

(b) The Managers shall designate the Eligible Participants, if any, to be granted Performance Awards and the amount of such Performance Awards and the time when such Performance Awards will be granted. All Performance Awards granted under the Plan shall be on the terms and subject to the conditions determined by the Managers consistent with the Plan.

Section 1.4 Eligible Participants. Employees or Contractors who (i) professionally associates with the Company or its Affiliates, and (ii) achieve the Threshold Performance Measures, are eligible to become Participants and earn Performance Awards under this Plan (such Contractors or Employees being "Eligible Participants"). Eligible Participants must execute a Participant Agreement in order to be eligible to receive Performance Awards under the Plan.

Section 1.5 Other Compensation Programs. Nothing contained in the Plan shall be construed to preempt or limit the authority of the Company to exercise its corporate rights and powers, including, but not by way of limitation, the right of the Company (i) to grant incentives for proper corporate purposes otherwise than under the Plan to any Employee, Contractors. manager, officer, director or other person or entity or (ii) to grant incentive awards to, or assume incentive awards of, any person or entity in connection with a change of control of the Company.

ARTICLE II.
Performance Awards

Section 2.1 Terms and Conditions of Performance Awards. The Managers shall be authorized to grant awards which are intended to be "stock-appreciation-based

compensation" ("Performance Awards") and which are payable in cash. Managers may amend the terms for Performance Awards at any time prior to an award being issued.

(a) Performance Periods. The Managers may establish with respect to each Performance Award a Performance Period over which the performance of a Participant shall be measured. Performance Awards may be awarded based on performance for (x) Annual Performance Periods or (y) Monthly Performance Periods. Annual Performance Periods and Monthly Performance Periods may overlap for the same Participant. The Managers may establish Performance Periods at their own discretion and are not required to establish a Performance Period for any specific time.

(b) Performance Measures. The Managers shall establish a minimum level of acceptable achievement for the Participant to be granted a Performance Award. Each Performance Award shall be contingent upon the performance and achievement of the Performance Measures fixed by the Managers.

(c) Threshold Performance Measures. Pursuant to Section 1.4 of this Plan, a prerequisite to being deemed an Eligible Participant is the achievement of certain Threshold Performance Measures. The "Threshold Performance Measures" are either:

(i) As deemed appropriate for specific Company Employees or Contractors at the discretion of the Managers;

(ii) The generation of $100,000 in Collections for the first time within a Monthly Performance Period at the discretion of the Managers ("Monthly Threshold Measures"), or

(iii) The generation of $960,000 in Collections by a doctor within an Annual Performance Period at the discretion of the Managers ("Annual Threshold Measures").

(d) Performance Awards. Upon achievement of the Threshold Performance Measures and the execution of a Participant Agreement, the Participant will be granted a Performance Award. Though the Managers retain the right to amend Performance Awards criteria prior to their issuance at any time, the initial Performance Awards will be:

(i) As deemed appropriate for specific Company Employees or Contractors set as a specific number of units based on the equivalent initial stock value for Risas Holdings LLC at the discretion of the Managers;

(ii) The specific number of units based on the approximate estimated initial stock value of $5,000 in Risas Holdings LLC for achieving the Monthly Threshold Measures at the discretion of the Mangers, and

(iii) The specific number of units based on the approximate estimated initial stock value of $10,000 in Risas Holdings LLC for achieving the Annual Threshold Measures at the discretion of the Managers.

(e) Multiple Performance Award Eligibility. Participants will be eligible to collect Performance Awards for achieving the Performance Measures for subsequent or overlapping Performance Periods. Each Performance Period is to be measured independently of all other Performance Periods on a rolling basis. Though the Managers retain the right to amend the Performance Measures and Performance Awards any time prior to their issuance, the Performance Measures for Monthly Performance Periods and Annual Performance Periods are initially set to be the Monthly Threshold Measures and Annual Threshold Measures, respectively.

(f) No Partial Performance Awards. Unless the Managers choose otherwise, in their sole discretion, the Participant will not receive or be deemed to have earned any partial Performance Award for achieving a portion of the Performance Measures for a certain Performance Period.

(g) Allocation. Following the end of each Performance Period, the Managers will determine at their sole discretion whether a Participant has earned a Performance Award, based on the Participant's achievement of the Performance Measures for such Performance Period. The Company will allocate the units for each Performance Award earned in a Monthly Performance Period within 90 days following Monthly Performance Period. Each Performance Award earned over an Annual Performance Period will be allocated within 120 days following the end of the Annual Performance Period. The Managers will have the final say as to whether any Participant has rightfully earned a Performance Award. In the event the Managers are unable to determine whether a Participant has achieved the Performance Measures, the Managers may withhold allocation of the Performance Award until they are able to make such determination and the payments for such Performance Awards may be delayed until the Performance Period following such determination.

(h) Termination of Employment or Contractor Agreement, Retirement, or Withdrawal. Participants (Contractors or Employees) whose services to the Company or its Affiliates which ends through Termination, Retirement, or Withdrawal, will no longer be eligible to receive new Performance Awards and Vesting in this Plan will end. In the event a Participant has vested pursuant to Article III on a Performance Award prior to the Termination, Retirement or Withdrawal, the Participant will be eligible to receive Payouts under the provision of Section 3.3, unless the Participant was terminated for Cause, in which case no Payout will be paid.

(i) Member Rights. The grant of a Performance Award to a Participant shall not, as such, cause such Participant to become and have the rights of a member of the Company or his Practice.

(j) Performance-Based Compensation. Performance Awards are intended to be "stock-appreciation-based compensation," and the grant of the Performance Award and the establishment of the Performance Measures shall be made during the period required under Section 162(m) of the Code.

ARTICLE III.
Vesting, Valuation and Payout

Section 3.1 Vesting. Performance Awards will vest independently at 60% at its 3rd anniversary and 100% at its 5th anniversary for each independent Performance Award. Prior to Vesting and during years four and five as partial Vesting, the unvested individual Performance Awards will have no value to the Participant and will not be entitled to any Payout.

Section 3.2 Distributions. Each month after a Performance Award has been issued and up until the Performance Award is set for Payout, the Participant of each Performance Award shall receive Distributions in proportion and timing of the Participant's prorate share of fully diluted Company Distributions. Managers have sole discretion to set Distributions based on financial results and cash needs of the Company.

Section 3.3 Payout Valuation. Payouts for this Plan shall be based on the equivalent prorate fully diluted ownership valuation represented by the Performance Award in Risas Holdings LLC using eight times (8x) trailing Earnings Before Taxes, Interest, Depreciation and Amortization ("EBITDA"), less total outstanding debt of the Company and its Affiliates. The Payout Valuation will be set at the time of the requested payout or termination as Contractors or Employees of the Company or it Affiliates, unless (i) the Company has suffered a Material Adverse Event, or (ii) the Company is party to an Ownership Event that is materially different than this Payout Valuation. In the event of (i), Managers will set a new Payout Valuation based on their sole discretion and information at the time of Payout. In the event of (ii), Managers will set a new Payout Valuation based on the equivalent value used in the Ownership Event.

Section 3.4 Payout Period. Payout Valuation are payable without interest in eight (8) equal quarterly installments beginning within 90 days of the request for payout, termination of employment or professional services agreement. At the sole discretion of the Managers, payments may be accelerated.

ARTICLE IV.
Additional Provisions

Section 4.1 Amendments. The Managers may at any time and from time to time and in any respect amend or modify the Plan prior to any issuance of each specific Performance Award.

Section 4.2 Beneficiary. A Participant may file with the Company a written designation of beneficiary, on such form as may be prescribed by the Managers, to receive any Performance Awards that become deliverable to the Participant pursuant to the Plan after the Participant's death. A Participant may, from time to time, amend or revoke a designation of beneficiary. If no designated beneficiary survives the Participant, the Participant's estate shall be deemed to be the Participant's beneficiary.

Section 4.3 Transferability. Except as expressly provided in the Plan or as may be permitted by the Managers, no Performance Award under the Plan shall be assignable or transferable by the holder thereof except by will or by the laws of descent and distribution.

Section 4.4 Non-uniform Determinations. Determinations by the Managers under the Plan (including, without limitation, determinations of the persons to receive Performance Awards; the form, amount and timing of such Performance Awards; the terms and provisions of such Performance Awards and the agreements evidencing same; and provisions with respect to termination of employment) need not be uniform and may be made by the Managers selectively among persons who receive, or are eligible to receive, Performance Awards under the Plan, whether or not such persons are similarly situated.

Section 4.5 No Guarantee of Employment. No action of the Company in establishing the Plan, no action taken under the Plan by the Managers and no provision of the Plan itself shall be construed to grant any person the right to remain in the employ of or continue to provide services to the Company or any of its Affiliates for any period of specific duration. The grant of a Performance Award under the Plan shall not constitute an assurance of continued employment for any period.

Section 4.6 Duration and Termination.

(a) The Plan shall be of unlimited duration, unless otherwise terminated or changed pursuant to the terms of the Plan and the Participant Agreement.

(b) The Managers may suspend, discontinue or terminate the Plan at any time. Such action shall not impair any of the rights of any Participant who earned a Performance Award prior to the date of the Plan's suspension, discontinuance or termination without the holder's written consent.

Section 4.7 Effective Date. The Plan shall be effective as of January 1, 2013, subject to approval of a majority of the Company's members present and eligible to vote at a meeting of the members of the Company at which a quorum is present or through the execution of a written consent in the manner described in the Company's operating agreement.

Section 4.8 Section 409A. Notwithstanding anything herein to the contrary, (i) if, at the time of a Participant's termination of employment with the Company and its Affiliates, the Participant is a "specified employee" as defined in Section 409A of the Internal Revenue Code and the deferral of the commencement of any payments or benefits otherwise payable hereunder as a result of such termination of employment is necessary in order to prevent any accelerated or additional tax under Section 409A of the Code, then the Company will defer the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to the Participant) until the date that is six months following the Participant's termination of employment with Company and its Affiliates (or the earliest date as is permitted under Section 409A of the Code without the imposition of any accelerated or additional tax) and (ii) if any other payments or benefits due to the Participant hereunder could cause the application of an accelerated or additional tax under Section 409A of the Code, such payments or benefits shall be deferred if deferral will avoid such acceleration or additional tax, or otherwise such payment or other benefits shall be restructured, to the extent possible, in a manner, reasonably determined by the Managers, that

does not cause such an accelerated or additional tax and that preserves, to the greatest extent possible, the value (both in amount and considering promptness of payment), of such payment or other benefits to the Participant. In the event that payments under this Plan are deferred pursuant to this Section in order to prevent any accelerated tax or additional tax, then such payments shall be paid at the time specified in this Section 3.4 without interest. The Company shall consult with the Participant in good faith regarding the implementation of this Section; provided that neither the Company, any of its Affiliates, nor any of their respective employees or representatives shall have any liability to the Participant with respect thereto.

Section 4.9 Dispute Resolution.

(a) Confidential Mediation. Any controversy, dispute, or claim arising out of, in connection with, or in relation to, the interpretation, performance or breach of this Plan or a Participant Agreement that cannot be resolved within twenty (20) days of written notification by one party to the other that a dispute has occurred shall be initially redressed by mediation. The mediation shall be scheduled with or without the involvement of legal counsel and held at a location in the city where the Company is located as mutually agreed to by the parties and shall take place within thirty (30) days of notice of said mediation being sent to the parties. The cost of the mediation shall be borne equally by the parties, and such mediation shall engage a sole mediator selected from the panel of mediators of the American Arbitration Association ("AAA"). The parties shall attempt in good faith to agree upon a mediator, and if there is no agreement, the mediator shall be selected by the AAA. The parties agree to keep the proceedings of the mediation, all events leading up to the mediation and the outcome of the mediation confidential. Should mediation fail to resolve the Parties' differences, the Parties agree to submit their dispute to arbitration in accordance with the procedures set forth in Section 3.9(b).

(b) Confidential Binding Arbitration. Should the mediation procedures set forth in Section 3.9(a) fail to resolve the parties' differences, the parties agree to submit their dispute to arbitration in accordance with the commercial rules of the AAA then in effect. The arbitration shall be held either at (i) at the AAA office in the city where the Company is located, or (ii) if there is no AAA office in the city where the Company is located, then at the AAA office geographically closest to the Company. The arbitration shall be before a sole arbitrator agreed to by the parties and selected from the panel of arbitrators of the AAA. The parties shall attempt in good faith to agree upon an arbitrator, and if there is no agreement, then the selection of the arbitrator shall be made by the AAA. The arbitrator shall award the prevailing party its reasonable attorneys' fees and costs. The parties agree to keep the proceedings of the arbitration, all events leading up to the arbitration and the outcome of the arbitration confidential. It is the intent of the parties that this Section provides a broad arbitration clause and is intended to include claims and causes of action regarding, arising out of, or relating to this Plan or such Participant's Participant Agreement whether arising in contract, tort, statute, regulation, common law or otherwise. The Parties submission and agreement to arbitrate shall be specifically enforceable, and the judgment of the arbitrator granting an award to a party may be entered in any court having jurisdiction thereof.

Section 4.10 Exclusive Agreement. This Plan document and the applicable Participant Agreement constitute the full and complete agreement between each Participant and the Company regarding the subject matter described herein and therein.

