



other confidential information, tortious interference with advantageous relations, conversion, breach of an employee's duty of loyalty, and violation of the Computer Fraud and Abuse Act.

### **PARTIES**

2. TPC is, and at all relevant times was, a Delaware corporation with its principal place of business in Burlington, Massachusetts. Plaintiff is a financial intermediary specializing in leasing and financing of equipment that are typically in the \$500 to \$25,000 price range.

3. Upon information and belief, McBride is an individual who resides at 621 Islington Street, Unit D, Portsmouth, New Hampshire, 03801. Until Friday, February 3, 2012, McBride worked as a Business Development Manager for TPC at the Company's office in Burlington, Massachusetts.

### **JURISDICTION & VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (a)(1), since the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

5. This Court also has subject matter jurisdiction under the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. §1030, *et seq.*

6. This Court has personal jurisdiction over Defendant because he transacts business in the Commonwealth of Massachusetts, has made and performed contracts in Massachusetts and/or has breached duties and/or committed tortious acts in Massachusetts.

7. Venue is appropriate in the District pursuant to 28 U.S.C. §1391(a)-(b) because a substantial part of the events giving rise to the claims occurred in this District and because Defendant is subject to personal jurisdiction in this District.

**FACTUAL ALLEGATIONS**

**A. The Microticket Financing Industry**

8. TPC is the wholly-owned operating subsidiary of MicroFinancial, Inc. (“MFI”), a publicly traded company. TPC is a specialized finance company that originates equipment leases for “microticket” commercial and consumer equipment typically valued at less than \$25,000.

9. Microticket leases facilitate sales of equipment by allowing dealers of such equipment to make their products available to the dealers’ customers for a small monthly lease payment instead of a high initial purchase price. This allows the end-user businesses to preserve capital for other uses. In other words, equipment dealers offer their customers an option to lease equipment rather than purchase it outright, and for those customers who choose to do so, TPC purchases the equipment from the dealer and leases it to the end-user.

10. Typically, TPC’s microticket financing involves transactions of between \$500 and \$25,000. In 2010, the average amount financed by the Company was approximately \$5,800.

11. TPC generally originates leases for products with limited distribution channels. The Company finances a variety of equipment including water filtration systems, food service equipment, security equipment, point-of-sale cash registers, salon equipment, and fitness equipment. Water filtration systems represent the largest percentage of TPC’s microticket leasing business, totaling approximately 23% in 2010.

12. TPC does not typically market its services directly to the end-users who are utilizing the equipment. Rather, its leases are presented as financing options through a nationwide network of independent equipment vendors (the “Dealers”). The Dealers interact directly with potential lessees, who market not only their own products, but also present financing options offered by TPC. The relationships TPC has with the Dealers are, therefore, critical to TPC’s business.

13. Dealers use a TPC proprietary, Internet-based application to process lease application and credit approvals for potential lessees. The tool also allows Dealers to present a potential equipment lessee with a variety of leasing options. By assisting the Dealers in providing financing for their equipment contracts, TPC simultaneously promotes equipment contract sales and the utilization of TPC as a preferred finance provider. It is a beneficial arrangement for all involved.

14. TPC originates leases on transactions referred to it by Dealers by purchasing the underlying equipment from the referring Dealers when transactions are finalized, and then collecting monthly payments from the end-user. TPC also services the leases and owns the revenue streams from the leases. The Dealers continue to maintain and service leased equipment.

15. Because Dealer relationships play a critical role in TPC's business, an important component of TPC's business model is the credit assessment of Dealers. Dealers undergo both an initial screening process and ongoing evaluations, including examinations of Dealer portfolio credit quality and performance, lessee complaints, application activity, and conversion rates for potential lessees and other financial studies.

**B. Plaintiff's Trade Secrets – Dealer Lead Generation, Qualification And Vetting Process**

16. TPC expends a considerable amount of resources identifying sales leads for equipment dealers through professional lead generators, trade shows, online services (e.g., Hoover's), and other sources, using a list of criteria that TPC has determined to be the most relevant and useful. These sources provide lists of tens of thousands of potential leads that TPC then internally "qualifies," which is a time consuming and expensive process that narrows the leads down to those that TPC believes are most likely to use its microticket financing services.

