

PK

Robert A. Assuncao (Bar # 034311983)  
**ANSA ASSUNCAO, LLP**  
(A Pennsylvania Limited Liability Partnership)  
Two Tower Center Blvd., Suite 1600  
East Brunswick, New Jersey 08816-1100  
(732) 993-9850  
Attorneys for Plaintiff

02/07/10  
RECEIVED AND FILED  
2010 FEB 10 P 3:52  
CLERK OF SUPERIOR COURT  
MIDDLESEX COUNTY

J-M MANUFACTURING COMPANY, INC.,  
  
Plaintiff,  
  
v.  
  
PHILLIPS & COHEN LLP, JOHN HENDRIX, and  
JOHN/JANE DOES 1-50, inclusive,  
  
Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX COUNTY  
DOCKET NO.: **MID-L- 0792 - 14**  
  
Civil Action

**COMPLAINT AND JURY DEMAND**

Plaintiff, J-M Manufacturing Company, Inc., by its attorneys Ansa Assuncao, LLP, for its Complaint against the Defendants Phillips & Cohen LLP, John Hendrix, and John/Jane Does 1-50, says:

**INTRODUCTION**

1. This case arises from a deliberate course of misconduct perpetrated by John Hendrix ("Hendrix") and Phillips & Cohen LLP ("P&C"), which resulted in, among other things, the misappropriation and theft of confidential, proprietary, and trade-secret information and documents from Plaintiff J-M Manufacturing Company, Inc. ("J-M").

2. Hendrix was employed as an engineer in J-M's Product Assurance Division in Livingston, New Jersey office. Over the course of four months beginning in August 2005, P&C attorneys repeatedly collaborated with and directed Hendrix to use his employee status at J-M to steal confidential, proprietary, and trade-secret documents from J-M's files, and to secretly conduct specific and directed searches through J-M's proprietary and confidential information.

3. While working in concert with P&C to purloin J-M's confidential, competitively sensitive, and trade secret documents and information, Hendrix also fabricated evidence, made misrepresentations to third-parties, sent pretextual emails and made unlawful overtures to customers.

4. Hendrix was the relator client of P&C in a *qui tam* civil action lawsuit filed against J-M in a California federal court (Case no.: ED CV 06-00055-GW, C.D. Cal.) (the "*qui tam* lawsuit"). Hendrix's intentional conduct in concert with and at the direction of P&C was motivated and driven by the unlawful goal of causing financial and competitive harm to J-M under the guise of the *qui tam* lawsuit.

5. P&C's conduct in directing, encouraging and facilitating Hendrix's acts of theft and deception cannot be mistaken for, or excused as, simple "legal advice." Rather, P&C was actively engaged in this pilfering scheme. Over a period of four months, P&C directed Hendrix's unlawful conduct of purloining J-M's confidential and trade secret documents and information, which was designed to intentionally harm J-M. No valid excuse or justification exists for the conduct of P&C and its attorneys who orchestrated the brazen theft of confidential and privileged documents from an unsuspecting employer of a P&C client.

## THE PARTIES

6. Plaintiff J-M Manufacturing Company, Inc. is a corporation duly organized and existing under the laws of the State of Delaware with headquarters located in Los Angeles, California. J-M is one of the leading PVC pipe manufacturers in the world. J-M conducts business in the State of New Jersey and County of Middlesex.

7. Phillips & Cohen LLP, upon information and belief, is a limited liability partnership with offices located in Washington, District of Columbia, and San Francisco,

California. P&C provides legal services within the State of New Jersey to New Jersey citizens, including John Hendrix.

8. John Hendrix, upon information and belief, is an individual who currently resides at 11 Jay Court, Colonia, Woodbridge Township, County of Middlesex, State of New Jersey.

9. Defendants John/Jane Does 1-50 are fictitious names used to designate as of yet unknown or unidentified parties, corporations, commercial entities, sole proprietorships and/or individuals, who in some manner contributed to the damages sustained by Plaintiff. Plaintiff hereby reserves the right to substitute the name(s) of the actual party or parties if and when the identity or identities of said individual(s) or business(es) is/are obtained.