Section 4.11 Governing Law. The laws of the State of Arizona shall govern all questions concerning the construction, validity and interpretation of this Plan (including the Participant Agreement), without regard to such state's conflict of laws rules.

EXHIBIT D

Begin forwarded message:

From: Jeff Adams <ja@risasdental.com>
Date: February 23, 2016 at 8:42:41 AM CST
To: Gilbert Ochoa <gilbert@creativepluscultural.com>, Colao Brian <BColao@dykema.com>
Subject: Re: C+C Contract

Gilbert,
I respect your decision and feel this this is an unfortunate result of Brandon

breaking his contracts with Risas. We will proceed accordingly.

Jeff Adams
Risas Dental Management LLC
303-883-5990 (c)

On Feb 22, 2016, at 10:57 PM, Gilbert Ochoa <gilbert@creativepluscultural.com> wrote:

> Hi Jeff,
>
> Juan and I have been speaking about C+C's future with Risas Dental and our new contract. I am also aware of the situation with Brandon Tackett and his new company Somos Dental. Rather then it coming from another source I want to send you note that Brandon has reached out to us and is looking for some support. Understanding that this would create a potential conflict I want to bring this to your attention immediately. Even if there is a chance we could go about business as usual working with you both, I must bring this to your attention respecting you as a businessman. I built my company based on transparency and integrity, so knowing that our future relationship is likely contingent on a noncompete agreement (understandably so) I must be clear that we are not in a position to accept terms of a noncompete.
>
> This will likely end our relationship with Risas Dental which is unfortunate. Rather then waiting to hear the inevitable please accept this email as a notice that we will no longer be working with Risas Dental. I will forever be grateful for the life lessons and opportunity to work with your team. I wish you the best and congratulations on hiring an amazing talent in Juan Prado. He is the right person of the job and will be a great asset to Risas Dental.
>
> Best,
>
> Gilbert Ochoa

Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
03/11/2016 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001841 03/08/2016

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
H. Bell
Deputy

RISAS HOLDINGS CYNTHIA A RICKETTS

v.

BRANDON TACKETT OLIVIER A BEABEAU

MINUTE ENTRY

Courtroom 201-OCH

2:30 p.m. This is the time set for return hearing re: Plaintiff's Application for Temporary Restraining, Preliminary Injunction and Permanent Injunction. Plaintiff, Risas Holdings, is represented by counsel, Cynthia A. Ricketts. Defendant, Brandon Tackett, is represented by counsel, Olivier A. Beabeau and Keith Galbut.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Oral argument is presented.

Based upon matters presented to the Court,

IT IS ORDERED setting a 1 hour hearing regarding Plaintiff's Application for Temporary Restraining, Preliminary Injunction and Permanent Injunction on **April 28, 2016 at 10:00 a.m.**

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001841 03/08/2016

IT IS FURTHER ORDERED parties shall file simultaneous bench briefs no later than April 25, 2016 in preparation of the hearing.

3:44 p.m. Matter concludes.

Michael K Jeanes, Clerk of Court
*** Electronically Filed ***
T. Hays, Deputy
3/15/2016 5:00:00 PM
Filing ID 7269824

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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

RISAS HOLDINGS LLC, and RISAS DENTAL MANAGEMENT, LLC Plaintiffs, v. BRANDON TACKETT Defendant.	Civ. No. CV2016-001841 **PLAINTIFFS' FIRST AMENDED COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION**

Plaintiffs Risas Holdings LLC ("Risas Holdings") and Risas Dental Management, LLC ("Risas Management" and collectively "Plaintiffs") hereby file this First Amended Complaint and Application for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction against Defendant Brandon Tackett (hereinafter "Tackett" or "Defendant") requesting damages and injunctive relief, and in support thereof states as follows:

I. THE PARTIES

1. Plaintiff Risas Holdings LLC is an Arizona limited liability company that conducts business in Arizona.

2. Plaintiff Risas Dental Management, LLC is an Arizona limited liability company that conducts business in Arizona.

3. Defendant Brandon Tackett is an individual who resides at 10531 E. Evergreen St., Mesa, Arizona 85207.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction because the amount in controversy and relief requested herein are within the jurisdictional limits of this Court.

5. Venue is proper in Maricopa County, Arizona, pursuant to ARIZ. REV. STAT. § 12-241.01(A) because it is the county in which the Defendant resides.

III. CONDITIONS PRECEDENT

6. Any and all conditions precedent to the filing of this suit and the prosecution of the claims asserted herein have been performed or have occurred.

IV. FACTUAL BACKGROUND

A. Defendant Enters Into An Employment Relationship With Risas Management, Signs A Confidentiality And Non-Solicitation Agreement With Risas Management, And Signs Two Stock Bonus Appreciation Plans In Exchange For Profit And Equity Participation And Appreciation In Risas Holdings.

7. Plaintiff Risas Management is a management company that provides non-clinical business support services to affiliated dental practices in the Phoenix area.

8. In the summer of 2013, Defendant applied for and ultimately accepted a position as support center director of Risas Management and then was offered and accepted a second new position as marketing director of Risas Management in 2014. As the marketing director, Defendant was placed in a position of trust and confidence as a member of the management team. This meant that Defendant had access to Plaintiffs' most sensitive information, including their trade secrets.

9. On or about December 11, 2013, in connection with his acceptance of employment as Risas Management's marketing director and when becoming a member of the management team, Defendant entered into an Employee Confidentiality and Non-Solicitation Agreement with Risas Management (the "Confidentiality Agreement"). The Confidentiality Agreement is attached hereto as **Exhibit A**.

10. Pursuant to Section One of the Confidentiality Agreement, Defendant specifically acknowledged and agreed that any confidential information, whether written or oral, learned by him in the course of his employment with Risas Management was and would remain the property of Risas Management. Defendant further acknowledged in Section One that any disclosure of any confidential information by him would result in irreparable injury and damage to Risas Management. Additionally, Defendant specifically acknowledged in Section One that the "confidential information" belonging to Risas Management included, without limitation, (1) information related to the business, services, trade secrets, contractors, suppliers, products, or sales of Risas Management or its affiliates or any of their respective patients whether written or oral, and (2) any information contained in the RISAS WAY manual, proprietary Google Drive files, emails, and other written or electronic medium (collectively, "Confidential Information").

11. Indeed, Defendant was one of six individuals employed by Risas Management who had access to the Confidential Information.

12. Pursuant to Section Two of the Confidentiality Agreement, Defendant specifically agreed not to disclose, allow to be disclosed, or use any Risas Management Confidential Information in competition with Risas Management or otherwise for a period of five years following the termination of Defendant's employment with Risas Management. Specifically, Section Two provides the following:

> 2. **Covenant Not-to-Divulge Confidential Information**. Employee acknowledges and agrees that Employer and its affiliates are entitled to prevent the disclosure of Confidential Information. As a portion of the consideration for the employment of Employee and for the compensation being paid to Employee by Employer, Employee agrees at all times during Employee's employment and for five years thereafter to hold in strict confidence and not to disclose or allow to be disclosed to any person, firm or corporation, other than to persons engaged by Employer and its affiliates to further the business of Employer and its affiliates, and not to use except in the pursuit of the business of Employer and its affiliates, the Confidential Information, without the prior written consent of Employer, including Confidential Information, without prior consent of Employer, including Confidential Information developed by Employee.

13. Additionally, Defendant specifically agreed to return all documents, data, and other information pertaining to any Confidential Information he received once his employment at Risas Management ended. This included any documents, literature, samples, demonstration models, office equipment, or other information, or any reproduction or excerpt thereof, containing or pertaining to any Confidential Information.

14. Furthermore, Defendant agreed in Section Four of the Confidentiality Agreement that, for a period of two years after the termination of his relationship with Risas Management, he would not directly or indirectly solicit, induce, recruit, or encourage any Risas Management employee to leave his or her employment with Risas Management, either for Defendant or any other entity. Specifically, Section Four provides the following:

> 4. **Non-Solicitation**. Employee further agrees that for a period of twenty-four (24) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, that Employee shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of the Company, either for myself or for any other person or entity.

15. In addition to the Confidentiality Agreement, also in connection with becoming a member of the management team, on January 22, 2014, Defendant entered into a Stock Bonus Appreciation Plan Participant Agreement with Risas Holdings (the "First Participant Agreement"). A copy of the First Participant Agreement is attached hereto as **Exhibit B**. On May 1, 2014, Defendant entered into the exact same Stock Bonus Appreciation Plan Participant Agreement with Risas Holdings (the "Second Participant Agreement" and collectively the "Participant Agreements") pursuant to which Defendant was given a greater equity interest as a member of the management team. A copy of the Second Participant Agreement is attached hereto as **Exhibit C**. Pursuant to Section VI of the Participant Agreements, Defendant specifically agreed for a period of two years after termination of his relationship with Risas Management "not to disclose, directly or indirectly, the Confidential Information [of Plaintiffs]

to any third person or entity, other than representatives or agents of the Company, and to treat all such information as confidential and proprietary property of the Company."

B. Defendant Surreptitiously Creates A Business That Competes With Risas Management, Unlawfully Uses Plaintiffs' Confidential Information To Open That Competing Business, And Solicits Risas Management's Employees In Violation Of His Contractual Agreement.

16. Defendant resigned from Risas Management on January 6, 2016.

17. Upon learning of his resignation, Plaintiffs had extensive conversations with Defendant to remind him of the obligations he accepted when signing both the Confidentiality Agreement and the Participation Agreements. Plaintiffs also offered Defendant the opportunity to remain on Plaintiffs' payroll until January 15, 2016, as a good-faith gesture and Defendant accepted the offer.

18. After the termination of his relationship with Plaintiffs, and despite entering into the Confidentiality Agreement and the Participant Agreements, Plaintiffs became aware that Defendant had started a business called Somos that directly competes with Plaintiffs while he was still employed at Risas Management and while he still owed both fiduciary duties and a duty of loyalty to Plaintiffs.

19. Upon information and belief, Defendant improperly withheld and is currently in unauthorized possession of Confidential Information belonging to Plaintiffs, including the RISAS WAY manual and other information related to Plaintiffs' business including but not limited to suppliers, employees, and doctors, other trade secrets of Plaintiffs, as well as the information contained in the Stock Appreciation Bonus Plan that is attached to the Participant Agreements.

20. Moreover, upon information and belief, Defendant is currently using this improperly retained Confidential Information and the information contained in the Stock Appreciation Bonus Plan in connection with the operation of a business that directly competes with Plaintiffs.

21. Furthermore, upon information and belief, Defendant has made several representations to various entities and individuals that appear to indicate Defendant believes that he is entitled to the use of this Confidential Information.

22. Upon further information and belief, Defendant is also falsely stating that he created much of Plaintiffs' proprietary systems and is directly referencing his past employment with Risas Management when contacting Plaintiffs' relationships for the benefit of Somos. This is in spite of the fact that Defendant signed multiple agreements acknowledging the contrary to be true.

23. Furthermore, upon information and belief, Defendant improperly used the Confidential Information and the compensation information contained in the Stock Appreciation Bonus Plan to assist with the formation a competing company well before he actually resigned from Risas Management and while he still owed fiduciary duties and a duty of loyalty to Plaintiffs. This was done without Plaintiffs' permission, consent, or authorization.

24. While still employed, upon information and belief, Defendant improperly used the Confidential Information in order to plan his new competing business. It is clear that Defendant was actively using Confidential Information to make arrangements to compete with Plaintiffs while still being employed by them and while still owing fiduciary duties and a duty of loyalty to Plaintiffs.

25. In fact, Defendant worked to organize the entities that form the competing business well before he resigned from Risas Management. Based on publicly filed information, about which Plaintiffs learned after Defendant's January 6, 2016, resignation, Somos Dental Services, LLC was incorporated by Defendant on January 28, 2016. Somos Dental, LLC, which is the sole member of Somos Dental Services, LLC, was incorporated on January 19, 2016—less than two weeks after Defendant resigned from Risas Management and three business days after Defendant accepted his final paycheck from Risas Management. Most glaringly, Sumus Holdings Ltd, LLC, which is listed as the sole member of Somos Dental, LLC, was incorporated on October 8, 2015—some three months before Defendant resigned from Risas Management.

Based on these facts, there is no conclusion but that Defendant was preparing to unfairly compete, and did in fact form the ownership structure of his competing business, months before he actually resigned from Risas Management and while he still owed fiduciary duties and a duty of loyalty to Plaintiffs. Thus, Defendant flagrantly breached his fiduciary duties and contractual obligations to Plaintiffs.

26. Upon information and belief, Defendant is also now using the Confidential Information that he memorized while employed at Risas Management. This includes, but is not limited to, all of the Confidential Information more particularly pled in the preceding paragraphs. Indeed, it is inevitable that Defendant will use the Confidential Information in his current role at a business (i.e., Somos) that directly competes and is intended to directly compete with Plaintiffs.

27. Plaintiffs have a protectable interest in the Confidential Information, which would have been inaccessible to Defendant but for his former employment with Plaintiffs and but for his position as a member of Plaintiffs' management team.

28. In addition, improperly using the Confidential Information, upon information and belief, Defendant is currently actively recruiting doctors and other medical professionals away from Risas Management to work for his competing business and its affiliates in violation of Section Four of the Confidentiality Agreement.