Specifically, the leads are provided to TPC Business Development Representatives who initially call on them and determine whether they would actually utilize its services. Leads that have gone through this process are referred to as “Qualified Leads,” and information regarding the qualification of each lead is included in TPC’s customer relations management system (the “CRM System”).

17. Qualified Leads are then passed off to Business Development Managers, such as McBride, whose role is to get the Dealers to complete the TPC Dealer application and begin originating TPC leases as soon as possible. Initially, a Dealer submits a Dealer application TPC with the assistance of a Business Development Manager. The application is sent to TPC’s Credit Group for a credit check and other safeguards. After this process is complete, the Dealer becomes an “Approved Dealer.” The results of this process are also contained in the CRM System. As an Approved Dealer, it can utilize TPC’s proprietary software to submit applications from businesses seeking financing for the Dealer’s equipment. Approved Dealer relationships are generally maintained by both the Business Development Manager and TPC’s Vendor Relations Group, although TPC prefers that the Vendor Relations Group take the leading role in this respect.

18. A Business Development Manager’s role at TPC primarily consists of cold-calling Qualified Leads and attempting to convert them to Approved Dealers. They are not expected to identify leads of their own, other than occasionally through existing leads that TPC has identified and qualified and/or research on the Internet, in trade publications, and the like. Although Business Development Managers are not discouraged from building relationships with TPC’s Approved Dealers, TPC’s Vendor Relations Group and Business Development Managers work together to maintain the relationship with the Dealers.

19. TPC's analysis of Dealers does not end when a Dealer becomes approved. TPC regularly vets Approved Dealers and analyzes the performance of their portfolios of customers to ensure that those Dealers who were initially qualified and approved are, in fact, doing the volume and type of business expected; offering financing to creditworthy customers who are making timely payments, and the like. Poor performing Dealers are subject to restrictions or are terminated. This analysis is performed by TPC's Finance and Legal Departments, as well as other senior executives, including the Chief Executive Officer, and the results of this vetting process are contained in the CRM System.

20. In fact, TPC maintains all of its sales lead and Dealer information on the CRM System, including: (a) contact information such as personal cell phone and e-mail addresses for individual contacts at Qualified Dealers and Approved Dealers; (b) information generated by Business Development Representatives in the initial lead qualification process; (c) Dealer credit review and approval data; (d) financial information on Dealer lessee portfolios including credit quality and performance; (e) lessee complaint data about Dealers; (f) Dealer application activity and conversion rates; and (g) the aggregate value of leases funded through each Dealer.

21. Business Development Managers also have access to information from the ongoing Dealer vetting process through the CRM System, such as financial information on Dealer lessee portfolios including credit quality and performance, Dealer application activity and conversion rates, and the aggregate value of leases funded through each Dealer or specific contacts within a single Dealer organization.

22. Although Business Development Managers are not discouraged from building relationships with TPC's originating Dealers, the Company has a Vendor Relations Department that is specifically tasked with doing so.

**C. TPC's Protection Of Its Confidential Information And Trade Secrets**

23. Because TCP's Qualified Dealer lists and related information about Dealers and funding through Dealers are one of the Company's most valuable assets, Plaintiff has worked hard to keep this information confidential.

24. Business Development Managers, including Defendant, are an important component of TPC's business development efforts. Their work for TPC requires that Business Development Managers have access to vast amounts of information related to Dealers, including sensitive internally created compilations of Dealer information and non-public, TPC financial information related to transactions funded through Dealers. These compilations and financial information would be extremely valuable to competitors of TPC.

25. Because TPC's relationships with Dealers are a critically important part of the Company's business model, TPC limits access to the CRM System to only sales representatives and Marketing Department personnel who have a need to access the information to perform their jobs, as well as a few very senior level members of the Company's management team.