#### **FACTUAL BACKGROUND**

10. Hendrix began working with P&C as early as August 2005 while still an employee of J-M; their concerted activity lead to the filing of the *qui tam* action in January 2006.

11. During that time, Hendrix and P&C conducted numerous meetings and telephone conversations, which led Hendrix to secretly steal a significant amount of J-M's data, including confidential, trade-secret, and proprietary J-M documents and electronically stored information. J-M believes that Hendrix's theft involved hundreds of J-M documents, which Hendrix provided to P&C at P&C's request.

12. When he was hired by J-M in 2002, Hendrix executed J-M's Employee Secrecy Agreement ("ESA"). Thus, Hendrix was fully aware that his acts of purloining J-M's confidential and trade secret documents and information for P&C's review and use was unlawful and in clear contravention of his ESA with J-M. Hendrix understood that violating the ESA would subject him to disciplinary action by the Company, including termination. Upon information and belief, P&C also was well aware that Hendrix was bound by an employee

secrecy agreement, but nevertheless knowingly encouraged and directed Hendrix to act in contravention of that agreement.

13. Under the terms of the ESA, Hendrix agreed that any matters relating to J-M's business "that are not items of common knowledge already widely known throughout the industry, are considered to be trade secrets, proprietary information, and/or confidential data ("Trade Secrets")." Hendrix further agreed to "not divulge (directly or indirectly) any Trade Secrets belonging to or relating to [J-M], to any person or entity." Under the agreement, Hendrix additionally agreed both during and after his employment with J-M to not divulge financial information relating to J-M.

14. On January 17, 2006, Hendrix, through his legal counsel P&C, filed a complaint under seal to initiate the *qui tam* lawsuit.

15. More than four years later, on February 24, 2010, the complaint in the *qui tam* lawsuit was unsealed and served on J-M.

16. In 2013, by way of supplemental discovery responses provided in the *qui tam* lawsuit, P&C disclosed some of the information Hendrix had previously stolen from J-M.

17. On January 24, 25, and 26, 2013, Hendrix's video-taped deposition was taken in the *qui tam* lawsuit.

18. J-M did not discover that Hendrix stole trade secret, confidential, and proprietary documents and data belonging to J-M, or that P&C and Hendrix had collaborated and acted in concert to do so, until well after the complaint in the *qui tam* lawsuit was unsealed and the discovery process ensued.

19. After receiving the stolen J-M documents from Hendrix, P&C used these documents in furtherance of their *qui tam* lawsuit. P&C filed a complaint under seal in the

United States District Court for the Central District of California, with Hendrix acting as the relator.

20. Subsequent to filing the *qui tam* lawsuit in January 2006, P&C embarked on an extensive nationwide campaign to meet with various end-user customers that purchased and used J-M products, and to recruit these entities as plaintiffs for their *qui tam* lawsuit. On information and belief, P&C used J-M's stolen documents and information to develop its lawsuit and identify potential plaintiffs, and shared the stolen J-M documents and data with these various end-users as part of its overall recruitment efforts.

21. As a direct and proximate result of P&C's nationwide campaign to meet with various end-users and recruit these entities as plaintiffs for their *qui tam* action, and P&C's improper use of the stolen records and data, end-users removed J-M products from their approved product lists.

22. In response to suffering the unwarranted removal of its products from the approved product lists of end-users, J-M was forced to expend substantial time and resources to counter defendants' misrepresentations and misuse of stolen J-M documents and have its products restored to end-user approved product lists.