29. Plaintiffs first became aware of these solicitations when Gilbert Ochoa contacted Plaintiffs to admit that Defendant had contacted Mr. Ochoa in order to hire him. As a result of this direct solicitation by Defendant, Mr. Ochoa informed Plaintiffs that he was firing them as a client in order to perform work for Somos. A true and correct copy of this email exchange has been attached as **Exhibit D**.

30. Additionally, upon information and belief, improperly using the Confidential Information, Defendant has recruited and/or solicited Dr. Tina Keyhani (a then Risas Management referral oral surgeon), Eric Vega (a then Risas Management Dental Assistant), Denise Rico (a then Risas Management Dental Assistant), and Dr. Wyatt Dannels (a current Risas Management Doctor being actively approached by Defendant) to affiliate with Somos.

Defendant met each of these contacts for the first time as an employee of Risas Management, learned Confidential Information about each of these employees and/or business relationships, and has leveraged his past relationship with Plaintiffs and his knowledge and improper use of the Confidential Information in order to hire these medical professionals by Somos or its affiliates, all in violation of Defendant's Confidentiality Agreement with Plaintiffs.

31. Finally, further improperly using the Confidential Information, Defendant is also actively seeking expertise and services from, soliciting, and is attempting to recruit Keith Gauzza (Henry Schein Dental Supplies Special Markets Representative), Aaron Call (Henry Schein Dental Supplies Representative), Rich Andrus (Menlo Partners Real Estate Advisors), and Andrew DeCarlo (videographer), all current vendors about whom Defendant learned Confidential Information, to supply Somos or its affiliates with dental equipment and/or professional services. Again, Defendant met each of these contacts for the first time as an employee of Plaintiffs and learned Confidential Information about each of these business relationships throughout the course of his employment. Now, Defendant is using his past relationships, prior knowledge, and improperly obtained Confidential Information, including but not limited to proprietary vendor expertise and price discount information, in order to obtain an improper advantage for his business that is in direct competition with Plaintiffs. Each of these actions is in clear violation of his Confidentiality Agreement with Risas Management.

V. CAUSES OF ACTION

COUNT ONE: BREACH OF CONTRACT (Breach of the Confidentiality Agreement)

32. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

33. Risas Management and Defendant entered into the Confidentiality Agreement. Defendant breached the agreement in material fashion, as more particularly pled in the preceding paragraphs.

34. Significantly, Defendant's employment at Somos makes it inevitable that Defendant has used and will continue to improperly use the Confidential Information to directly compete with Plaintiffs.

35. Specifically, Defendant has breached and continues to breach Sections 2-4 of the Confidentiality Agreement.

36. Risas Management has sustained and continues to sustain monetary damage, loss, or injury as a result of Defendant's breach of this agreement, in an amount to be determined at trial. If the preliminary and permanent injunctive relief Plaintiffs seek herein is not granted, Risas Management will continue to suffer irreparable harm and damage that cannot be adequately remedied by monetary relief.

37. When entering the Confidentiality Agreement, in Section 6, Defendant recognized, acknowledged, and agreed that in the event of his breach of any term in the agreement, the remedies at law available to Risas Management and its affiliates would be inadequate and may be difficult to ascertain. As such, Defendant agreed that in the event of his breach of the Confidentiality Agreement, Risas Management and its affiliates will have the right to specific performance and/or injunctive relief in addition to any and all other remedies and rights at law or in equity, and such rights and remedies shall be accumulative.

38. Risas Management retained counsel to pursue its claim and seeks recovery of reasonable attorneys' fees as authorized by ARIZ. REV. STAT. § 12-341.01(A) and Section 9 of the Confidentiality Agreement.

COUNT TWO: BREACH OF CONTRACT (Breach of the Participant Agreements)

39. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

40. Risas Holdings and Defendant entered into the Participant Agreements. Defendant breached the agreements in material fashion, as more particularly pled in the preceding paragraphs.

41. Risas Holdings has sustained and continues to sustain monetary damage, loss, or injury as a result of Defendant's breach of these agreements, in an amount to be determined at trial.

42. Risas Holdings retained counsel to pursue its claim and seeks recovery of reasonable attorneys' fees as authorized by ARIZ. REV. STAT. § 12-341.01(A).

COUNT THREE: VIOLATION OF ARIZONA'S UNIFORM TRADE SECRETS ACT (ARIZ. REV. STAT. §§ 44-401 TO 44-407)

43. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

44. Plaintiffs have expended substantial time, effort, and resources in developing their Confidential Information including their intellectual property about their suppliers, pricing, contractors, employees, medical professionals, trademarks, and trade name (the "Risas Intellectual Property") and promoting their professional services. Plaintiffs have built a nationwide reputation and notoriety in the Risas Intellectual Property associated with the services provided by their affiliated practices.

45. The Risas Intellectual Property/Confidential Information constitutes a trade secret within the meaning of A.R.S. § 44-401.

46. Plaintiffs consider their intellectual property, including the "Risas" trade name and the RISAS WAY manual, to be among their most valuable assets and devote significant resources to ensure that their rights are not infringed. This protection includes, but is not limited to, the requirement that Defendant enter into the Participant Agreements and the Confidentiality Agreement.

47. As more particularly pled in the preceding paragraphs, Defendant misappropriated Plaintiffs' Confidential Information. Significantly, Defendant's employment at Somos makes it inevitable that Defendant has used and will continue to improperly use the Confidential Information to directly compete with Plaintiffs.

48. As a result, Plaintiffs have sustained monetary damage, loss, or injury due to the Defendant's misappropriation of these trade secrets, in an amount to be determined at trial. If the preliminary and permanent injunctive relief Plaintiffs seek herein is not granted, Risas Management will continue to suffer irreparable harm and damage that cannot be adequately remedied by monetary relief because there is a continued threat of actual or threatened misappropriation of the Risas Trade Secrets/Confidential Information.

49. Due to the fact that Defendant's misappropriation was both willful and malicious, Plaintiffs seek attorneys' fees pursuant to ARIZ. REV. STAT. § 44-404. Plaintiffs are also entitled to recover their fees pursuant to Section 9 of the Confidentiality Agreement and ARIZ. REV. STAT. § 12-341.01.

COUNT FOUR: BREACH OF FIDUCIARY DUTY/DUTY OF LOYALTY

50. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

51. In his position as marketing director, Defendant was a member of the management team. In this role, Defendant was placed in a position of trust and confidence. As such, Defendant was given access to Plaintiffs' most sensitive Confidential Information.

52. While employed at Risa Management, Defendant also owed a duty of loyalty to Plaintiffs.

53. As outlined above, Defendant breached one or more of his fiduciary duties to Plaintiffs by, amongst other things: (1) breaching his duty of loyalty; (2) breaching his duty of candor; (3) breaching his duty to act with integrity of the strictest kind; (4) breaching his duty of honesty and fair dealing; (5) breaching his duty of full disclosure; (6) breaching his duty to account for company property; (7) breaching his duty to refrain from competition/solicitation with Plaintiffs; and/or (8) misappropriating and disclosing Plaintiffs' confidential, proprietary, and trade secret information.

54. Plaintiffs have suffered and continue to suffer irreparable harm and injury as a result of Defendant's breaches of his fiduciary duties for which there is no adequate remedy at law. Additionally, as a proximate cause of Defendant's breaches of his fiduciary duties, Plaintiffs have suffered and will continue to suffer monetary damages.

55. Plaintiffs are entitled to recover their attorneys' fees and costs incurred pursuant to A.R.S. § 12-341.01.

VI. APPLICATION FOR PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION

56. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

57. As reflected above, Defendant's wrongful acts have caused, and are continuing to cause, irreparable injury to Plaintiffs, for which there is no adequate remedy at law.

58. Plaintiffs have established a substantial likelihood of success on the merits in this matter.

59. The harm faced by Plaintiffs outweighs any harm that would be sustained by Defendant if the preliminary injunction were granted; indeed, the continued damage to Plaintiffs through the solicitation of its employees, the improper direct competition posed by Somos, and the misappropriation of the Risas Intellectual Property greatly exceeds any harm Defendant could conceivably suffer.

60. Moreover, the issuance of a preliminary and/or permanent injunction would not adversely affect the public interest. To the contrary, public interest is served by enforcing contractual agreements such as the Participant Agreements and the Confidentiality Agreement.

61. Plaintiffs are willing to post a bond should the Court deem it necessary.

62. Therefore, Plaintiffs ask this Court to (a) enter a temporary restraining order, (b) enter a preliminary injunction, from now until such time as there is a trial on the merits, and subsequently (c) enter a permanent injunction, after a trial on the merits, requiring Defendant (and his agents, assigns, representatives, or any person who is participating or is in active concert with him), after receipt of actual notice of this Court's order by personal service, telecopy, email, or otherwise, to do the following:

a. immediately refrain from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendant's business;

b. immediately return to Plaintiffs all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the

Risas Intellectual Property and/or Risas Confidential Information that are in Defendant's possession, custody, or control;

c. immediately refrain from competing with Plaintiffs in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any current Risas Management employee to leave his or her employment with Risas Management, in violation of Defendant's obligations in the Confidentiality Agreement;

d. immediately refrain from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property; and

e. immediately refrain from deleting, destroying, or altering any evidence of Defendant's disclosure of Plaintiffs' Confidential Information or any other evidence, including but not limited to any emails, text messages, voicemail messages, or other written or recorded communications, regarding the Confidential Information.

VII. PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court award judgment against Defendant Brandon Tackett and grant Plaintiffs the following:

A. Actual, direct, exemplary, and consequential damages;

B. Pre-judgment interest and interest on the judgment;

C. Attorneys' fees, expenses, and costs;

D. A temporary restraining order compelling the following:

1. immediately restrain Defendant and anyone acting in active concert or participation with him who receives actual notice of the order from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendant's business;

2. order Defendant to immediately return to Plaintiffs all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendant's possession, custody, or control;

3. immediately restrain Defendant from competing with Plaintiffs in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas Management employee to leave his or her employment with Risas Management, in violation of Defendant's obligations in the Confidentiality Agreement;

4. immediately restrain Defendant from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property; and

5. immediately restrain Defendant from deleting, destroying, or altering any evidence of Defendant's disclosure of Risas's Confidential Information or any other evidence, including but not limited to any emails, text messages, voicemail messages, or other written or recorded communications, regarding the Confidential Information;

E. A preliminary injunction compelling the following:

1. immediately restrain Defendant from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendant's business;

2. order Defendant to immediately return to Plaintiffs all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendant's possession, custody, or control;

3. immediately restrain Defendant from competing with Plaintiffs in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas Management employee to leave his or her employment with Risas Management, in violation of Defendant's obligations in the Confidentiality Agreement;

4. immediately restrain Defendant from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property; and

5. immediately restrain Defendant from deleting, destroying, or altering any evidence of Defendant's disclosure of Risas's Confidential Information or any other evidence, including but not limited to any emails, text messages, voicemail messages, or other written or recorded communications, regarding the Confidential Information;

F. A permanent injunction compelling the following:

1. immediately and permanently restrain Defendant from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendant's business;

2. order Defendant to return to Plaintiffs all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendant's possession, custody, or control;

3. immediately and permanently restrain Defendant from competing with Plaintiffs in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas Management employee to leave his or her employment with Risas Management, in violation of Defendant's obligations in the Confidentiality Agreement; and

4. immediately and permanently restrain Defendant from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property.

G. Such other and further relief to which it may show itself to be justly entitled, at law or in equity.

RESPECTFULLY SUBMITTED this 15th day of March, 2016.

SACKS, RICKETTS & CASE LLP

/s/Cynthia A. Ricketts
Cynthia A. Ricketts (Arizona Bar No. 012668)
Natalya Ter-Grigoryan (Arizona Bar No. 029493)
SACKS, RICKETTS & CASE LLP
2800 N. Central Avenue, Suite 1230
Phoenix, AZ 85004

Attorneys for Plaintiffs

VERIFICATION

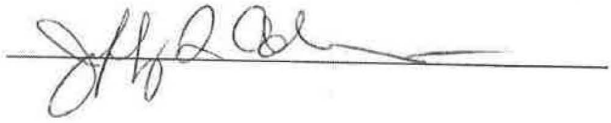
STATE OF ARIZONA)
)
County of Maricopa)

1. I, Jeff Adams, am the Managing Director of both Risas Holdings LLC, and Risas Dental Management, LLC, the Plaintiffs in this matter.

2. I have read the forgoing Verified First Amended Complaint, know the contents thereof, and state that it is true based on my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this _____ day of March, 2016.



Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
04/28/2016 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001841 04/26/2016

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
H. Bell
Deputy

RISAS HOLDINGS, et al. CYNTHIA A RICKETTS

v.

BRANDON TACKETT OLIVIER A BEABEAU

MINUTE ENTRY

The Court having contacted counsel for both parties regarding the Evidentiary Hearing on Plaintiff's Application for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction, set on April 28, 2016; and both counsel having indicated that the hearing is no longer necessary,

IT IS THEREFORE ORDERED vacating the Evidentiary Hearing set on April 28, 2016.

