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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DAVID NOSAL, Defendant.	Case No. CR 08-0237 EMC **DEFENDANT NOSAL'S POST-REMAND MEMORANDUM REGARDING RESTITUTION** Hon. Edward M. Chen Date: February 7, 2018 Time: 2:30 p.m.

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I.

INTRODUCTION AND STATEMENT OF FACTS

On May 5, 2014, this Court ordered restitution in the amount of $827,983.25. *See* Dkt. No. 547. Of that amount, $595,758.35 consisted of attorneys' fees incurred by Korn Ferry International (KFI) through its retention of an outside law firm, O'Melveny & Myers (OMM). On July 6, 2016, the Ninth Circuit Court of Appeals decided that the attorney fees portion of the restitution figure was too high and remanded the case for further reduction.[1] The Court found the amount "striking," particularly considering that the trial only involved three discrete instances of alleged misconduct. Indeed, as noted by the Court, "at bottom, the events were temporally circumscribed and limited in scope." In vacating the restitution order, the Court provided clear categories through which to further review and reduce the attorney fee component of the restitution award.

On December 13, 2017, the government submitted its revised figure for the attorneys' fees accrued by KFI during the proceedings. The government filled concurrently with its pleading a 41-page billing spreadsheet with nearly 1,100 entries, submitted under seal, containing uniformly vague descriptions of work performed and amounts requested. The government apportioned the work reflected in the billing spreadsheet according to nine different categories, which it incorrectly maintains are recoverable under the MVRA. The amount now requested by the government for the attorneys' fees incurred by KFI as a result of its retention of OMM is $457,785.78.

[1] That court affirmed the award of $27,400 for response costs and $204,825 for the value of work done by KFI employees related to the incidents.

Mr. Nosal files this response for the Court's consideration. First, as seen below, Mr. Nosal respectfully argues that in light of numerous equities, the restitution award should be zero. At first blush, the Court may deem this an excessive request; however, based on facts that have come to light in the wake of the Spencer Stuart, Inc (SSI) lawsuit against KFI in response to the latter's direct involvement in substantial theft of trade secrets and other proprietary and confidential information from SSI, fairness necessitates that KFI should be denied any and all restitution in the present case given its "unclean hands." Put another way, based on KFI's actions in blatant disregard to this Court's "message" of general deterrence, it should not be permitted to seek this Court's award of restitution.

Second, if the Court decides it is unwilling to strike the entire restitution award, Mr. Nosal has nonetheless painstakingly reviewed all 41 pages of billing entries with its 1,100 entries submitted by the government on behalf of OMM. In accordance with the Ninth Circuit's instructions, the Nosal defense has reviewed the data with an eye toward addressing the issues and concerns identified by the Ninth Circuit. To that end, the defense identified a set of categories of excludable billing entries and correspondingly reduced the requested amount of attorneys' fees. The defense objections, guided by the express language of the Ninth Circuit opinion, have been incorporated into the billing spreadsheet previously provided by the government. In the end, the defense recommends that the amount of attorney fee restitution be reduced to $54,942.60—a very forgiving value considering the vagueness of OMM's billing records and its attorneys' persistent overstepping of their roles—going beyond mere assistance to the prosecutors and instead impermissibly becoming "shadow prosecutors." Additionally, as the Ninth Circuit recognized, the circular logic undergirding the award of a substantial amount restitution for the work done by OMM attorneys related to the determination of the restitution

amount is unreasonable and must be excluded. As discussed below and detailed in the accompanying spreadsheet, there are many additional reasons to reduce the requested restitution amount related to OMM attorneys' fees.

II.

ARGUMENT

A. Recent revelations demonstrate that KFI orchestrated and directly participated in actions that are similar to, albeit more extreme than, those alleged against Nosal; this and other equitable considerations necessitate a reconsideration and rejection of the entire restitution award.

1. KFI's leadership role in orchestrating the theft of proprietary materials, contact lists, trade secrets, and other confidential data from one of its competitors supports a finding of zero restitution.

The Ninth Circuit's mandate in this case necessitates a recalculation of the restitution amount, particularly with respect to the massive legal fees that KFI paid out to attorneys from O'Melveny and Myers (OMM). This Court clearly went to great lengths to ascertain a restitution amount that, based on the Court's understanding of the case at that time, reflected a fair and accurate assessment of the reasonable and foreseeable costs that KFI incurred as a result of Nosal's actions.