26. Access to the CRM System is also secured by requiring individual logon passwords.

27. Reports generated through the CRM System, such as Dealer contact lists, contain a statement on the bottom of the generated document that the information is "**Confidential Information – Do Not Distribute . . . TimePayment Corp.**"

28. As an additional security measure, USB ports are disabled on TPC computers to prevent copying and removal of confidential and trade secret materials such as information on the CRM System.

29. At the outset of employment with TPC, the Company gives all employees an Employee Handbook and requires them to sign a form stating their intent to comply with its

terms. The Employee Handbook Acknowledgment form specifically identifies compliance with policies protecting the confidentiality of TPC information. The Employee Handbook singles out certain information that must remain confidential and prohibits certain conduct to protect the confidential nature of the Company's proprietary information. For example, the Employee Handbook sets forth polices explicitly forbidding the disclosure of Company proprietary information to TPC competitors or sending confidential information by e-mail or otherwise over the Internet.

30. In addition, all TPC employees are also required to comply with the Company Code of Business Conduct and Ethics (the "Code of Ethics"), a copy of which is provided to them at the time they begin working at TPC. The Code of Ethics contains a provision explicitly prohibiting Company confidential and proprietary information from unauthorized disclosure or use. Employees are also required to confirm, in writing, that they understand and will comply with the Code of Ethics and again periodically thereafter. The Confirmation form includes a statement that the employee "will maintain the confidentiality of information acquired in the course of my work . . . [and] will not use confidential information acquired in the course of my work for personal advantage."

31. In order to protect its confidential, proprietary and trade secret information, at the conclusion of employment with the Company, an employee's access card is promptly taken in order to prevent physical access to the TPC's building. Access to the Company's information technology and computer systems is also promptly shut down, including termination of the ability to access the CRM System.

**D. Defendant's Employment With TPC**

32. McBride began working for the Company on or about April 27, 2009 as a Business Relations Manager.

33. McBride did not have prior experience in the microticket financing industry. He previously worked as a mortgage broker or in a similar position in the mortgage industry.

34. On his first day of work, TPC provided McBride with a copy of the Employee Handbook and McBride signed the Acknowledgment form that same day, stating that he understood and would comply with the Company's policies and practices set forth in the Employee Handbook, "including, but not limited to policies on business conduct, [and] confidentiality of MFI/TimePayment information . . . ."

35. McBride was also provided with a copy of the Code of Ethics on his first day of work for TPC. That same day, he signed a Certification stating that he understood and would comply with the policies and practices set forth the Code of Ethics. In the Certification, McBride further stated that he:

will maintain the confidentiality of information acquired in the course of my work except when authorized or otherwise legally obligated to disclose such information. I will not use confidential information acquired in the course of my work for personal advantage.

36. McBride re-certified his understanding of, and continued compliance with, the Code of Ethics on or about March 25, 2011.

37. Upon being hired by TPC, McBride, like all other sales representatives, was provided with an intensive one-week training that covered such topics as sales, the microticket industry, in general, and various business sectors in particular. Training was also provided on the Company's business model, processes, and technology. This training was followed up by on-the-job sales training, including how to effectively cold call Dealer sales leads, which is the primary responsibility of all Business Development Managers at TPC.

38. McBride was initially assigned to work with Dealers in the telecommunications industry, with a West Coast geographic focus. Approximately two years ago he was reassigned

to working with Dealers on a national level who sell (i) restaurant and bar equipment; (ii) point-of-sale devices (i.e., cash registers); and (iii) ATMs. Shortly before McBride resigned, he was also assigned to work with East Coast Dealers that sell computer equipment such as PCs and servers.

**E. McBride's Theft Of Confidential, Proprietary, Trade Secret Dealer Information And Disclosure to TPC's Competitor**

39. On or about October 25, 2011, McBride logged onto the CRM System and ran a comprehensive search for TPC's Dealer contacts in the water filtration equipment industry. After accessing that data, he copied it into a spreadsheet containing detailed information on more than 3,000 Dealer contacts, including non-public contact information such as individual employee names, cell phone numbers and personal e-mail addresses (the "Dealer Report").