Michael K Jeanes, Clerk of Court
*** Electronically Filed ***
D. Sandoval, Deputy
5/5/2016 12:06:00 PM
Filing ID 7396853

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

RISAS HOLDINGS LLC, and RISAS DENTAL MANAGEMENT, LLC, Plaintiffs, v. BRANDON TACKETT, Defendant.	Civ. No. CV2016-001841 **STIPULATION FOR ENTRY OF CONSENT DECREE** **(Assigned to the Hon. Christopher Whitten)**

Plaintiffs Risas Holdings LLC and Risas Dental Management, LLC (collectively, "Risas") and Defendant Brandon Tackett ("Tackett") jointly agree and stipulate to entry of the Consent Decree attached as **Exhibit 1** hereto and ask that the Court enter the Consent Decree as an order of the Court.

DATED this 5th day of May, 2016.

SACKS, RICKETTS & CASE LLP

/s/ Cynthia A. Ricketts
Cynthia A. Ricketts (Arizona Bar No. 012668)
Natalya Ter-Grigoryan (Arizona Bar No. 029493)
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Attorneys for Plaintiff

GALBUT & GALBUT, P.C.

/s/ Keith R. Galbut (with permission)
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Attorneys for Defendant Brandon Tackett

EXHIBIT 1

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

RISAS HOLDINGS LLC, and RISAS DENTAL MANAGEMENT, LLC Plaintiffs, v. BRANDON TACKETT, Defendant.	Civ. No. CV 2016-001841 **CONSENT DECREE**

Plaintiffs Risas Holdings LLC and Risas Dental Management, LLC (hereinafter, "Plaintiffs") having filed its Amended Verified Complaint and Application for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction against Brandon Tackett (hereinafter, "Defendant"), and, following a hearing before the Court on March 8, 2016, Plaintiffs and Defendant having agreed, with Defendant denying any wrongdoing or contractual violation and reserving all its rights under *Ariz.R.Civ.P.* 12 and defenses, to the entry of this Consent Decree,

IT IS ORDERED that, for a period expiring January 6, 2021, Defendant, his agents, and those acting in active concert or participation with him who receive actual notice of this Consent Decree by personal service or otherwise, are enjoined from using for commercial purposes the

following written and tangible records of Risas Dental Management, LLC ("Risas Management") in existence and available to Defendant on or before January 6, 2016: (1) RISAS WAY Operating Manual; (2) Risas Management work product contained in Risas Management Google Drive files; (3) e-mails directed to or from Risas Management e-mail accounts; (4) Risas Management accounting records; and (5) Risas Management records containing information regarding Risas Management business operations, finances, and personnel.

IT IS FURTHER ORDERED that, for a period expiring January 6, 2018, Defendant, his agents, and those acting in active concert or participation with him who receive actual notice of this Consent Decree by personal service or otherwise are enjoined from directly or indirectly soliciting or recruiting any person in the current employment of Risas Management to leave his or her employment with Risas Management to join any business owned in whole or in part by Defendant. For purposes of this Consent Decree, current employment means employment by Risas Management at the time of solicitation or recruitment.

IT IS FURTHER ORDERED that this Consent Decree will not be construed as a waiver by Defendants of any right under *Ariz.R.Civ.P.* 12 or defense, all of which are reserved, or as a waiver by Plaintiffs of their request to enjoin Defendant from using or disclosing information Plaintiffs claim are confidential and/or trade secrets.

IT IS FURTHER ORDERED that this Consent Decree is effective as of the date of entry.

ENTERED this _____day of May, 2016.

_____

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

RISAS HOLDINGS LLC, and RISAS DENTAL MANAGEMENT, LLC, Plaintiffs, v. BRANDON TACKETT, Defendant.	Civ. No. CV2016-001841 **[PROPOSED] ORDER GRANTING STIPULATION FOR ENTRY OF CONSENT DECREE** (Hon. Christopher Whitten)

This matter, having come before the Court on the parties' Stipulation for Entry of Consent Decree, and for good cause shown, the Stipulation is granted. The Consent Decree attached as Exhibit 1 to the Stipulation shall be filed in this matter by the Clerk.

IT IS SO ORDERED.

DATED this ___ day of _____, 2016.

_____

Hon. Christopher Whitten

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

RISAS HOLDINGS LLC, and RISAS DENTAL MANAGEMENT, LLC Plaintiffs, v. BRANDON TACKETT, Defendant.	Civ. No. CV 2016-001841 **CONSENT DECREE**

Plaintiffs Risas Holdings LLC and Risas Dental Management, LLC (hereinafter, "Plaintiffs") having filed its Amended Verified Complaint and Application for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction against Brandon Tackett (hereinafter, "Defendant"), and, following a hearing before the Court on March 8, 2016, Plaintiffs and Defendant having agreed, with Defendant denying any wrongdoing or contractual violation and reserving all its rights under *Ariz.R.Civ.P.* 12 and defenses, to the entry of this Consent Decree,

IT IS ORDERED that, for a period expiring January 6, 2021, Defendant, his agents, and those acting in active concert or participation with him who receive actual notice of this Consent Decree by personal service or otherwise, are enjoined from using for commercial purposes the

following written and tangible records of Risas Dental Management, LLC ("Risas Management") in existence and available to Defendant on or before January 6, 2016: (1) RISAS WAY Operating Manual; (2) Risas Management work product contained in Risas Management Google Drive files; (3) e-mails directed to or from Risas Management e-mail accounts; (4) Risas Management accounting records; and (5) Risas Management records containing information regarding Risas Management business operations, finances, and personnel.

IT IS FURTHER ORDERED that, for a period expiring January 6, 2018, Defendant, his agents, and those acting in active concert or participation with him who receive actual notice of this Consent Decree by personal service or otherwise are enjoined from directly or indirectly soliciting or recruiting any person in the current employment of Risas Management to leave his or her employment with Risas Management to join any business owned in whole or in part by Defendant. For purposes of this Consent Decree, current employment means employment by Risas Management at the time of solicitation or recruitment.

IT IS FURTHER ORDERED that this Consent Decree will not be construed as a waiver by Defendants of any right under *Ariz.R.Civ.P.* 12 or defense, all of which are reserved, or as a waiver by Plaintiffs of their request to enjoin Defendant from using or disclosing information Plaintiffs claim are confidential and/or trade secrets.

IT IS FURTHER ORDERED that this Consent Decree is effective as of the date of entry.

ENTERED this _____day of May, 2016.

eSignature Page 1 of 1

Filing ID: 7437491 Case Number: CV2016-001841
Original Filing ID: 7396853

Granted with Modifications

/S/ Christopher Whitten Date: 5/21/2016
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2016-001841 SIGNATURE DATE: 5/21/2016

E-FILING ID #: 7437491 FILED DATE: 5/24/2016 8:00:00 AM

CYNTHIA A RICKETTS

OLIVIER A BEABEAU

Michael K Jeanes, Clerk of Court
*** Electronically Filed ***
C. Gray, Deputy
8/5/2016 2:12:00 PM
Filing ID 7624983

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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Risas Dental Management, LLC, Plaintiff, v. Brandon Tackett, Defendant.	Case No. CV2016-001841 **PLAINTIFF'S SECOND AMENDED COMPLAINT** **AND** **APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION** (Assigned to the Honorable Christopher Whitten)

Plaintiff Risas Dental Management, LLC ("Risas Management") hereby files this First Amended Complaint and Application for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction against Defendant Brandon Tackett (hereinafter "Tackett" or "Defendant") requesting damages and injunctive relief, and in support thereof states as follows:

I. THE PARTIES

1. Plaintiff Risas Dental Management, LLC is an Arizona limited liability company that conducts business in Arizona.

2. Defendant Brandon Tackett is an individual who resides at 10531 E. Evergreen St., Mesa, Arizona 85207.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction because the amount in controversy and relief requested herein are within the jurisdictional limits of this Court.

4. Venue is proper in Maricopa County, Arizona, pursuant to ARIZ. REV. STAT. § 12-241.01(A) because it is the county in which the Defendant resides.

III. CONDITIONS PRECEDENT

5. Any and all conditions precedent to the filing of this suit and the prosecution of the claims asserted herein have been performed or have occurred.

IV. FACTUAL BACKGROUND

A. Defendant Enters Into an Employment Relationship with Risas Management and Signs a Confidentiality and Non-Solicitation Agreement with Risas Management.

6. Plaintiff Risas Management is a management company that provides non-clinical business support services to affiliated dental practices in the Phoenix area.

7. In the summer of 2013, Defendant applied and was ultimately accepted for a position as support center director of Risas Management and then accepted a second new position as marketing director of Risas Management in 2014. Pursuant to his job as marketing director, Defendant was placed in a position of trust and confidence as a member of the management team. This meant that Defendant had access to Plaintiff's most sensitive information, including its trade secrets.

8. On or about December 11, 2013, in connection with his employment as marketing director, Defendant entered into an Employee Confidentiality and Non-Solicitation Agreement with Risas Management (the "Confidentiality Agreement"). The Confidentiality Agreement is attached hereto as **Exhibit A**.

9. Pursuant to Section One of the Confidentiality Agreement, Defendant specifically acknowledged and agreed that any confidential information learned by him in the course of his engagement with Risas Management was and would remain the property of Risas Management. Defendant further acknowledged in Section One that any disclosure of any confidential information by him would result in irreparable injury

and damage to Risas Management. Additionally, Defendant specifically acknowledged in Section One that the "confidential information" belonging to Risas Management included, without limitation, (1) information related to the business, services, trade secrets, contractors, suppliers, products, or sales of Risas Management or its affiliates or any of their respective patients and (2) any information contained in the RISAS WAY manual, proprietary Google Drive files, and emails.

10. Pursuant to Section Two of the Confidentiality Agreement, Defendant specifically agreed not to disclose, allow to be disclosed, or use any Risas Management Confidential Information in competition with Risas Management for a period of five years following the termination of Defendant's engagement with Risas Management. Specifically, Section Two provides the following:

> 2. **Covenant Not-to-Divulge Confidential Information**. Employee acknowledges and agrees that Employer and its affiliates are entitled to prevent the disclosure of Confidential Information. As a portion of the consideration for the employment of Employee and for the compensation being paid to Employee by Employer, Employee agrees at all times during Employee's employment and for five years thereafter to hold in strict confidence and not to disclose or allow to be disclosed to any person, firm or corporation, other than to persons engaged by Employer and its affiliates to further the business of Employer and its affiliates, and not to use except in the pursuit of the business of Employer and its affiliates, the Confidential Information, without the prior written consent of Employer, including Confidential Information, without prior consent of Employer, including Confidential Information developed by Employee.

11. Additionally, Defendant specifically agreed to return all documents, data, and other information pertaining to any Confidential Information he received once his employment at Risas Management ended. This included any documents, literature, samples, demonstration models, office equipment or other information, or any reproduction or excerpt thereof, containing or pertaining to any Confidential Information.

12. Furthermore, Defendant agreed in Section Four of the Confidentiality Agreement not to compete with Risas Management for a period of two years after the termination of his relationship with Risas Management by directly or indirectly

soliciting, inducing, recruiting, or encouraging any Risas Management employee to leave his or her employment with Risas Management, either for Defendant or any other entity. Specifically, Section Four provides the following:

> 4. **Non-Solicitation.** Employee further agrees that for a period of twenty-four (24) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, that Employee shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of the Company, either for myself or for any other person or entity.

B. Defendant Surreptitiously Creates a Business that Competes with Risas Management, Unlawfully Uses Plaintiff's Confidential Information To Open That Competing Business, And Solicits Risas Management's Employees In Violation Of His Contractual Agreement.

13. Defendant resigned from Risas Management on January 6, 2016. Plaintiff had extensive conversations with Defendant to remind him of the obligations he accepted when signing the Confidentiality Agreement. Plaintiff also offered Defendant the opportunity to remain on Plaintiff's payroll until January 15, 2016, as a good-faith gesture and Defendant accepted the offer.

14. After the termination of his relationship with Plaintiff, and despite entering into the Confidentiality Agreement, Plaintiff became aware that Defendant had started a business called SOMOS that directly competes with Plaintiff. Defendant improperly withheld and is currently in unauthorized possession of Confidential Information belonging to Plaintiff, including the RISAS WAY manual and other information related to the business including but not limited to suppliers, employees, and doctors, and other trade secrets of Plaintiff. Moreover, Defendant is currently using this improperly retained Confidential Information in connection with the operation of a business that directly competes with Plaintiff. Furthermore, Defendant has made several representations to various entities and individuals that appear to indicate Defendant believes that he is entitled to the use of this Confidential Information. Defendant is also falsely stating that he created much of Plaintiff's proprietary systems and is directly referencing his past employment with Risas Management when contacting Plaintiff s

relationships for the benefit of SOMOS. This is in spite of the fact that Defendant signed multiple agreements acknowledging the contrary to be true.

15. Furthermore, upon information and belief, Defendant was using this sensitive and confidential information, including trade secrets, in preparation to form a competing company well before he actually resigned from Risas Management. While still employed, Defendant was using information related to the business, services, trade secrets, contractors, suppliers, products, and sales of Risas Management and its affiliates, as well as the information contained in the RISAS WAY manual, proprietary Google Drive files, and emails in order to plan his new business venture. It is clear that Defendant was actively using confidential information to make arrangements to compete with Plaintiff while still being employed by it.