At the time of sentencing, when this Court was struggling to craft an appropriate penalty to effectuate the goal of general deterrence, Nosal addressed the Court on his own behalf and explained, "Every person who moves from Company A to Company B, good, bad, or indifferent, takes these lists with them because there's no regulator on it and there's nobody saying don't." RT 1/8/14 at 56:9-11. The Court, responding to Nosal's description of the widespread nature of the taking of source lists from company to company, indicated it did not believe this pattern or practice should affect the sentence: "And as I've already stated, this is an

offense that, although one might argue that this is done commonly, it's done all the time in his field, it is a violation." RT 1/8/14 at 60:8-11.

What the Court did not know at the time of sentencing, or at the subsequent restitution hearing, is that KFI commits the very same offenses, but has suffered no criminal consequences. According to the two SSI lawsuits, KFI induced two high level SSI employees, Truc and Paquet, to secretly plan to leave SSI and bring with them a variety of confidential and proprietary documents relevant to SSI's business, all of which were highly valuable to KFI to gain a significant advantage over their competitor SSI. Those documents, along with Truc and Paquet, went to KFI. All KFI had to do to put an end to the ordeal was simply settle the lawsuits. No criminal prosecution or restitution order was ever assessed against KFI for this massive breach.

So, the question becomes, if KFI is committing the same crimes against its corporate competitors, to what extent should it receive restitution from an individual who, after leaving KFI with the intent of starting his own company, improperly obtained access to the KFI database on three occasions? Under these circumstances, it is unjust and improper to force Nosal to pay hundreds of thousands of dollars out of his own pockets to KFI as part of a criminal restitution order. The revelation of KFI's unclean hands related to its theft of proprietary information from SSI necessitates a total reconsideration of the restitution order against Nosal, and given KFI's obvious disregard for this Court's message of general deterrence, it would be patently unfair to order Nosal to pay restitution to a billion-dollar corporation with such "unclean hands." There should be no restitution in this case.

2. KFI's recent theft of trade secrets from SSI opens the door for this Court to consider other equitable factors that further support a total denial of restitution for KFI.

Restitution is not ordered in every case. In fact, the three codefendants in this case, without full explanation, were not ordered to pay any restitution whatsoever. *See* Gruel Decl., at ¶16.

Ostensibly, the justification for "excusing" restitution against these three defendants, even though the same "response" and "Korn Ferry employee" costs would apply equally to them as to Nosal, is that the former agreed to cooperate with the government against the latter. In short, the government gave them a pass on restitution in exchange for cooperating to bring Nosal down.

The same deference should be given to Mr. Nosal albeit on different grounds. In addition to the manifest inequity of ordering Nosal to pay restitution to KFI in light of KFI's actions against SSI, the following additional equitable considerations equally support a total elimination of the restitution award in this case.

1. Conspirators are typically "jointly and severally" liable when restitution is ordered. Accordingly, any amount of restitution ordered against Mr. Nosal should include all codefendants "jointly and severally." Put another way, if the three codefendants are afforded the apparent discretionary benefit of no restitution, then the same should be afforded to Nosal. He should not be financially punished for defending himself at trial, including successfully defending himself against multiple counts that were ultimately dismissed by the Court, a ruling that was upheld on appeal resulting in the evisceration of the original indictment, leaving intact just six counts.

2. Restitution should also be zero because Nosal himself incurred extraordinary legal expenses in this case. Exhibit K filed under seal includes the break down his legal fees totaling approximately $2,722,456. The original indictment filed on April 10, 2008 contained 18 counts. *See* Dkt. No. 1. At great personal expense, Nosal successfully challenged the false claims leveled against him in the indictment charging him with misappropriating trade secrets on a massive scale. The government clearly over charged the case, causing extreme financial expenditure for Nosal. Given any claims for restitution, again viewed in the dark light of KFI's recent scheme to steal trade secrets from SSI necessarily fail because of the great expenses incurred by Nosal to successfully defend himself against the government's overzealous prosecution.

3. Mr. Nosal's computer system was seized by the government, thereby requiring him to replace what was taken by the FBI. As seen in exhibit J, Nosal needlessly suffered a $56,000 loss due to this seizure.