40. The Dealer Report also had columns containing data on the specific amount of funded transactions for specific contacts in the years 2008, 2009, 2010, year-to-date for 2011, and month-to-date for October 2011. Therefore, the data compilation included financial information provided by and concerning certain Dealers with whom TPC did business during those time periods.

41. On the bottom left hand corner, the Dealer Report states: "**Confidential Information – Do Not Distribute**" along with the name "**TimePayment Corp.**"

42. A few minutes after generating the report, McBride used his TPC e-mail account, [Jonathan.McBride@timepaymentcorp.com](mailto:Jonathan.McBride@timepaymentcorp.com) to send the Dealer Report to his personal e-mail account [jonathan.d.mcbride@gmail.com](mailto:jonathan.d.mcbride@gmail.com).

43. Immediately after receiving the Dealer Report on his personal e-mail; McBride used his iPhone to forward it to the e-mail address [lisagargiulo@verizon.com](mailto:lisagargiulo@verizon.com), which is the personal e-mail address of Lisa Gargiulo. Ms. Gargiulo is a former TPC employee who had left

the Company shortly before October 25, 2011 to work for Balboa Capital, a direct competitor of TPC.

44. McBride used his personal e-mail address and his iPhone to send the Dealer Report to Ms. Gargiulo and Balboa Capital to avoid TPC's technical safeguards against data theft and to avoid detection by the Company.

45. The compilation of information contained in the Dealer Report is considered a trade secret and confidential/ proprietary information by TPC. These data would be extremely valuable to any of TPC's competitors in the microticket finance industry.

46. Upon information and belief, Ms. Gargiulo and Balboa Capital have used the information contained in the Dealer Report to systematically contact TPC's Accredited Dealers and Qualified Dealers in the water filtration equipment industry.

47. Upon information and belief, when McBride sent the Dealer Report to Ms. Gargiulo/Balboa Capital on October 25, 2011, he was seeking a job with Balboa Capital.

48. On Friday, February 3, 2012, TPC learned, for the first time, that on October 25, 2011, McBride accessed data in the CRM System for purposes beyond his authorization, copied the data and sent it to Balboa Capital through Ms. Gargiulo. TPC learned of this information through the forensic analysis of Ms. Gargiulo's personal computer.

49. Upon information and belief, at various times after October 25, 2011, McBride disclosed to Gargiulo additional TPC confidential and proprietary information.

**F. McBride Abrupt Resignation From TPC To Work For A Competitor**

50. Shortly after 5:00 p.m. on Friday, February 3, 2012, McBride abruptly resigned from TPC. The day before, McBride had informed his supervisors that he had multiple outstanding job offers, which was the first time TPC became aware that McBride was looking to leave the Company.

51. McBride would not disclose the identity of his new employer to his supervisors.

52. When McBride announced his resignation, his direct supervisor immediately took McBride's building access key. The supervisor escorted him from the building, accompanying McBride as he said goodbye to colleagues.

53. McBride continued to access the CRM System after his resignation. Someone using McBride's CRM System account and password accessed the database on seven (7) occasions after he resigned from TPC. Specifically, the account and password assigned to McBride was used to access the CRM System on the following dates and times:

- a. Saturday, February 4, 2012, at 12:44 a.m.;
- b. Saturday, February 4, 2012, at 4:44 a.m.;
- c. Saturday, February 4, 2012, at 8:45 a.m.;
- d. Saturday, February 4, 2012, at 11:02 a.m.;
- e. Saturday, February 4, 2012, at 3.46 p.m.;
- f. Saturday, February 4, 2012, at 10:47 p.m.; and
- g. Sunday, February 5, 2012, at 2:47 a.m.

54. On Sunday, February 5, 2012, TPC hand delivered to McBride a letter demanding, among other things, the he immediately cease and desist using or disclosing any TPC confidential, proprietary or trade secret information concerning dealers, and that he turn over to the Company all such TPC information. McBride has not responded to this letter.

55. On Monday, February 6, 2012, McBride began working in a sales role for Direct Capital Corporation, a direct competitor of TPC.