16. In fact, Defendant worked to organize the entities that form the competing business well before he resigned from Risas Management. Based on publicly filed information, Somos Dental Services, LLC was incorporated by Defendant on January 28, 2016. Somos Dental, LLC, which is the sole member of Somos Dental Services, LLC, was incorporated on January 19, 2016—less than two weeks after Defendant resigned from Risas Management. Most glaringly, Sumos Holdings Ltd, LLC, which his listed as the sole member of Somos Dental, LLC, was incorporated on October 8, 2015—some three months before Defendant resigned from Risas Management. Based on these facts, there is no conclusion but that Defendant was preparing to compete, and did in fact form the ownership structure of his competing business, months before he actually resigned from Risas Management. Thus, Defendant flagrantly breached his fiduciary duties and contractual obligations to Plaintiff.

17. Upon information and belief, Defendant is also now using confidential information, including trade secrets, that he memorized while employed at Risas Management. This includes, but is not limited to, all of the confidential information more particularly pled in the preceding paragraphs. Plaintiff has a protectable interest in

this confidential information and it would have been inaccessible to Defendant but for his former employment with Plaintiff.

18. In addition, Defendant is currently actively recruiting doctors and other medical professionals away from Risas Management to work for his competing business and its affiliates in clear violation of Section Four of the Confidentiality Agreement. Plaintiff first became aware of these solicitations when Gilbert Ochoa contacted Plaintiff to admit that Defendant had contacted Mr. Ochoa in order to hire him. As a result of this direct solicitation by Defendant, Mr. Ochoa informed Plaintiff that he was firing it as a client in order to perform work for SOMOS. A true and correct copy of this email exchange has been attached as **Exhibit B**. Additionally, Defendant has recruited and/or solicited Dr. Tina Keyhani (former Risas Management referral oral surgeon), Eric Vega (former Risas Management Dental Assistant), Denise Rico (former Risas Management Dental Assistant), and Dr. Wyatt Dannels (Risas Management Doctor being actively approached by Defendant) to affiliate with SOMOS. Defendant met each of these contacts for the first time as an employee of Risas Management and has leveraged his past relationship with Plaintiff in order to hire these medical professionals by SOMOS or its affiliates, all in violation of Defendant's Confidentiality Agreement with Plaintiff.

19. Finally, Defendant is also actively seeking expertise and services from, soliciting, and is attempting to recruit Keith Gauzza (Henry Schein Dental Supplies Special Markets Representative), Aaron Call (Henry Schein Dental Supplies Representative), Rich Andrus (Menlo Partners Real Estate Advisors), and Andrew DeCarlo (videographer) to supply SOMOS or its affiliates with dental equipment and/or professional services. Again, Defendant met each of these contacts for the first time as an employee of Plaintiff, and he is using his past relationships and his knowledge of Plaintiff s confidential and proprietary vendor expertise and price discount information in order to obtain an improper advantage for his business that is in direct competition with Plaintiff, all in violation of his Confidentiality Agreement with Risas Management.

V. CAUSES OF ACTION

COUNT ONE: BREACH OF CONTRACT (Breach of the Confidentiality Agreement)

20. Plaintiff incorporate the foregoing paragraphs as though fully set forth herein.

21. Risas Management and Defendant entered into the Confidentiality Agreement. Defendant breached the agreement in material fashion, as more particularly pled in the preceding paragraphs. Risas Management has sustained monetary damage, loss, or injury as a result of Defendant's breach of these this agreement, in an amount to be determined at trial.

22. Plaintiff retained counsel to pursue its claim and seeks recovery of reasonable attorneys' fees as authorized by ARIZ. REV. STAT. § 12-241.01(A) and Section 9 of the Confidentiality Agreement.

COUNT TWO: VIOLATION OF ARIZONA'S UNIFORM TRADE SECRETS ACT (ARIZ. REV. STAT. §§ 44-401 TO 44-407)

23. Plaintiff incorporate the foregoing paragraphs as though fully set forth herein.

24. Plaintiff has expended substantial time, effort, and resources in developing its intellectual property, including its suppliers, pricing, contractors, employees, medical professionals, trademarks, and trade name (the "Risas Intellectual Property"), and promoting its professional services. Plaintiff has built a nationwide reputation and notoriety in the Risas Intellectual Property associated with the services provided by its affiliated practices. Plaintiff considers its intellectual property, including the "Risas" trade name and the RISAS WAY manual, to be among its most valuable assets and devote significant resources to ensure that its rights are not infringed. This protection includes, but is not limited to, the requirement that Defendant enter into the Confidentiality Agreement. As more particularly pled in the preceding paragraphs, Defendant clearly misappropriated Plaintiff's trade secrets. As a result, Plaintiff has

sustained monetary damage, loss, or injury due to the Defendant's misappropriation of these trade secrets, in an amount to be determined at trial.

25. Due to the fact that Defendant's misappropriation was both willful and malicious, Plaintiff seeks attorneys' fees pursuant to ARIZ. REV. STAT. § 44-404.

COUNT THREE: BREACH OF FIDUCIARY DUTY

26. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

27. In his position as marketing director, Defendant was a member of the management team. In this role, Defendant was placed in a position of trust and confidence. As such, Defendant was given access to Plaintiff's most sensitive and confidential information, including its trade secrets.

28. As outlined above, Defendant breached one or more of his fiduciary duties to Plaintiff by, amongst other things: (1) breaching his duty of loyalty; (2) breaching his duty of candor; (3) breaching his duty to act with integrity of the strictest kind; (4) breaching his duty of honesty and fair dealing; (5) breaching his duty of full disclosure; (6) breaching his duty to account for company property; (7) breaching his duty to refrain from competition/solicitation with Plaintiff; and/or (8) misappropriating and disclosing Plaintiff's confidential, proprietary, and trade secret information.

29. Plaintiff has suffered irreparable harm and injury as a result of Defendant's breaches of his fiduciary duties for which there is no adequate remedy at law. Additionally, as a proximate cause of Defendant's breaches of his fiduciary duties, Plaintiff has suffered monetary damages within the jurisdictional limits of this Court.

VI. APPLICATION FOR PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION

30. Plaintiff incorporate the foregoing paragraphs as though fully set forth herein.

31. As reflected above, Defendant's wrongful acts have caused, and are continuing to cause, irreparable injury to Plaintiff, for which there is no adequate remedy at law.

32. Plaintiff has established a substantial likelihood of success on the merits in this matter.

33. The harm faced by Plaintiff outweighs any harm that would be sustained by Defendant if the preliminary injunction were granted; indeed, the continued damage to Plaintiff through the solicitation of its employees, the improper direct competition posed by SOMOS, and the misappropriation of the Risas Intellectual Property greatly exceeds any harm Defendant could conceivably suffer.

34. Moreover, the issuance of a preliminary injunction would not adversely affect the public interest. To the contrary, public interest is served by enforcing contractual agreements such as the Confidentiality Agreement.

35. Plaintiff is willing to post a bond should the Court deem it necessary.

36. Therefore, Plaintiff asks this Court to (a) enter a temporary restraining order, (b) enter a preliminary injunction, from now until such time as there is a trial on the merits, and subsequently (c) enter a permanent injunction, after a trial on the merits, requiring Defendant (and his agents, assigns, representatives, or any person who is participating or is in active concert with him), after receipt of actual notice of this Court's order by personal service, telecopy, email, or otherwise, to do the following:

a. immediately refrain from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendant's business;

b. immediately return to Plaintiff all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which

include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendant's possession, custody, or control;

c. immediately refrain from competing with Plaintiff in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas Management employee to leave his or her employment with Risas Management, in violation of Defendant's obligations in the Confidentiality Agreement;

d. immediately refrain from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property; and

e. immediately refrain from deleting, destroying, or altering any evidence of Defendant's disclosure of Plaintiff's Confidential Information or any other evidence, including but not limited to any emails, text messages, voicemail messages, or other written or recorded communications, regarding the Confidential Information.

VII. PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court award judgment against Defendant Brandon Tackett and grant Plaintiff the following:

A. Actual, direct, exemplary, and consequential damages;

B. Pre-judgment interest and interest on the judgment;

C. Attorneys' fees, expenses, and costs;

D. A temporary restraining order compelling the following:

1. immediately restrain Defendant from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendant's business;

2. order Defendant to immediately return to Plaintiff all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendant's possession, custody, or control;

3. immediately restrain Defendant from competing with Plaintiff in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas Management employee to leave his or her employment with Risas Management, in violation of Defendant's obligations in the Confidentiality Agreement;

4. immediately restrain Defendant from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property; and

5. immediately restrain Defendant from deleting, destroying, or altering any evidence of Defendant's disclosure of Risas's Confidential Information or any other evidence, including but not limited to any emails, text messages, voicemail messages, or other written or recorded communications, regarding the Confidential Information;

E. A preliminary injunction compelling the following:

1. immediately restrain Defendant from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendant's business;

2. order Defendant to immediately return to Plaintiff all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendant's possession, custody, or control;

3. immediately restrain Defendant from competing with Plaintiff in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas Management employee to leave his or her employment with Risas Management, in violation of Defendant's obligations in the Confidentiality Agreement;

4. immediately restrain Defendant from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property; and

5. immediately restrain Defendant from deleting, destroying, or altering any evidence of Defendant's disclosure of Risas's Confidential Information or any other evidence, including but not limited to any emails, text messages, voicemail messages, or other written or recorded communications, regarding the Confidential Information;

F. A permanent injunction compelling the following:

1. immediately and permanently restrain Defendant from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendant's business;

2. order Defendant to return to Plaintiff all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendant's possession, custody, or control;

3. immediately and permanently restrain Defendant from competing with Plaintiff in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas

Management employee to leave his or her employment with Risas Management, in violation of Defendant's obligations in the Confidentiality Agreement; and

4. immediately and permanently restrain Defendant from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property.

G. Such other and further relief to which it may show itself to be justly entitled, at law or in equity.

Dated this 5th day of August, 2016.

OSBORN MALEDON, P.A.

By /s/ Joshua M. Ernst
Scott W. Rodgers
Joshua M. Ernst
2929 N. Central Ave., Suite 2100
Phoenix, Arizona 85012-2793

Attorneys for Plaintiff

COPY of the foregoing e-filed and a COPY e-delivered this 5th day of August, 2016, to:

The Honorable Christopher Whitten
Maricopa County Superior Court

COPY of the foregoing mailed this 5th day of August, 2016, to:

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/s/ Karen Willoughby

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Risas Holdings, LLC; Risas Dental Management, LLC, Plaintiffs, v. Brandon Tackett, Defendant.	Case No. CV2016-001841 **STIPULATION REGARDING INJUNCTIVE RELIEF** (Assigned to the Honorable Christopher Whitten)

In its minute entry dated August 31, 2016, the Court set a return hearing to discuss issues relating to Plaintiff's request for injunctive relief in this matter. The parties contacted the Court's chambers and informed the Court that no hearing was needed at this time, and the parties were directed to file a stipulation regarding this issue.

At the beginning of this matter, Plaintiff sought a temporary restraining order. Following a return hearing, the parties stipulated to a consent decree regarding injunctive relief, which the Court entered. The parties are in the process of conducting discovery. If Plaintiff believes a preliminary injunction hearing is necessary at some point in this case, it will file a request with the Court. The parties agree, however, that no court hearing is necessary at this time to discuss Plaintiff's request for injunctive relief.

Dated this 14th day of September, 2016.

OSBORN MALEDON, P.A.

By /s/ Scott W. Rodgers
Scott W. Rodgers
Joshua M. Ernest
2929 N. Central Ave., Suite 2100
Phoenix, Arizona 85012-2793

Attorneys for Plaintiffs

GALBUT & GALBUT, P.C.

By /s/ Olivier A. Beaubeau (w/ permission)
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Phoenix, Arizona 85016

Attorneys for Defendant

COPY of the foregoing e-filed and a COPY e-delivered this 14th day of September, 2016, to:

The Honorable Christopher Whitten
Maricopa County Superior Court

COPY of the foregoing emailed this 14th day of September, 2016, to:

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Olivier A. Beabeau
Galbut & Galbut, P.C.
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KGalbut@galbutlaw.com
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Attorneys for Defendant

/s/ Karen Willoughby

Michael K Jeanes, Clerk of Court
*** Electronically Filed ***
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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Risas Holdings, LLC; Risas Dental Management, LLC, Plaintiffs, v. Brandon Tackett and Catherine Tackett, a married couple; Somos Dental, LLC, an Arizona limited liability company; Somos Dental Services, LLC, an Arizona limited liability company Defendants.	Case No. CV2016-001841 **PLAINTIFFS' THIRD AMENDED COMPLAINT** (Assigned to the Honorable Christopher Whitten)

Plaintiffs Risas Holdings, LLC and Risas Dental Management, LLC (collectively "Risas Management") hereby file this Third Amended Complaint against Defendant Brandon Tackett (hereinafter "Tackett"), Somos Dental, LLC, and Somos Dental Services, LLC (collectively "Defendants") requesting damages and injunctive relief, and in support thereof state as follows:

THE PARTIES

1. Plaintiff Risas Dental Management, LLC is an Arizona limited liability company that conducts business in Arizona.

2. Plaintiff Risas Holdings, LLC is an Arizona limited liability company that conducts business in Arizona.

3. Defendant Brandon Tackett and Catherine Tackett are a married couple who, upon information and belief, reside at 10531 E. Evergreen St., Mesa, Arizona 85207.