23. In at least one other case, P&C has committed—and been punished for—transgressions which were similar to, albeit less egregious than, the transgressions it committed against J-M. P&C was disqualified approximately two years ago from ever again being adverse to IASIS Healthcare Corporation, the defendant in *U.S. ex rel. Frazier v. IASIS Healthcare Corp.*, 2012 WL 130332 (D. Ariz. 2012). There, P&C was disqualified and ordered to pay monetary sanctions based on conduct involving the improper acquisition and mishandling of documents that had been wrongfully obtained from IASIS. P&C's misconduct involved

requesting and receiving documents stolen by an FCA whistleblower and “play[ing] ‘dumb’” when *IASIS* sought their return. Nonetheless, P&C operates its enterprise in a manner exhibiting a pattern of misconduct; P&C either improperly retains or actively conspires to purloin confidential, proprietary, privileged, and trade secret documents from unwitting employers in order to bring FCA lawsuits.

**COUNT I**  
**(Breach of Contract Against Hendrix)**

24. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 23, and incorporates them by reference as though set forth in full.

25. On June 5, 2002, Hendrix signed an Employee Secrecy Agreement (“ESA”) with J-M and covenanted not to divulge the financial information, trade secrets, proprietary information, and confidential data belonging to J-M.

26. Under the terms of the ESA, Hendrix agreed that any matters relating to J-M’s business “that are not items of common knowledge already widely known throughout the industry, are considered to be trade secrets, proprietary information, and/or confidential data (“Trade Secrets”).” Hendrix further agreed to “not divulge (directly or indirectly) any Trade Secrets belonging to or relating to [J-M], to any person or entity.” Under the agreement, Hendrix additionally agreed both during and after his employment with J-M to not divulge financial information relating to J-M.

27. Hendrix breached the terms of this agreement when he and P&C acted in concert to steal various J-M documents and data from approximately August 2005 to November 2005.

28. Upon information and belief, P&C was aware of the ESA, and the consequences of its breach, when it directed Hendrix to steal confidential, proprietary, and trade secret

documents and data. P&C exceeded its role as a legal representative by actively directing and engaging in Hendrix's illegal scheme to steal J-M's confidential and proprietary information.

29. At the direction of P&C, Hendrix stole confidential, proprietary, financial, and trade secret documents and significant quantities of J-M data. On information and belief, Hendrix stole hundreds of trade secret, confidential, and proprietary documents and transferred the information to P&C.

30. The documents and data that Hendrix stole fell within the scope of "Trade Secrets" and financial information under the ESA. By stealing these documents and data, and divulging the documents and data to P&C, Hendrix breached the terms of the ESA.

31. Hendrix's breach of his ESA directly and proximately caused and continues to cause J-M to lose lucrative extant business, prospective business, and further caused the unwarranted removal of its products from the approved product lists of end-users.

**WHEREFORE**, Plaintiff prays for judgment as follows:

- (i) For compensatory damages in an amount to be proven at trial;
- (ii) For recovery of all attorney's fees and costs in this action;
- (iii) For interest thereon at the legal rate through entry of judgment;
- (iv) That the Court award any other relief it deems proper.

**COUNT II**  
**(Breach of Fiduciary Duty Against Hendrix)**

32. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 31, and incorporates them by reference as though set forth in full.

33. As an employee of J-M, Hendrix owed his employer a duty to act for the benefit of J-M on matters within the scope of his employment.

34. Hendrix violated the trust of his employer, and acted to J-M's detriment when he and P&C acted in concert to steal trade secret, confidential, and proprietary J-M documents and data from approximately August 2005 to November 2005.

35. At the direction of P&C, Hendrix stole confidential, proprietary, financial, and trade secret documents and data and emailed this information to P&C. On information and belief, Hendrix stole hundreds of trade secret, confidential, and proprietary documents and transferred the information to P&C.

36. Hendrix's actions were taken to the detriment of J-M and constituted a breach of his fiduciary duty to J-M.

37. Hendrix's breach of his fiduciary duty directly and proximately caused and continues to cause J-M to lose lucrative extant business, prospective business, and further caused the unwarranted removal of its products from the approved product lists of end-users.

**WHEREFORE**, Plaintiff prays for judgment as follows:

- (i) For compensatory damages in an amount to be proven at trial;
- (ii) For punitive, exemplary and monetary damages in an amount to be proven at trial;
- (iii) For interest thereon at the legal rate through entry of judgment;
- (iv) For recovery of all attorney's fees and costs in this action;
- (v) That the Court award any other relief it deems proper.