## **COUNT I**

### **Misappropriation Of Trade Secrets And Confidential Information Under Massachusetts Common Law**

56. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 55 of the Complaint as if fully set forth herein.

57. By virtue of his employment at TPC and performance of responsibilities as a Business Development Manager, McBride was given access to trade secrets as well as other confidential and proprietary business information belonging to TPC.

58. TPC took reasonable steps to preserve the secrecy of its confidential and proprietary business information and trade secrets. The Company derives independent economic value from that information not being generally known to the public or to other persons who can obtain economic value from their disclosure.

59. Defendant is under a continuing duty to maintain the confidentiality of TPC's trade secrets and other confidential/proprietary information, and not to use, exploit, or divulge such information other than in connection with the performance of his duties, for the benefit of TPC and with the Company's authorization.

60. McBride misappropriated, disclosed, misused and exploited TPC's trade secrets and/or confidential and proprietary information, to benefit himself, to the detriment of the Company.

61. Defendant's disclosure of the Dealer Report to Ms. Gargiulo and Balboa Capital constitutes a misappropriation of confidential, proprietary and trade secret information in violation of Massachusetts common law.

62. As a direct and proximate cause of the Defendant's wrongful conduct, TPC has and will continue to suffer substantial direct and consequential damages. Plaintiff has and will continue to suffer irreparable harm as a result of Defendant's conduct that cannot be adequately redressed at law. Unless injunctive relief is granted, TPC will be irreparably harmed in a manner not fully compensable by money damages.

**COUNT II**

**Taking Of Trade Secrets And Confidential Information  
In Violation Of Mass. Gen. Laws, ch, 93, §42**

63. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 62 of the Complaint as if fully set forth herein.

64. Defendant's actions are also in violation of the Massachusetts Trade Secrets Act, Mass. Gen. Laws ch 93, §42 because TPC has protectable confidential, proprietary and/or trade secret information for which it took reasonable steps to preserve the secrecy, and Defendant has used improper means to acquire, disclose and use that protected information.

65. Through McBride's improper actions, including his misappropriation and distribution of the Dealer Report and other confidential, proprietary and trade secret information, TPC has lost valuable information, as well as customers, income and goodwill.

66. As a direct and proximate cause of the Defendant's conduct in breach of Chapter 93, §42, TPC has and will continue to suffer substantial direct and consequential damages. Plaintiff has and will continue to suffer irreparable harm as a result of Defendant's conduct that cannot be adequately redressed at law. Unless injunctive relief is granted, TPC will be irreparably harmed in a manner not fully compensable by money damages.

**COUNT III**

**Tortious Interference With Advantageous Relations**

67. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 66 of the Complaint as if fully set forth herein.

68. McBride knew of TPC's advantageous business relationships with certain Dealers, many of which were identified in the Dealer Report, and TPC's expectation that its Dealer relationships would continue in the future.

69. TPC has reasonably come to expect that ongoing business relationships with Accredited Dealers and Qualified Dealers will continue, in that many of those Dealer relationships have existed for several years and TPC invested substantial resources into maintaining those Dealer relationships.

70. Despite having knowledge of these advantageous business relationships, McBride interfered with those relationships without lawful justification or legitimate reason, including by surreptitiously obtaining and disclosing confidential information about TPC's water filtration equipment industry Dealer relationships to a direct competitor.

71. Defendant's interference was malicious and unjustified and accomplished wrongful means, including misappropriation of TPC's confidential information accomplished in direct violation of Company policies prohibiting the use of its information technology systems in the manner undertaken by McBride and against the disclosure of confidential information to competitors.

72. As a direct and proximate cause of the Defendant's interference, TPC has and will continue to suffer substantial direct and consequential damages. Plaintiff has and will continue to suffer irreparable harm as a result of Defendant's conduct that cannot be adequately redressed at law. Unless injunctive relief is granted, TPC will be irreparably harmed in a manner not fully compensable by money damages.

#### **COUNT IV**

##### **Conversion**

73. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 72 of the Complaint as if fully set forth herein.

74. TPC had possession, or a right of immediate possession, in the confidential information that was available to McBride through his work for the Company.