4. Upon information and belief, all of Tackett's actions alleged herein were done on behalf of his marital community, and Catherine Tackett is named solely for community property purposes.

5. Somos Dental, LLC is an Arizona limited liability company whose principal place of business is in Maricopa County.

6. Somos Dental Services, LLC is an Arizona limited liability company whose principal place of business is in Maricopa County.

7. Tackett is a Manager of Somos Dental and Somos Dental Services.

JURISDICTION AND VENUE

8. This Court has jurisdiction because the amount in controversy and relief requested herein are within the jurisdictional limits of this Court.

9. Venue is proper in Maricopa County, Arizona, pursuant to ARIZ. REV. STAT. § 12-241.01(A) because it is the county in which the Defendants reside and are located.

FACTUAL BACKGROUND

A. Defendant Enters Into an Employment Relationship with Risas Management and Signs a Confidentiality and Non-Solicitation Agreement with Risas Management.

10. Plaintiff Risas Management is a management company that provides non-clinical business support services to affiliated dental practices in the Phoenix area.

11. In the summer of 2013, Tackett applied and was ultimately accepted for a position as support center director of Risas Management and then accepted a second new position as marketing director of Risas Management in 2014. Pursuant to his job as marketing director, Tackett was placed in a position of trust and confidence as a member of the management team. This meant that Tackett had access to Plaintiffs' most sensitive information, including its trade secrets.

12. On or about December 11, 2013, in connection with his employment as marketing director, Tackett entered into an Employee Confidentiality and Non-Solicitation Agreement with Risas Management (the "Confidentiality Agreement"). The Confidentiality Agreement is attached hereto as **Exhibit A**.

13. Pursuant to Section One of the Confidentiality Agreement, Tackett specifically acknowledged and agreed that any confidential information learned by him in the course of his engagement with Risas Management was and would remain the property of Risas Management. Tackett further acknowledged in Section One that any disclosure of any confidential information by him would result in irreparable injury and damage to Risas Management. Additionally, Tackett specifically acknowledged in Section One that the "confidential information" belonging to Risas Management included, without limitation, (1) information related to the business, services, trade secrets, contractors, suppliers, products, or sales of Risas Management or its affiliates or any of their respective patients and (2) any information contained in the RISAS WAY manual, proprietary Google Drive files, and emails.

14. Pursuant to Section Two of the Confidentiality Agreement, Tackett specifically agreed not to disclose, allow to be disclosed, or use any Risas Management Confidential Information during his employment or for a period of five years following the termination of Tackett's engagement with Risas Management. Specifically, Section Two provides the following:

> 2. **Covenant Not-to-Divulge Confidential Information**. Employee acknowledges and agrees that Employer and its affiliates are entitled to prevent the disclosure of Confidential Information. As a portion of the consideration for the employment of Employee and for the compensation being paid to Employee by Employer, Employee agrees at all times during Employee's employment and for five years thereafter to hold in strict confidence and not to disclose or allow to be disclosed to any person, firm or corporation, other than to persons engaged by Employer and its affiliates to further the business of Employer and its affiliates, and not to use except in the pursuit of the business of Employer and its affiliates, the Confidential Information, without the prior written consent of Employer, including Confidential Information, without prior consent of Employer, including Confidential Information developed by Employee.

15. Additionally, Tackett specifically agreed to return all documents, data, and other information pertaining to any Confidential Information he received once his employment at Risas Management ended. This included any documents, literature, samples, demonstration models, office equipment or other information, or any reproduction or excerpt thereof, containing or pertaining to any Confidential Information.

16. Furthermore, Tackett agreed in Section Four of the Confidentiality Agreement not to compete with Risas Management for a period of two years after the termination of his relationship with Risas Management by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas Management employee to leave his or her employment with Risas Management, either for Tackett or any other entity. Specifically, Section Four provides the following:

> 4. **Non-Solicitation.** Employee further agrees that for a period of twenty-four (24) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, that Employee shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of the Company, either for myself or for any other person or entity.

B. Tackett Surreptitiously Creates a Business that Competes with Risas Management, Unlawfully Uses Plaintiffs' Confidential Information To Open That Competing Business, And Solicits Risas Management's Employees In Violation Of His Contractual Agreement.

17. Tackett resigned from Risas Management on January 6, 2016. Plaintiffs had extensive conversations with Defendant to remind him of the obligations he accepted when signing the Confidentiality Agreement. Plaintiffs also offered Tackett the opportunity to remain on Plaintiffs' payroll until January 15, 2016, as a good-faith gesture and Tackett accepted the offer.

18. After the termination of his relationship with Plaintiffs, and despite entering into the Confidentiality Agreement, Plaintiffs became aware that Tackett had started a business called SOMOS that directly competes with Plaintiffs. Tackett improperly withheld and is currently in unauthorized possession of Confidential

Information belonging to Plaintiffs, including the RISAS WAY manual and other information related to the business including but not limited to suppliers, employees, and doctors, and other trade secrets of Plaintiffs. Moreover, Defendants are currently using this improperly retained Confidential Information in connection with the operation of a business that directly competes with Plaintiffs. Furthermore, Tackett has made several representations to various entities and individuals that appear to indicate Tackett believes that he is entitled to the use of this Confidential Information. Tackett is also falsely stating that he created much of Plaintiffs' proprietary systems and is directly referencing his past employment with Risas Management when contacting Plaintiff s relationships for the benefit of SOMOS. This is in spite of the fact that Tackett signed multiple agreements acknowledging the contrary to be true.

19. Furthermore, upon information and belief, Tackett was using this sensitive and confidential information, including trade secrets, in preparation to form a competing company well before he actually resigned from Risas Management. While still employed, Tackett was using information related to the business, services, trade secrets, contractors, suppliers, products, and sales of Risas Management and its affiliates, as well as the information contained in the RISAS WAY manual, proprietary Google Drive files, and emails in order to plan his new business venture. It is clear that Tackett was actively using confidential information to make arrangements to compete with Plaintiffs while still being employed by it.

20. In fact, Tackett worked to organize the entities that form the competing business well before he resigned from Risas Management. Based on publicly filed information, Somos Dental Services, LLC was incorporated by Defendant on January 28, 2016. Somos Dental, LLC, which is the sole member of Somos Dental Services, LLC, was incorporated on January 19, 2016—less than two weeks after Tackett resigned from Risas Management. Most glaringly, Sumos Holdings Ltd, LLC, which his listed as the sole member of Somos Dental, LLC, was incorporated on October 8, 2015—some three months before Tackett resigned from Risas Management. Based on

these facts, there is no conclusion but that Tackett was preparing to compete, and did in fact form the ownership structure of his competing business, months before he actually resigned from Risas Management. Thus, Tackett flagrantly breached his fiduciary duties and contractual obligations to Plaintiffs.

21. Upon information and belief, Defendants are also now using confidential information, including trade secrets, that Tackett memorized while employed at Risas Management. This includes, but is not limited to, all of the confidential information more particularly pled in the preceding paragraphs. Plaintiffs have a protectable interest in this confidential information and it would have been inaccessible to Defendants but for Tackett's former employment with Plaintiffs.

22. In addition, Tackett has recruited doctors, other medical professionals, and vendors away from Risas Management to work for his competing business and its affiliates in violation of his contractual obligations to Plaintiffs.

COUNT ONE: BREACH OF CONTRACT (Breach of the Confidentiality Agreement) (BRANDON TACKETT)

23. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

24. Risas Management and Tackett entered into the Confidentiality Agreement. Tackett breached the agreement in material fashion, as more particularly pled in the preceding paragraphs. Risas Management has sustained monetary damage, loss, or injury as a result of Tackett's breach of these this agreement, in an amount to be determined at trial.

25. Plaintiffs retained counsel to pursue its claim and seeks recovery of reasonable attorneys' fees as authorized by ARIZ. REV. STAT. § 12-241.01(A) and Section 9 of the Confidentiality Agreement.

COUNT TWO: VIOLATION OF ARIZONA'S UNIFORM TRADE SECRETS ACT (ARIZ. REV. STAT. §§ 44-401 TO 44-407) (ALL DEFENDANTS)

26. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

27. Plaintiffs have expended substantial time, effort, and resources in developing their intellectual property, including their suppliers, pricing, contractors, employees, medical professionals, trademarks, and trade name (the "Risas Intellectual Property"), and promoting their professional services. Plaintiffs have built a nationwide reputation and notoriety in the Risas Intellectual Property associated with the services provided by their affiliated practices. Plaintiffs consider their intellectual property, including the "Risas" trade name and the RISAS WAY manual, to be among their most valuable assets and devote significant resources to ensure that their rights are not infringed. This protection includes, but is not limited to, the requirement that Tackett enter into the Confidentiality Agreement. As more particularly pled in the preceding paragraphs, Tackett clearly misappropriated Plaintiffs' trade secrets.

28. While employed with Plaintiffs, Tackett took confidential and trade secret information and provided it to Tylor More, another Manager of Somos Dental and Somos Dental Services.

29. This information was used in the formation of, and upon information and belief, continues to be used in the operation of Somos Dental and/or Somos Dental Services. Thus, Somos Dental and/or Somos Dental Services have engaged in misappropriation of Plaintiffs' trade secrets.

30. As a result, Plaintiffs have sustained monetary damage, loss, or injury due to the Defendant's misappropriation of these trade secrets, in an amount to be determined at trial, including disgorgement of profits earned by Tackett, Somos Dental, and/or Somos Dental Services in using Plaintiffs' confidential and trade secret information.

31. Due to the fact that Defendants' misappropriation was both willful and malicious, Plaintiffs seek attorneys' fees pursuant to ARIZ. REV. STAT. § 44-404.

COUNT THREE: BREACH OF FIDUCIARY DUTY (BRANDON TACKETT)

32. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

33. In his position as marketing director, Tackett was a member of the management team. In this role, Tackett was placed in a position of trust and confidence. As such, Tackett was given access to Plaintiffs' most sensitive and confidential information, including its trade secrets.

34. As outlined above, Tackett breached one or more of his fiduciary duties to Plaintiffs by, amongst other things: (1) breaching his duty of loyalty; (2) breaching his duty of candor; (3) breaching his duty to act with integrity of the strictest kind; (4) breaching his duty of honesty and fair dealing; (5) breaching his duty of full disclosure; (6) breaching his duty to account for company property; (7) breaching his duty to refrain from competition/solicitation with Plaintiffs; and/or (8) misappropriating and disclosing Plaintiffs' confidential, proprietary, and trade secret information.

35. Plaintiffs have suffered irreparable harm and injury as a result of Tackett's breaches of his fiduciary duties for which there is no adequate remedy at law. Additionally, as a proximate cause of Tackett breaches of his fiduciary duties, Plaintiffs have suffered monetary damages within the jurisdictional limits of this Court.

COUNT FOUR: APPLICATION FOR PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION (ALL DEFENDANTS)

36. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

37. As reflected above, Defendants' wrongful acts have caused, and are continuing to cause, irreparable injury to Plaintiffs, for which there is no adequate remedy at law.

38. Plaintiffs have established a substantial likelihood of success on the merits in this matter.

39. The harm faced by Plaintiffs outweighs any harm that would be sustained by Defendants if the preliminary injunction were granted; indeed, the continued damage to Plaintiffs through the solicitation of its employees, the improper direct competition posed by SOMOS, and the misappropriation of the Risas Intellectual Property greatly exceeds any harm Defendants could conceivably suffer.

40. Moreover, the issuance of a preliminary injunction would not adversely affect the public interest. To the contrary, public interest is served by enforcing contractual agreements such as the Confidentiality Agreement.

41. Plaintiffs are willing to post a bond should the Court deem it necessary.

42. Therefore, Plaintiffs ask this Court to (a) enter a temporary restraining order, (b) enter a preliminary injunction, from now until such time as there is a trial on the merits, and subsequently (c) enter a permanent injunction, after a trial on the merits, requiring Defendants (and their agents, assigns, representatives, or any person who is participating or is in active concert with him), after receipt of actual notice of this Court's order by personal service, telecopy, email, or otherwise, to do the following:

a. immediately refrain from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendants' business;

b. immediately return to Plaintiffs all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendants' possession, custody, or control;

c. immediately refrain from competing with Plaintiffs in any way by using or disclosing any Risas Confidential Information or by directly or indirectly

soliciting, inducing, recruiting, or encouraging any Risas Management employee to leave his or her employment with Risas Management, in violation of Defendants' obligations in the Confidentiality Agreement;

d. immediately refrain from making any statements or representations to any individual or entity that Defendants are responsible for, created, or have any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property; and

e. immediately refrain from deleting, destroying, or altering any evidence of Defendants' disclosure of Plaintiffs' Confidential Information or any other evidence, including but not limited to any emails, text messages, voicemail messages, or other written or recorded communications, regarding the Confidential Information.

COUNT FIVE: UNFAIR COMPETITION (ALL DEFENDANTS)

43. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

44. This cause of action is for unfair competition under Arizona state law.

45. Defendants' acts as described above constitute unfair competition.

46. Defendants' conduct was and is intentional and in deliberate disregard of the rights of Plaintiffs. By reason thereof, Plaintiffs are entitled to recover not only actual damages, but also punitive exemplary damages in an amount sufficient to deter Defendants from similar conduct in the future.