4. KFI has never paid Mr. Nosal the $1.2 million dollars owed him for successfully completing all of the open searches KFI required him to finish pursuant to the separation agreement. KFI maintains that they began to investigating and planning to sue to sue Nosal as early as March 2005. Notwithstanding its suspicions regarding Nosal's wrongdoing, KFI had no problem with keeping him working on its searches under the false promise to pay him in August 2005. Instead of fulfilling its contractual obligation to pay Nosal at the conclusion of his contract, the corporate giant reneged on its agreement and greeted Nosal with lawsuits and an FBI search warrant KFI helped prepare.

KFI's corporate arrogance, demonstrated in the past through its decision to string Nosal along with no intention to pay him for his contract work, recently surfaced again when it

elected to ignore the Court's message of general deterrence at the Nosal sentencing. KFI's flagrant disregard of the law, especially in light of the Court's message at sentencing, was a choice—one that carries, or should carry, consequences. One of those consequences should a total forfeiture of KFI's claim to restitution in the present case.

B. Consistent with the Ninth Circuit's opinion, this Court should limit KFI's restitution for attorneys' fees to no more than $54,942.60—a value that reflects reductions for the numerous inexplicably vague billing entries, the exorbitant billing amounts associated with the trial and sentencing proceedings, the filing of motions contesting the work of the prosecution, and other aspects of OMM's billing that fall outside the ambit of the word and spirit of the MVRA.

From the outset, the government has sought a massive amount of restitution for KFI principally based upon the nearly $1 million bill that KFI purportedly paid to OMM for the services its attorneys provided before, during, and after the trial in this case. This Court, in an effort to rein in the restitution amount somewhat, reduced the recoverable attorneys' fees to $595,758.25. The Court rejected, however, many of the specific attacks that Nosal made upon the government's proposed restitution value.

On appeal, the Ninth Circuit understandably commended this Court for its intensive analysis but nevertheless remanded the case for further consideration of the restitution amount. Specifically, the Ninth Circuit took issue with the attorneys' fees included within the restitution value, which, at $595,758.25, represented a figure roughly 13 times the $46,908.88 amount of loss KFI suffered, as established by the Court under the sentencing guidelines.

The Ninth Circuit recognized the "striking" excessiveness of the restitution amount, "particularly given that the trial ultimately involved only three discrete incidents of criminal behavior . . . [that] were temporally circumscribed and limited in scope." *United States v. Nosal*, 844 F.3d 1024, 1048 (9th Cir. 2016). Consequently, the Ninth Circuit sent the case back,

but not without offering guidance as to how this Court should reevaluate its prior restitution award. Specifically, the Ninth Circuit provided the following interpretation of the MVRA's mandate in this context:

> To begin, the fees must be the direct and foreseeable result of the defendant's conduct. *United States v. Gordon*, 393 F.3d 1044, 1057 (9th Cir. 2004) (quoting *United States v. Phillips*, 367 F.3d 846, 863 (9th Cir. 2004). Next, as in other attorneys' fee awards, reasonableness is the touchstone. Reasonableness is benchmarked against the necessity of the fees under the terms of the statute, thus excluding duplicate effort, time that is disproportionate to the task and time that does not fall within the MVRA's mandate. Finally, fees are only recoverable if incurred during "*participation in* the investigation or prosecution of the offense." *18 U.S.C. § 3663A(b)(4)* (emphasis added). The company's attorneys are not a substitute for the work of the prosecutor, nor do they serve the role of a shadow prosecutor. To be sure, nothing is wrong with proactive participation. But participation does not mean substitution or duplication.

Id. at 1047-1048. More acutely, the Ninth Circuit directed this Court to take into consideration the following points when reevaluating the reasonableness of the attorneys' fees in this case:

> (i) whether the sizeable fee related to restitution matters was reasonable;
> (ii) whether there was unnecessary duplication of tasks between Korn/Ferry staff and its attorneys since the court awarded a substantial sum for the time of Korn/Ferry employees; and
> (iii) whether the outside attorneys were substituting for or duplicating the work of the prosecutors, rather than serving in a participatory capacity.

Id. at 1048. The principles identified by the Ninth Circuit must, therefore, guide the parties and this Court in arriving at a fair and just restitution award in this case.