75. Defendant converted TPC confidential information to his own use by exercising dominion over it in violation of Company policies set forth in the Code of Ethics and the Employee Handbook and in a manner that is otherwise inconsistent with TPC's rights. Both during his employment and after his employment, McBride owes, and continues to owe, Plaintiff a duty of loyalty.

76. The property converted by Defendant is worth more than \$100,000.

77. As a direct and proximate cause of the Defendant's wrongful conduct, TPC has and will continue to suffer substantial direct and consequential damages. Plaintiff has and will continue to suffer irreparable harm as a result of Defendant's conduct that cannot be adequately redressed at law. Unless injunctive relief is granted, TPC will be irreparably harmed in a manner not fully compensable by money damages.

#### **COUNT V**

##### **Breach Of Employee's Duty Of Loyalty**

78. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 77 of the Complaint as if fully set forth herein.

79. As a Business Development Manager and top-performing sales representative at TPC, McBride had access to the Company's confidential information concerning Dealers and financial data. McBride, therefore, occupied a position of trust and confidence.

80. While still employed with TPC, McBride copied, disclosed and used TPC confidential information in violation of TPC policies, including by providing a copy of the Dealer Report to Ms. Gargiulo/Balboa Capital.

81. As a direct and proximate cause of the Defendant's wrongful conduct, TPC has and will continue to suffer substantial direct and consequential damages. Plaintiff has and will continue to suffer irreparable harm as a result of Defendant's conduct that cannot be adequately

redressed at law. Unless injunctive relief is granted, TPC will be irreparably harmed in a manner not fully compensable by money damages.

**COUNT VI**

**Violation Of The Computer Fraud And Abuse Act, 18 U.S.C. §1030, et seq.**

82. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 81 of the Complaint as if fully set forth herein.

83. TPC's CRM System and other computer systems comprise a protected computer that is used across state lines in interstate commerce and communication.

84. By the conduct described above, McBride knowingly and with intent to defraud, accessed Plaintiff's protected computer systems, without authorization and/or in excess of his authorized access, for his own benefit and the benefit of others including Ms. Gargiulo and Balboa Capital. Defendant thereby obtained information from a protected computer, and his conduct involved interstate communications.

85. By actions alleged above, McBride obtained or attempted to obtain unauthorized use of Plaintiff's protected computer system causing a loss and/or damage in excess of \$5,000 in any 1-year period, including, among other things, the costs of engaging a computer forensics firm to respond to Defendant's offenses and to analyze and assess the extent of Defendant's wrongful taking of information from TPC's computers.

86. As a result of the foregoing conduct, Plaintiff was damaged.

87. Consequently, Defendant has violated 18 U.S.C.A. § 1030 of the Computer Fraud and Abuse Act ("CFAA").

88. As a direct and proximate cause of the Defendant's violation of CFAA, TPC has and will continue to suffer substantial direct and consequential damages. Plaintiff has and will continue to suffer irreparable harm as a result of Defendant's conduct that cannot be adequately

redressed at law. Unless injunctive relief is granted, TPC will be irreparably harmed in a manner not fully compensable by money damages.

**REQUESTED RELIEF**

**WHEREFORE**, Plaintiff TimePayment Corp. respectfully requests the following relief:

1. Enter an Order granting the relief set forth in Plaintiff's proposed Order attached to its Motion for Temporary Restraining Order and Preliminary Injunction;
2. Enter an Order granting a permanent injunction to the same effect as the proposed preliminary injunction;
3. Enter judgment in favor of TimePayment Corp. and against Jonathan McBride on all counts of the Complaint;
4. Award compensatory and consequential damages in an amount to be proven at trial in excess of \$100,000;
5. As to Count II, award double damages pursuant to Mass. Gen. Laws ch. 93, §§ 42, 42A;
6. Award applicable pre-judgment and post-judgment interest;
7. Award Plaintiff its attorneys' fees and costs of suit; and
8. Award such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues in this action.

Respectfully submitted,

TIMEPAYMENT CORP.,

By its attorneys,

/s/ Kent D.B. Sinclair

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