COUNT SIX: AIDING AND ABETTING (SOMOS DENTAL, LLC & SOMOS DENTAL SERVICES, LLC)

47. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

48. Tackett's actions described above constitute a breach of his fiduciary duties to Plaintiffs as well as a misappropriation of Plaintiffs' confidential information and trade secrets.

49. As a manager of Somos Dental, LLC and Somos Dental Services, LLC, Tackett's knowledge is imputed to the entities.

50. Upon information and belief, through Tackett, Somos Dental, LLC and Somos Dental Services, LLC knew that Tackett's actions constituted a breach of his fiduciary duties and misappropriation of Plaintiffs' confidential information and trade secrets.

51. By accepting and using Plaintiffs' confidential information and trade secrets, Somos Dental and Somos Dental Services have substantially assisted Tackett in breach of his fiduciary duties and the misappropriation of Plaintiffs' trade secrets.

52. Plaintiffs are entitled to damages resulting from Somos Dental's and Somos Dental Service's aiding and abetting, in an amount to be determined at trial.

COUNT SEVEN: BREACH OF CONTRACT (BRANDON TACKETT)

53. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

54. On January 22, 2014, Tackett signed an Incentive Plan Participant Agreement (the "Participant Agreement").

55. The other party to the Participant Agreement was Risas Holdings, LLC.

56. In the Participant Agreement, Tackett acknowledged that the "terms of this Agreement and the Plan constitute confidential information ('Confidential Information'). Participant acknowledges that the Company's business is extremely competitive, dependent in part upon the maintenance of secrecy, and that any disclosure of the Confidential Information would result in serious irreparable harm to the Company."

57. In addition, Tackett agreed "not to disclose, directly or indirectly, the Confidential Information to any third person or entity, other than representatives or agents of the Company, and to treat all such information as confidential and proprietary property of the Company."

58. On July 13, 2015, while employed by Risas, Tackett sent a copy of the Participant Agreement to Tylor More.

59. Tackett's actions constitute a breach of the Participant Agreement.

60. As a result of Tackett's breach, Risas Holdings has been damaged in an amount to be determined at trial.

61. In addition, Risas Holdings seeks an award of attorneys' fees and costs under A.R.S. § 12-341.01.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court award judgment against Defendants and grant Plaintiffs the following:

A. Actual, direct, exemplary, and consequential damages;

B. Pre-judgment interest and interest on the judgment;

C. Attorneys' fees, expenses, and costs;

D. A temporary restraining order compelling the following:

1. immediately restrain Defendants from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendants' business;

2. order Defendants to immediately return to Plaintiffs all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendants' possession, custody, or control;

3. immediately restrain Defendants from competing with Plaintiffs in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas Management employee to leave his or her employment with Risas Management, in violation of Defendants' obligations in the Confidentiality Agreement;

4. immediately restrain Defendants from making any statements or representations to any individual or entity that Defendants is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property; and

5. immediately restrain Defendants from deleting, destroying, or altering any evidence of Defendants' disclosure of Risas's Confidential Information or any other evidence, including but not limited to any emails, text messages, voicemail messages, or other written or recorded communications, regarding the Confidential Information;

E. A preliminary injunction compelling the following:

1. immediately restrain Defendants from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendants' business;

2. order Defendants to immediately return to Plaintiffs all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendants' possession, custody, or control;

3. immediately restrain Defendants from competing with Plaintiffs in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas Management employee to leave his or her employment with Risas Management, in violation of Defendants' obligations in the Confidentiality Agreement;

4. immediately restrain Defendants from making any statements or representations to any individual or entity that Defendant is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property; and

5. immediately restrain Defendants from deleting, destroying, or altering any evidence of Defendants' disclosure of Risas's Confidential Information or any other evidence, including but not limited to any emails, text messages, voicemail messages, or other written or recorded communications, regarding the Confidential Information;

F. A permanent injunction compelling the following:

1. immediately and permanently restrain Defendants from using the Risas Intellectual Property in any manner to market, distribute, and/or advertise any goods or services, including but not limited to using the phrase "Risas" or any iteration or combination of the phrase "Risas" in any communication, solicitation, advertising, or promotional materials in connection with Defendants' business;

2. order Defendants to return to Plaintiffs all unauthorized items (e.g., digital images, hard copies, dvds, recordings, pamphlets, mailers, proof sheets, etc.) which include the Risas Intellectual Property and/or Risas Confidential Information that are in Defendants' possession, custody, or control;

3. immediately and permanently restrain Defendants from competing with Plaintiffs in any way by using or disclosing any Risas Confidential Information or by directly or indirectly soliciting, inducing, recruiting, or encouraging any Risas Management employee to leave his or her employment with Risas Management, in violation of Defendants' obligations in the Confidentiality Agreement; and

4. immediately and permanently restrain Defendants from making any statements or representations to any individual or entity that Defendants is responsible for, created, or has any right whatsoever to disclose or use in any manner the Risas Confidential Information and/or Risas Intellectual Property.

G. Such other and further relief to which it may show itself to be justly entitled, at law or in equity.

Dated this 27th day of March, 2017.

OSBORN MALEDON, P.A.

By /s/ Scott W. Rodgers
Scott W. Rodgers
Brian K. Mosley
2929 N. Central Ave., Suite 2100
Phoenix, Arizona 85012-2793

Attorneys for Plaintiffs

COPY of the foregoing e-filed and a COPY e-delivered this 27th day of March, 2017, to:

The Honorable Christopher Whitten
Maricopa County Superior Court

COPY of the foregoing mailed this 27th day of March, 2017, to:

Keith Galbut
Olivier A. Beabeau
Galbut & Galbut, P.C.
2425 East Camelback Road, Suite 1020
Phoenix, Arizona 85016

Attorneys for Defendant

/s/ Karen Willoughby

EXHIBIT A

Tackett

EMPLOYEE CONFIDENTIALITY AND NON-SOLICITATION

This Employee Confidentiality Agreement (the "Agreement") is entered into as of the Effective Date set forth on the signature page below, between **RISAS DENTAL MANAGEMENT LLC and all affiliated PRACTICES dba Risas Dental and Braces** ("Employer," "Company" or "RISAS"), and the undersigned employee of RISAS ("Employee").

WITNESSETH:

WHEREAS, Employer desires to employ or continue to employ Employee and Employee desires to continue such employment; and

WHEREAS, Employee will, as employee of Employer, have access to confidential information with respect to Employer and its affiliates;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and for other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Acknowledgment of Proprietary Interest. Employee recognizes the proprietary interest of Employer and its affiliates in any Confidential Information (as hereinafter defined) of Employer and its affiliates (defined below). Employee acknowledges and agrees that any and all Confidential Information learned by Employee during the course of Employee's engagement by Employer or otherwise, whether developed by Employee alone or in conjunction with others or otherwise, will be and is the property of Employer and its affiliates. In connection with Employee's employment by Company, Employee acknowledges and agrees that Employee will come into contact with such Company Confidential Information. Employee further acknowledges and understands that Employee's disclosure of any Confidential Information and/or proprietary information will result in irreparable injury and damage to Employer and its affiliates, including without limitation information derived from reports, investigations, experiments, research, work in progress, drawings, designs, plans, proposals, codes, marketing and sales programs, client lists, client mailing lists, financial projections, cost summaries, pricing formulae, manuals, and all other concepts, ideas, materials, or information prepared or performed for or by Employer or its affiliates. "Confidential Information" shall mean and includes all information relating to the Company, whether written or oral, including without limitation (i) information relating to the business, property, operations, finances and personnel of the Company; (ii) information not generally known to the public; (iii) information contained in any of the Company's manuals and guidebooks and (iv) any information generated or derived by the Company or its representatives and affiliates that contains, reflects or is derived from any such information. "Confidential Information" also specifically includes (x) information related to the business, services, trade secrets, products or sales of Employer or its affiliates, or any of their respective patients and (y) information contained in The RISAS Way manual, proprietary Google Drive files, and emails other than information which may otherwise be publicly available. An "affiliate" of any party hereto will mean the person controlling, controlled by or under control with such party.

2. Covenant Not-to-Divulge Confidential Information. Employee acknowledges and agrees that Employer and its affiliates are entitled to prevent the disclosure of Confidential Information. As a portion of the consideration for the employment of Employee and for the compensation being paid to Employee by Employer, Employee agrees at all times during Employee's employment and for five years thereafter to hold in strict confidence and not to disclose or allow to be disclosed to any person, firm or corporation, other than to persons engaged by Employer and its affiliates to further the business of Employer and its affiliates, and not to use except in the pursuit of the business of Employer and its affiliates, the Confidential Information, without the prior written consent of Employer, including Confidential Information, without prior consent of Employer, including Confidential Information developed by Employee.

3. Return of Material at Termination. In the event of any termination or cessation of Employee's employment with Employer for any reason whatsoever, Employee will promptly deliver to Employer all documents, data and other information pertaining to Confidential Information. Employee will not take any documents, literature, samples, demonstration models, office equipment or other information, or any reproduction or excerpt thereof, containing or pertaining to any Confidential Information.

4. Non-Solicitation. Employee further agrees that for a period of twenty-four (24) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, that Employee shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of the Company, either for myself or for any other person or entity.

5. No Grant of License. The Confidential Information shall remain the property of the Company, and no license or assignment, by implication, estoppel or otherwise, is granted by the Company to Employee to make, have made, use, or sell

any product using the Confidential Information, or a license under any patent, patent application, utility model, copyright, trade secret, trademark, service mark or any other similar industrial or intellectual property right..

6. Injunctive Relief. Employee recognizes and acknowledges that in the event of any default in, or breach of any of the terms, conditions, or provisions of this Agreement (either actual or threatened) by Employee, Employer's and its affiliates' remedies at law will be inadequate and its damages maybe difficult to ascertain. Accordingly, Employee agrees that in such event, Employer and its affiliates will have the right of specific performance and/or injunctive relief in addition to any and all other remedies and rights at law or in equity, and such rights and remedies will be accumulative.

7. Other Agreements and Assignment. This Agreement embodies the entire agreement between the parties regarding Confidential Information and supersedes all prior oral or written understanding or agreements between the parties hereto. This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing herein, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever hereunder. Any assignment of this Agreement by either party without the prior written consent of the other party shall be void.

8. Not an Employment Agreement. The Employee and the Company acknowledge and agree that this Agreement is not intended to and should not be construed to grant the Employee any right to employment with the Company.

9. Governing Law; Venue. This Agreement and the rights and obligations of the parties hereto will be governed, construed and enforced in accordance with the laws of the State of Arizona, without regard to the principals of conflicts of law thereof. The parties agree that this Agreement shall be performable in Phoenix, Arizona. EACH PARTY KNOWINGLY, WILLINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, COUNTERCLAIM OR OTHER PROCEEDING, TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS AGREEMENT. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which he or it may be entitled.

10. Enforceability. If, for any reason, any provision contained in this Agreement should be held invalid in part by court of competent jurisdiction, then it is the intent of each of the parties hereto that the balance of this Agreement be enforced to the fullest extent permitted by applicable law. Accordingly, should a court of competent jurisdiction determine that the scope of any covenant is too broad to be enforced as written, it is the intent of each of the parties that the Court should reform such covenant to such narrower scope as it determines enforceable, to the broadest extent possible.

11. Waiver of Breach. The waiver by any party hereto of a breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach by any party.

12. Captions. The captions in this Agreement are for convenience of reference only and will not limit or otherwise affect any of the terms or provisions hereof

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute as the same instrument, but only one of which need be produced.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties hereto have executed this Confidentiality Agreement effective as of the 11 day of Dec., 2013 (the "Effective Date").

EMPLOYER:

RISAS DENTAL MANAGEMENT LLC
and affiliated PRACTICES

By: _____
Printed Name: Brandon Tackett
Title: _____

EMPLOYEE:

By: _____
Printed Name: Brandon Tackett

Employee Address and Information for Notices:

10531 E. Evergreen St.
Mesa, AZ 85207

Attn: _____
Phone: (480) 510-8585
Fax: _____
Email: brandontackett@gmail.com

DALLAS\578714.3

Chris DeRose, Clerk of Court
*** Electronically Filed ***
04/23/2018 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001841 04/17/2018

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
T. Cooley
Deputy

RISAS HOLDINGS, et al. BRIAN K. MOSLEY

v.

BRANDON TACKETT, et al. OLIVIER A BEABEAU

MINUTE ENTRY

Courtroom 201-OCH

10:01 a.m. This is the time set for Oral Argument re: Defendants' Motion for Summary Judgment. Plaintiffs are represented by counsel, Brian K. Mosley and Scott Rogers. Defendants are represented by counsel, Olivier A. Beabeau. Defendant, Brandon Tackett is present.

A record of the proceedings is made digitally in lieu of a court reporter.

Oral argument is presented.

Based upon matters presented to the Court,

IT IS ORDERED taking this matter under advisement.

11:02 a.m. Matter concludes.

LATER:

The Court has considered Defendants' Motion for Summary Judgment, filed October 27, 2017, Plaintiffs' response, filed January 11, 2018, and Defendants' reply, filed January 30, 2018. The Court benefited from oral argument on the motion on April 17, 2018.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001841 04/17/2018

Confidentiality Agreement

The Confidentiality Agreement is invalid on its face. It purports to hold confidential "all information relating to [Risas], whether written or oral, including without limitation" any information included in one of several nearly all-encompassing categories. Essentially anything involving Risas's business would be confidential under the Agreement.