The government acknowledges that it bears the burden to demonstrate the amount of loss suffered within the meaning of the MVRA by a preponderance of the evidence. *See* Govt. Post-Remand Memo. at 2-3. And although the government's renewed restitution request is $457,785.78—a difference of $137,972.47 from this Court's previous restitution award—the cuts it made fall far short of meeting the goal identified by the Ninth Circuit. In support of its position, the government submitted a 41-page Excel spreadsheet collecting the billing entries

for the time spent by OMM attorneys related to the criminal case.[2] A review of the spreadsheet in light of the Ninth Circuit's opinion makes it abundantly clear that the government has not met its burden with respect to the vast majority of the entries. Most of the entries for which the government seeks restitution (on KFI's behalf) are (1) too vague to be considered reasonable and necessary; (2) duplicative of work done by KFI employees, including in-house counsel; (3) generated as part of the grossly disproportionate amount of time spent by OMM attorneys related to post-conviction concerns, including the calculation of a restitution amount; or (4) indicative of OMM attorneys substituting or duplicating the work of the AUSAs assigned to the case.

To respond to the government's claims, defense counsel has sifted through the billing records, closely examining them while keeping in mind the Ninth Circuit's directive. To that end, the defense has augmented the spreadsheet prepared by the government to include a column indicating which billing entries should rightfully be excluded based on the Ninth Circuit's orders. Below are the six categories of excludable entries, denoted with alphabetical characters A-F:

> **A. Billing entries for tasks that are "not the direct and foreseeable result of [Nosal's] conduct"** (*See Nosal*, 844 F.3d at 1047) – this category includes aspects of the billing records for which the causal nexus between Nosal's conduct and the attorney's actions is too attenuated.
>
> **B. Billing entries for tasks that are not reasonable, as "benchmarked against the necessity of the fees under the terms of the statute"** (*Id*. at 1047-1048) – this category includes "duplicate effort, time that is disproportionate to the task and time that does not

[2] As discussed below, one of Nosal's primary concerns is the vagueness of the vast majority of the billing entries. It is impossible to review the entries and conclusively determine that this work was done exclusively for the criminal case and not as part of the pending civil litigation. Nonetheless, the government insists that these billing records pertain only to the criminal proceedings, as assertion that, due to the vagueness of the data, cannot, in many instances, be either confirmed or challenged.

fall within the MVRA's mandate" such as entries that are vague or duplicative or excessive.

C. Billing entries for tasks that are not "incurred during 'participation in the investigation or prosecution of the offense.'" (*Id*. at 1048 [quoting 18 U.S.C. §3663A(b)(4)]) – this includes time spent on tasks that were in opposition to the swift movement of the prosecution, such as requiring the issuance of subpoeas to turn over documents or opposing government issued subpoenas.

D. Unreasonable billing entries related to the post-conviction proceedings regarding the amount of loss and restitution (*Id*.) – describing the amount as "striking," the Ninth Circuit expressed concern about the considerable amount of time billed by OMM attorneys related to the sentencing and restitution proceedings.

E. Billing entries that are duplicative of work done by KFI employees and, therefore, already accounted for in the restitution amount based on the $204,825 that this Court already imposed and which was upheld on appeal (*Id*.) – this category includes entries that demonstrate double billing for work already done by or with KFI employees Briski, Dunn, Demeter, and Nahas.

F. Billing entries for work in which the OMM attorneys "were substituting for or duplicating the work of the prosecutors, rather than serving in a participatory capacity" (*Id*.) – this includes time spent by OMM attorneys researching and working on legal issues or undertaking tasks that are properly the province of the government prosecutors, such as researching and responding to issues raised in defendant's pleadings, prepping witnesses, appearing at court proceedings where the presence was not required to assist with the prosecution, and other actions that should have been properly carried out by government counsel.

Assessed in accordance with this rubric, most of the billing entries are improper and should not be included within the restitution award. As shown on the spreadsheet, all of the time entries marked in red fall within one or more of the above categories and, therefore, must be excluded, leaving just $54,942.60 worth of attorneys' fees properly applied to the total restitution value. The spreadsheet, filed with the Court under seal, contains all of the categorical objections to each specific entry that the defense maintains should be excluded pursuant to the Ninth Circuit's remand. There are, however, some broad groups of billing entries that require additional discussion, as detailed below.

1. <u>This Court should not include any of the numerous meaninglessly vague entries pertaining to "conferences" with FBI agents and prosecutors about unidentified topics or the review of unspecified documents for an unspecified purpose that are littered throughout the billing records</u>.