**COUNT III**  
**(Computer-Related Offenses Against Hendrix)**

38. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 37, and incorporates them by reference as though set forth in full.

39. From approximately August 2005 to November 2005 Hendrix purposefully, knowingly, and without authorization altered, damaged, took and/or destroyed the data, databases, computer software, and/or computer equipment existing internally or externally to a computer, computer system, or computer network belonging to J-M. These actions were taken at the direction of P&C and in contravention of N.J.S.A. 2A:38A-3a.

40. From approximately August 2005 to November 2005 Hendrix purposely, knowingly and without authorization accessed and/or attempted to access a computer, computer system, or computer network belonging to J-M. These actions were taken at the direction of P&C and in contravention of N.J.S.A. 2A:38A-3c.

41. From approximately August 2005 to November 2005 Hendrix purposely and knowingly accessed, and recklessly altered, damaged, destroyed, and/or obtained the data, databases, computer program, computer software, computer equipment, computer system, and/or computer network belonging to J-M. These actions were taken at the direction of P&C and in contravention of N.J.S.A. 2A:38A-3e.

42. At the direction of P&C, Hendrix stole confidential, proprietary, financial, and trade secret documents and data and emailed this information to P&C. On information and belief, Hendrix stole hundreds of trade secret, confidential, and proprietary documents and transferred this information to P&C.

43. As a direct and proximate result of the foregoing actions taken by Hendrix and P&C, J-M's business was damaged and continues to be damaged because J-M suffered the loss of lucrative extant business, prospective business, and suffered the unwarranted removal of its products from the approved product lists of end-users.

**WHEREFORE, Plaintiff prays for judgment as follows:**

- (i) For compensatory damages in an amount to be proven at trial;
- (ii) For punitive, exemplary and monetary damages in an amount to be proven at trial;
- (iii) For all attorney's fees and costs in this action;
- (iv) For any and all appropriate remedies provided for by N.J.S.A. 2A:38A-3;
- (v) For interest thereon at the legal rate through entry of judgment; and
- (vi) That the Court award any other relief it deems proper.

**COUNT IV  
(Conspiracy Against All Defendants)**

44. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 43, and incorporates them by reference as though set forth in full.

Parties to the Conspiracy

45. The named defendants and, upon information and belief, the John/Jane Doe defendants, engaged in a civil conspiracy to commit various offenses against J-M.

Object and Scope of the Conspiracy

46. The named defendants and, upon information and belief, the John/Jane Doe defendants, engaged in a civil conspiracy by acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, in order to inflict a wrong and injury on J-M. They agreed to engage in conduct designed to achieve an unlawful object by stealing confidential, proprietary, financial, and trade secret documents that belonged to J-M. The scope of their agreement included the perpetration of acts constituting Hendrix's breach of contract, Hendrix's breach of fiduciary duty, Hendrix's commission of a computer-related offense, racketeering, tortious interference with contractual rights, tortious interference with prospective economic

advantage, and trespass to chattels. These actions are more specifically alleged in respective causes of action.

Overt Acts Taken in Furtherance of the Conspiracy

47. Between approximately August 2005 and November 2005, Hendrix and P&C took concerted action in furtherance of the conspiracy, as set forth above.

48. As a direct and proximate result of defendants' civil conspiracy, J-M has suffered and will suffer financial damages directly related to the loss of lucrative extant business, prospective business, and the unwarranted removal of its products from the approved product lists of end-users.

**WHEREFORE**, Plaintiff prays for judgment as follows:

- (i) For compensatory damages in an amount to be proven at trial;
- (ii) For punitive, exemplary and monetary damages in an amount to be proven at trial;
- (iii) For interest thereon at the legal rate through entry of judgment;
- (iv) For recovery of all attorney's fees and costs in this action; and
- (v) That the Court award any other relief it deems proper.