Under Arizona law, a trade secret must "derive[] independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use[, and be] the subject of efforts that are reasonable under the circumstances to maintain its secrecy." A.R.S. § 44-401(4). "[N]ot every commercial secret qualifies as a trade secret. Only those secrets affording a demonstrable competitive advantage may properly be considered a trade secret." *Enterprise Leasing Co, of Phoenix e. Ehmke*, 197 Ariz. 144, 150 ¶ 20 (App. 1999).

Plaintiffs identify four documents accessed by Mr. Tackett which they allege to constitute trade secrets: the Stock Participation Agreement, training materials (prepared by Mr. Tackett during his employment by Risas) on how to file an insurance claim, Risa's Operating Agreement, and a spreadsheet from a Daily Report. The first three do not rise to the level of trade secrets, because there is no economic value to be gained or lost from their disclosure or use. If Mr. Tackett copied Risas's Operating Agreement or Stock Participation program (which he denies), he has taken not a penny from Risas nor gained a penny for himself, apart from saving the prospective expense of re-inventing the wheel. The training materials, even in the unlikely event that they could be considered trade secrets as against the world in general, could not be considered trade secrets against Mr. Tackett, who of necessity knew beforehand everything he put into that material. The use of the spreadsheet might have been sufficient had Plaintiffs shown either an adverse effect upon Risas or a beneficial effect upon Mr. Tackett. But it has not done so.

Damages Claim

"It is firmly established, of course, in this state as elsewhere, that 'certainty in amount' of damages is not essential to recovery when the *fact* of damage is proven. This is simply a recognition that doubts as to the extent of the injury should be resolved in favor of the innocent plaintiff and against the wrongdoer. But it cannot dispel [the] requirement that the plaintiff's evidence provide some basis for estimating his loss. … 'conjecture or speculation' cannot provide the basis for an award of damages, and … the evidence must make an 'approximately accurate estimate' possible." *Gilmore v. Cohen*, 95 Ariz. 34, 36 (1968) (internal citations omitted); *Walter v. F.J. Simmons and Others*, 169 Ariz. 229, 236 (App. 1991).

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MARICOPA COUNTY

CV 2016-001841 04/17/2018

Other than the amount paid to Defendant while he was allegedly serving two masters, Plaintiffs do not assert damages to themselves, but instead claim recoupment of Defendants' unjust enrichment. However, they have not offered any basis for the jury to determine how much, if at all, Defendants were enriched by their use of the spreadsheet. The jury cannot be asked to infer that, simply because Defendants used the information, they must have been unjustly enriched, and then guess by how much.

Breach of Fiduciary Duty and Related Damages

What remains is the claim, first fleshed out in the briefing of the response, for breach of fiduciary duty. Defendants are certainly correct that the claim was raised late (and improperly, in a responsive memorandum). But delay alone, without prejudice to the opposing party, is not a sufficient basis for exclusion. *Allstate Ins. Co. v. O'Toole*, 182 Ariz. 284, 288 (1995).

The Court believes that any prejudice can be minimized provided that full disclosure of the theory and its supporting evidence be made promptly. Therefore, Plaintiffs are to make specific disclosure of all evidence in support of a breach of fiduciary duty claim, and specifically describe any related damages, within twenty-one days of this order being issued.

Conclusion

Defendants' Motion for Summary Judgment is granted with respect to all of Plaintiff's claims except for breach of fiduciary duty.

Clerk of the Superior Court
*** Electronically Filed ***
K. Higuchi-Mason, Deputy
9/13/2019 9:42:00 AM
Filing ID 10877644

Scott W. Rodgers, 013082
Brian K. Mosley, 030841
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(602) 640-9000
srodgers@omlaw.com
bmosley@omlaw.com

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Risas Holdings, LLC; Risas Dental Management, LLC, Plaintiffs, v. Brandon Tackett and Catherine Tackett, a married couple; Somos Dental, LLC, an Arizona limited liability company; Somos Dental Services, LLC, an Arizona limited liability company, Defendants.	Case No. CV2016-001841 **STIPULATION RE: COUNT THREE AND SCHEDULE** (Assigned to the Honorable Christopher Whitten)

The parties stipulate to judgment in favor of Plaintiff Risas Dental Management, LLC against Defendants Brandon Tackett and Catherine Tackett on Count Three of the Third Amended Complaint for Breach of Fiduciary Duty in the sum of $80,601.43.

In light of the stipulated resolution of the only remaining claim in the case, the parties request the Court vacate all currently scheduled deadlines, including the scheduled trial, and set deadlines for motions on attorneys' fees and costs and the submission(s) of a form of final judgment on all claims. A proposed form of order accompanies this stipulation.

Dated this 13th day of September, 2019.

OSBORN MALEDON, P.A.

By /s/ Scott W. Rodgers
Scott W. Rodgers
Brian K. Mosley
2929 N. Central Ave., Suite 2100
Phoenix, Arizona 85012-2793

Attorneys for Plaintiffs

GALBUT & GALBUT, P.C.

By /s/ Olivier A. Beabeau (w/ permission)
Olivier A. Beabeau
Keith R. Galbut
2425 East Camelback Road, Suite 1020
Phoenix, Arizona 85016

Attorneys for Defendants

The foregoing has been electronically filed via AZTurbo Court and electronically delivered this 13th day of September, 2019 to:

The Honorable Christopher Whitten
Maricopa County Superior Court

Keith Galbut
Olivier A. Beabeau
Galbut & Galbut, P.C.
2425 East Camelback Road, Suite 1020
Phoenix, Arizona 85016
OBeabeau@galbutlaw.com
KGalbut@galbutlaw.com

Attorneys for Defendants

/s/ Karen Willoughby

Granted with Modifications
See eSignature page

Clerk of the Superior Court
*** Electronically Filed ***
D. Tapia, Deputy
9/27/2019 8:00:00 AM
Filing ID 10926531

Scott W. Rodgers, 013082
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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Risas Holdings, LLC; Risas Dental Management, LLC, Plaintiffs, v. Brandon Tackett and Catherine Tackett, a married couple; Somos Dental, LLC, an Arizona limited liability company; Somos Dental Services, LLC, an Arizona limited liability company, Defendants.	Case No. CV2016-001841 **ORDER REGARDING COUNT THREE AND SCHEDULING** (Assigned to the Honorable Christopher Whitten)

Based on the stipulation of the parties and for good cause shown:

IT IS HEREBY ORDERED granting Plaintiff Risas Dental Management, LLC judgment against Defendants Brandon Tackett and Catherine Tackett under Count Three of the Third Amended Complaint in the sum of $80,601.43.

IT IS FURTHER ORDERED vacating all currently scheduled deadlines in this matter including:

- the final pretrial management conference on October 1, 2019 at 8:30 a.m.;
- the 5-day jury trial on November 1, 4, 5, 6, and 7, 2019; and,
- all other deadlines set forth in the Court's April 1, 2019 order.

IT IS FURTHER ORDERED that all motions seeking attorneys' fees and costs will be filed on or before October 11, 2019.

IT IS FURTHER ORDERED that the parties will file with the Court a form of final judgment on Third Amended Complaint Count Three and all previously

adjudicated claims (*i.e.*, Third Amended Complaint Counts One, Two, Four, Five, Six, and Seven) under Rule 54(h) within ten (10) days of the Court's filing of its ruling on all motions seeking attorneys' fees and costs. The parties will meet and confer regarding a stipulated form of final judgment prior to submitting separate forms of final judgment.

Dated this ____ day of _____, 2019.

_____
The Honorable Christopher Whitten
Maricopa County Superior Court Judge

eSignature Page 1 of 1

Filing ID: 10926531 Case Number: CV2016-001841
Original Filing ID: 10877644

Granted with Modifications

/S/ Christopher Whitten Date: 9/26/2019
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2016-001841 SIGNATURE DATE: 9/26/2019

E-FILING ID #: 10926531 FILED DATE: 9/27/2019 8:00:00 AM

BRIAN K. MOSLEY

OLIVIER A BEABEAU

Clerk of the Superior Court
*** Electronically Filed ***
11/20/2019 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001841 11/19/2019

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
D. Tapia
Deputy

RISAS HOLDINGS, et al. BRIAN K. MOSLEY

v.

BRANDON TACKETT, et al. OLIVIER A BEABEAU

MINUTE ENTRY

The Court has Defendants' Application for Attorneys' Fees and Costs and Defendants' Verified Request for Award of Taxable Costs, both filed October 11, 2019, and both fully briefed since November 4, 2019.

The Court also has Plaintiffs' Application for Costs, filed October 11, 2019, which has also been fully briefed since November 4, 2019.

The Court set oral argument on all three motions on November 22, 2019. In preparing for that argument, the Court is convinced that the parties' well-written briefs fully describe their positions, such that oral argument would be a waste of the parties' resources. The November 22, 2019 oral argument is therefore vacated.

The Employee Agreement controls all three pending motions. In looking at the outcome of the various claims to determine who the prevailing party in the case is, the balance is clearly with Plaintiffs, who got the injunctive relief they particularly sought, and also got the only money that changed hands. The effect of the outcome in the real world is not a matter of record of which the Court can take judicial notice.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001841 11/19/2019

ACCORDINGLY, IT IS ORDERED that the Defendants' Application for Attorneys' Fees and Costs and Defendants' Verified Request for Award of Taxable Costs are both denied.

IT IS FURTHER ORDERED that Plaintiffs' Application for Costs is granted. Plaintiff is awarded $12,170.85 in taxable costs.

CLERK OF THE SUPERIOR COURT
FILED
JAN 15 2020 @ 10:15 AM
D. Tapia, Deputy

Scott W. Rodgers, 013082
Kristin L. Windtberg, 024804
Brian K. Mosley, 030841
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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Risas Holdings, LLC; Risas Dental Management, LLC,

Plaintiffs,

v.

Brandon Tackett and Catherine Tackett, a married couple; Somos Dental, LLC, an Arizona limited liability company; Somos Dental Services, LLC, an Arizona limited liability company,

Defendants.

Case No. CV2016-001841

FINAL JUDGMENT

(Assigned to the Honorable Christopher Whitten)

Based on the Court's previous orders and for good cause shown:

IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED:

1. Affirming the injunctive relief provided in the Consent Decree entered on May 24, 2016 resolving Count Four (Injunctive Relief).
2. Entering judgment for Plaintiff Risas Dental Management, LLC against Defendants Brandon Tackett and Catherine Tackett under Count Three of the Third Amended Complaint (Breach of Fiduciary Duty) in the sum of $80,601.43.
3. Entering judgment for Defendants on all other counts in the Third Amended Complaint.

IT IS FURTHER ORDERED awarding taxable costs to Plaintiffs Risas Holdings, LLC and Risas Dental Management, LLC and against Defendants Brandon Tackett and Catherine Tackett in the amount of $12,170.85.

IT IS FURTHER ORDERED that post-judgment interest shall accrue on the total judgment amount of $92,772.28 at the statutory rate of 5.75% per annum from the date of this judgment until it is paid.

IT IS FURTHER ORDERED that this judgment is applicable to all claims and parties. No further matters remain pending and this judgment is entered under Rule 54(c).

Dated this 15th day of January, 2019.

The Honorable Christopher Whitten
Maricopa County Superior Court Judge

Clerk of the Superior Court
*** Filed ***
01/16/2020 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001841 01/15/2020

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
D. Tapia
Deputy

RISAS HOLDINGS, et al. BRIAN K. MOSLEY

v.

BRANDON TACKETT, et al. OLIVIER A BEABEAU

JUDGMENT SIGNED

The Court has Defendants' "Motion for Reconsideration of Ruling of November 19, 2019," which was filed on December 5, 2019 and the invited response, filed January 10, 2020.

No oral argument is warranted.

In reviewing the previous cost and fee applications it is unclear whether Defendants November 12, 2019 Reply in Support of Application for Attorneys' Fees was considered. The Court has now either re-read or read and considered that Reply.

There is no support for the proposition that the Court should consider only "fee-eligible" claims in determining who the prevailing party is in a "totally of the litigation" analysis. Instead, all claims must be considered.

That is exactly what the Court did in this case. Under such analysis, Defendants are not the prevailing party for the reasons more fully described in the November 19, 2019 minute entry order.

ACCORDINGLY, Defendants' Motion for Reconsideration is **denied**.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001841 01/15/2020

Having now resolved the motion for reconsideration, the Court has reviewed Plaintiffs' proposed form of judgment, filed November 27, 2019, Defendants' objection, filed December 11, 2019, and Plaintiffs' reply, filed December 20, 2019.

Good cause appearing,

IT IS ORDERED approving and settling the formal written Final Judgment against Defendants Brandon Tackett and Catherine Tackett, signed by the Court January 15, 2020, and filed (entered) by the Clerk on January 15, 2020.

Please note: The Court has signed a hard-copy version of the Judgment. After the Judgment has been scanned and docketed by the Clerk of Court, copies of the Judgment may be available through ECR Online at clerkofcourt.maricopa.gov or through AZTurboCourt.gov and from the Public Access Terminals at the Clerk of Court's offices located throughout Maricopa County.