The government has apparently taken the position that virtually every communication between OMM attorneys and either FBI agents or government counsel is compensable under the MVRA. This is untrue. Within the billing records are numerous, perhaps hundreds, of entries relating to "conferences" or calls between OMM attorneys and FBI Agents Sadlowski and Kim or AUSA Waldinger, as well as numerous entries pertaining to the review of nameless documents. Most of these entries offer no description regarding the contents of the conversations, and the majority simply refer to the "status" of the case or the "criminal investigation" or "criminal trial" with no added specificity.[3]

Given the Ninth Circuit's mandate that the work must be reasonable and necessary to justify its inclusion in the restitution award (see Category B, above), these entries must be rejected. The government cannot prove by a preponderance of the evidence that a generic "conference with [FBI Agent/AUSA] regarding the status of investigation" is reasonable or necessary. It is incontestable that some, perhaps the majority, of the communications between OMM attorneys and government counsel would not qualify for inclusion, if we were privy to their subject matter. Many of the conferences and calls would relate to scheduling concerns or

[3] There are, according to the defense's count, approximately 64 billing entries for various conferences "regarding status," "regarding status of criminal investigation," "regarding status of criminal trial," "regarding status of case," etc. Additionally, there are some 44 entries for "regarding criminal trial" and 32 entries for "regarding investigation." These represent just a portion of the impermissibly vague billing entries that are included in the OMM billing records. Indeed, there are many other overly vague entries related to reviewing unspecified documents that likewise do not meet the Ninth Circuit's standard for what is reasonable to include in the restitution claim. These and other similarly worded entries are simply too vague and numerous to be considered reasonable and necessary.

to a discussion of subjects that are not properly within the purview of the appropriate role of the OMM attorneys. If it is impermissible to include time for which the OMM attorneys were acting as shadow prosecutors or duplicating the work of the government, then it is also impermissible to include time entries for conferences and calls about subjects that would be likewise excludable. The fact that the OMM attorneys did not provide adequate detail to ascertain the nature of these conferences means that the government cannot meet its burden; Nosal should not be punished for OMM's failure to properly maintain its timekeeping. Moreover, while defense counsel did not endeavor to tally the accumulated value of all the undefined conferences mentioned in the billing records—sometimes occurring multiple times in a single day—it is apparent that, in the aggregate, these conferences, unspecified document reviews, and other similarly vague entries account for a substantial portion of the total billing.

It's worth noting that the government nearly always attempts to claim any conversation between one of the OMM attorneys and either the case agents or the prosecutor, even in many circumstances in which the government acknowledges that other related entries should be excluded. As a representative example, look at M. Robertson's entries for 2/6/13 and 2/21/13 (lines 764 and 784). On February 6, 2013, the total amount of time Robertson billed to the case was 1.90 hours; however, the government is only seeking to recover 0.3 hours of time for that day. This corresponds to the 0.3 that Robertson spent engaged in a "Conference with K. Waldinger." No other information is provided about the conference. Similarly, on February 21, 2013, the total amount of time Robertson billed to the case was 1.20 hours, and, once more, the government is only seeking to recover the 0.3 hours Robertson spent on a "Conference with K. Waldinger regarding criminal trial."

Neither of these entries offer enough specificity to justify their inclusion in the total restitution amount. Moreover, given the fact that the government conceded that the remaining time entries on those days were not relevant to the case for purposes of restitution, it stands to reason that a generic, undefined conversation with the prosecutor would likely pertain to the very same irrelevant topics of the day (i.e., the 17c briefing, Nosal's requests to extend briefing schedule, etc.). Given this total lack of detail in the billing records, the government cannot sincerely claim—let alone, prove by a preponderance of the evidence—that these conversations were necessary and, as such, it is manifestly unreasonable to include them in the total recoverable amount.

For that reason, this Court should deny the government's request to include within the restitution amount any billing entries related to conferences, calls, conversations, or document review for which the topic of the communication or the nature of the documents are not specified and not otherwise reasonable and necessary.

2. Notwithstanding the Ninth Circuit's clear expression of doubt about the propriety of including such a massive portion of time for matters related to the post-verdict proceedings, particularly the restitution calculation, the government impermissibly seeks $86,493,73 for post-verdict work done by OMM attorneys, most of it related to restitution and loss calculations.