**COUNT V  
(Aiding and Abetting Against P&C and Does 1-50)**

49. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 48, and incorporates them by reference as though set forth in full.

50. Hendrix committed wrongful acts when he, P&C, and John/Jane Does acted in concert to steal J-M documents and data from approximately August 2005 to November 2005.

51. At the direction of P&C, Hendrix stole confidential, proprietary, financial, and trade secret documents and data and emailed this information to P&C. On information and

belief, Hendrix stole hundreds of trade secret, confidential, and proprietary documents and transferred this information to P&C.

52. P&C knowingly and substantially participated in the wrongful acts committed by Hendrix.

53. As a direct and proximate result of P&C aiding and abetting Hendrix's commission of wrongful acts, J-M has suffered and will suffer financial damages directly related to the loss of lucrative extant business, prospective business, and the unwarranted removal of its products from the approved product lists of end-users.

**WHEREFORE**, Plaintiff prays for judgment as follows:

- (i) For compensatory damages in an amount to be proven at trial;
- (ii) For punitive, exemplary and monetary damages in an amount to be proven at trial;
- (iii) For interest thereon at the legal rate through entry of judgment;
- (iv) For recovery of all attorney's fees and costs in this action; and
- (v) That the Court award any other relief it deems proper.

**COUNT VI  
(Racketeering Against All Defendants)**

54. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 53, and incorporates them by reference as though set forth in full.

55. The wrongful acts perpetrated by Hendrix, P&C, and the unknown John/Jane Does constitute a violation of N.J.S.A. 2C:41-2c.

56. The defendant participants involved in racketeering activities are Hendrix and P&C. Hendrix is a former employee of J-M who is associated with the enterprise and participated directly in the pattern of racketeering activity. P&C is private law firm organized as

a limited liability partnership and specializing in *qui tam* litigation; it is the enterprise that conducted the pattern of racketeering activity.

57. Employees of P&C directly participated in the pattern of racketeering activity by committing multiple acts of wire fraud. John/Jane Does are unknown participants in the pattern of racketeering activity.

58. J-M is the victim of the racketeering activities perpetrated by P&C, and as a result of P&C's actions, J-M has suffered and will suffer financial damages directly related to the loss of lucrative extant business, prospective business, and the unwarranted removal of its products from the approved product lists of end-users.

59. Because two or more instances of wire fraud were perpetrated by associates of the enterprise P&C, against the same victim, using the same or similar methods, and for the same purpose, a pattern of racketeering activity exists under N.J.S.A. 2C:41-1a(2), -1d.

60. P&C is an enterprise within the meaning of N.J.S.A. 2C:41-1c. Hendrix is the client of P&C and perpetrated wrongful acts at the direction of P&C, in furtherance of bringing a *qui tam* lawsuit against J-M.

61. P&C's racketeering activities negatively affected J-M's business in New Jersey and elsewhere, thereby affecting trade and/or commerce in New Jersey.

**WHEREFORE**, Plaintiff prays for judgment as follows:

- (i) For compensatory damages in an amount to be proven at trial;
- (ii) For punitive, exemplary and monetary damages in an amount to be proven at trial,
- (iii) For treble damages and all attorney's fees and costs in this action;
- (iv) For any and all appropriate relief provided by N.J.S.A. 2C:41-4;

- (v) For interest thereon at the legal rate through entry of judgment;
- (vi) That the Court award any other relief it deems proper.

**COUNT VII  
(Trespass to Chattels Against Hendrix)**

62. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 61, and incorporates them by reference as though set forth in full.

63. Between August 2005 and November 2005, Hendrix intentionally interfered and intermeddled with J-M's use of its confidential, proprietary, financial, and trade secret documents and data.

64. At the direction of P&C, Hendrix stole confidential, proprietary, financial, and trade secret documents and data and emailed this information to P&C. On information and belief, Hendrix stole hundreds of trade secret, confidential, and proprietary documents and transferred this information to P&C.

65. Hendrix's actions directly and proximately caused and continue to cause J-M to lose lucrative extant business, prospective business, and further caused the unwarranted removal of its products from the approved product lists of end-users.

**WHEREFORE**, Plaintiff prays for judgment as follows:

- (i) For compensatory damages in an amount to be proven at trial;
- (ii) For punitive, exemplary and monetary damages in an amount to be proven at trial;
- (iii) For interest thereon at the legal rate through entry of judgment;
- (iv) For recovery of all attorney's fees and costs in this action;
- (v) That the Court award any other relief it deems proper.

**COUNT VIII**  
**(Tortious Interference with Contractual Rights**  
**Against P&C and Does 1-50)**

66. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 65, and incorporates them by reference as though set forth in full.

67. P&C and John/Jane Does 1-50 embarked on an extensive campaign to recruit end-users of J-M products for the *qui tam* lawsuit against J-M. In its contacts and meetings with end-users, P&C divulged stolen J-M documents to various third parties and intentionally, knowingly, and recklessly impugned J-M and the quality its products.

68. As a direct and proximate result of P&C's actions, J-M suffered great financial harm due to the loss of business from extant customers.

69. As a direct and proximate result of P&C's actions, end-users removed J-M products approved product lists, leading J-M to incur substantial financial harm due to the loss of business from extant customers.

**WHEREFORE**, Plaintiff prays for judgment as follows:

- (i) For compensatory damages in an amount to be proven at trial;
- (ii) For punitive, exemplary and monetary damages in an amount to be proven at trial;
- (iii) For interest thereon at the legal rate through entry of judgment;
- (iv) For recovery of all attorney's fees and costs in this action;
- (v) That the Court award any other relief it deems proper.

**COUNT IX**  
**(Tortious Interference with Prospective Economic Advantage Against P&C and Does 1-50)**

70. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 69, and incorporates them by reference as though set forth in full.

71. P&C and John/Jane Does embarked on an extensive campaign to recruit end-users of J-M products for the *qui tam* lawsuit against J-M. In its contacts and meetings with end-users, P&C divulged stolen J-M documents to various third parties and intentionally, knowingly, and recklessly impugned J-M and the quality of its products.

72. As a direct and proximate result of P&C's actions, J-M suffered great financial harm due to the loss of business from prospective customers.

73. As a direct and proximate result of P&C's actions, end-users removed J-M products from approved product lists, leading J-M to incur substantial financial harm due to the loss of business from prospective customers.

**WHEREFORE**, Plaintiff prays for judgment as follows:

- (i) For compensatory damages in an amount to be proven at trial;
- (ii) For punitive, exemplary and monetary damages in an amount to be proven at trial;
- (iii) For interest thereon at the legal rate through entry of judgment;
- (iv) For recovery of all attorney's fees and costs in this action;
- (v) That the Court award any other relief it deems proper.

**TRIAL BY JURY**

PLEASE TAKE NOTICE that Plaintiff demands a trial of the issues by a jury of six.

**DESIGNATION OF TRIAL COUNSEL**

PLEASE TAKE NOTICE that Robert A. Assuncao is hereby designated as Trial Counsel, pursuant to R. 4:25-4.

Dated: February 10, 2014



Robert A. Assuncao  
ANSA ASSUNCAO, LLP  
Two Tower Center Blvd., Suite 1600  
East Brunswick, New Jersey 08816  
(732) 993-9850

Attorneys for Plaintiff

**CERTIFICATION PURSUANT TO R. 4:5-1**

1. The matter in controversy is the subject of a pending action or arbitration proceeding as follows:

None.

2. Contemplation of another action or arbitration proceeding is contemplated as follows:

None.

3. The following parties listed should be joined in this action:

None.

CERTIFICATION: I hereby certify that the above statements made by me are true. I am aware that if any of the above statements made by me are willfully false, I am subject to punishment.

Dated: February 10, 2014



Robert A. Assuncao  
ANSA ASSUNCAO, LLP  
Two Tower Center Blvd., Suite 1600  
East Brunswick, New Jersey 08816  
(732) 993-9850

Attorneys for Plaintiff