The Ninth Circuit very clearly registered its reservations about the government's efforts to include within the total restitution award such a "striking" portion of billing entries related to the post-verdict proceedings involving the calculation of the loss and restitution amounts. The Court observed that "a *highly disproportionate percentage* of the [OMM attorneys'] fees arose from responding to requests and inquiries related to sentencing, damages, and restitution." *Nosal*, 844 F.3d at 1048 (emphasis added). The Ninth Circuit's statements notwithstanding, the

government still insists that Nosal must pay $86,493.73 for post-verdict work.[4] This figure represents approximately 14.5% of the overall restitution amount that the government is seeking for KFI. As the Ninth Circuit recognized, it makes no sense to pay KFI for the disproportionately large amount of time spent calculating the loss and restitution values in this case.

First of all, the sentencing and restitution proceedings in this case were unusually drawn out and complex. Throughout a series of briefs and hearings, the government offered the Court multiple theories for calculating the amounts of loss and restitution, none of which were particularly satisfying or accurate. The loss and restitution values were amorphous and malleable, and, therefore, the parties were, to a large extent, feeling around in the dark on these points. As a result, there is no justification for permitting KFI to recover for OMM's work done during this period; the amount of money and the purpose for which it was sought is simply unreasonable (see Category D, above).

Indeed, as the government's most recent pleading demonstrates, aside from presenting the government with basic billing records, the input of OMM attorneys is completely unnecessary. Tabulating the values of the work done by OMM attorneys is an administrative, not a legal task. And to the extent the calculation of the restitution amount involved legal interpretation of the data, that work is the province of the prosecutor, not OMM. While KFI is certainly free to offer, via its outside counsel, its own interpretation of the data and

[4] Surprisingly, while acknowledging the Ninth Circuit's directive related to the restitution values, the government is "still seeking restitution for most of the OMM attorneys' discussions with prosecutors and the Probation Office" as well as work done related to the restitution claims. *See* Govt. Post-Remand Memo at 6, n. 4. The government does not, however, meaningfully address the concerns raised by the Ninth Circuit about this sizable portion of the total restitution value.

corresponding restitution calculations, it does not follow that KFI should recover attorneys' fees for this work under the MVRA. As noted on the accompanying spreadsheet, such billing entries are neither reasonable nor necessary (Category B, above), and they further reflect the OMM attorneys' substitution for and duplicating the work of the prosecutors (Category F, above). Consequently, the restitution award must be purged of most, if not all, of the post-verdict billing entries.

It is also worth noting that the majority of the work done at the time of trial and after was billed at a rate of $760.50 (Bunzel), $729.00 (Robertson), and $661.50 (Evans). When the case began, however, Robertson, for example, billed at a rate of just $460.00. Over the course of the proceedings, therefore, Robertson's hourly billing rate swelled by 58.5% of what it was at the beginning of the case. Permitting Robertson, who was the primary attorney working on the restitution calculation efforts, to run up OMM's billing during the post-verdict stage by billing at a rate of $760.00 while tabulating the work done years earlier when he billed at a much lower rate is both ironic and unreasonable.

For the reasons described above, this Court should reduce the total restitution amount sought by the government by $83,232.58, reflecting the excludable billing entries as detailed on the accompanying spreadsheet.

3. <u>The government also wrongly includes within the billing entries for which it seeks restitution on KFI's behalf many entries related to OMM's responses to, including oppositions, subpoenas issued by the government; these entries cannot be characterized as reflecting KFI's assistance with the prosecution</u>.

Among the many objectionable aspects of the government's proposed restitution award is the substantial amount of time spent by OMM attorneys responding to and opposing subpoenas. Although the government agreed not to seek restitution for time spent "related to

litigation and research regarded Nosal's Rule 17(c) subpoenas," the government still included many billing entries related to OMM attorneys' work spent responding to and even resisting government subpoenas.

The government unconvincingly asserts that responding to government issued subpoenas is equivalent to responding to general requests for information by the government. There is a massive difference between responsively providing documentation when asked by government counsel on the one hand, and requiring the government to issue a subpoena on the other. If, for example, AUSA Waldinger sent an email to Robertson asking for a copy of his billing records, and Robertson complied, the billing entries, assuming they were proportionate and sufficiently detailed, would likely pass muster under the MVRA. By contrast, if OMM refused to simply hand over the records and, instead, forced the government to issue a subpoena, that is a difference scenario. There, OMM is actually thwarting the smooth efficiency of document production. Moreover, in many instances, a review of the billing records shows that OMM attorneys spent many, many hours responding to subpoenas, suggesting that the attorneys were not readily compliant with the requests. Indeed, there are also billing entries that demonstrate that, at time, KFI and OMM actually objected to the government's requests for documents. Clearly, objecting to a government subpoena cannot be characterized as "participating in the investigation or prosecution of the offense." If anything, this work by OMM served to impede the prosecution, rather than facilitate it. It should, therefore, properly be regarded as billing that was not incurred while participating in the prosecution (Category C, above).

The defense estimates that there are approximately $68,566.25 worth of billing entries related to responding to witness and document subpoenas for which the government still seeks restitution. These entries should be excised from the total restitution amount.

4. KFI should not recover restitution for time spent by OMM attorneys at trial because their presence was unnecessary to the prosecution of the case and, to the extent that OMM attorneys were involved in the prosecution at the trial stage, they were substituting for or duplicating work of the prosecutors.

A major portion of the billing for which the government seeks restitution comes from time spent by OMM attorneys in the weeks leading up to and during trial. Nearly 25% of the total restitution award sought by the government was generated in just two months—March and April of 2013—and amounts to an astonishing $119,037.28. The government has not made a showing that these entries were necessary, and, in fact, many of the entries are duplicative of work already accounted for by KFI employees or prosecutors (Categories B, E, and F, above). In the accompanying spreadsheet, the defense has closely examined the various billing entries during the months of March and April of 2003 and determined that, evaluated in accordance with the Ninth Circuit's directions, none of the time should be included.

Many of the entries in fact overlap with the entries described in Section IA, above, in that they are vague and do not provide enough information to ascertain what exactly the OMM attorneys accomplished. Although the government agrees that much of the time spent by the OMM attorneys on trial preparation and trial participation is not-recoverable as part of the restitution award, the government still seeks to recover time spent for the OMM attorneys' generic conferences, discussions, and meetings with prosecutors, despite the attorneys' failure to articulate the substance of those meetings. Although the government insists otherwise, there is no basis for asserting that KFI may recover for any and all conversations between OMM and

the prosecution. Many of the conversations likely pertained to mundane matters (i.e. scheduling) or to matters that were not within the purview of the MVRA. It is unclear what role OMM attorneys actually fulfilled at the trial proceedings, but it is obvious that their presence was unnecessary to the prosecution of the case. They rarely appeared on the record and offered no substantive contributions to the trial proceedings.

Much of the time spent by OMM attorneys leading up to the trial proceedings included tasks such as preparing witnesses, organizing witness binders, reviewing pleadings filed by the parties, etc. These are all tasks that should rightly be carried out by the AUSAs assigned to the case, not OMM. As the Ninth Circuit stated, OMM attorneys should not be compensated for work done as "shadow prosecutors." There are, in fact, no sufficiently detailed billing entries from the period of time immediately leading up to and during trial that fall within the purview of the MVRA, as interpreted by the Ninth Circuit.

For the months of March and April 2013, the government seeks restitution for work primarily done by two OMM attorneys: Robertson, and Bunzel. Significantly, by the time of trial, these attorneys billed at rates of $760.50 and $729.00, respectively. Although this Court has already justified its decision not to reduce the maximum value for the hourly rate the attorneys charged, this Court must still take into consideration the total amount charged for specific tasks and determine whether it is reasonable and proportionate. Indeed, the Ninth Circuit called upon this Court to exclude "time that are disproportionate to the task." *See Nosal*, *supra*, 844 F.3d at 1048. It is, therefore, patently unreasonable to allow Bunzel, for instance, to bill a staggering $7,909.20 on April 8, 2013 for the following: "Attend Nosal trial proceedings and meet with KF witnesses and government attorneys (9.6); multiple conferences with M. Robertson before and after court and prepare session (.8)." This is an example of a

billing entry that is too vague, too excessive, disproportionate to the task, and reflects billing for tasks that should be assigned to the prosecutor.

In fact, Bunzel's mere attendance at the trial proceedings between April 8, 2013 and April 17, 2013 generated approximately $49,812.75 of attorneys' fees. Forcing Nosal to pay this exorbitant amount is unconscionable and unjust.

The government has not met its burden of demonstrating that any of the work done by OMM attorneys around the time of trial was necessary. Moreover, a review of the billing records shows that it was all duplicative of work done by the prosecution or while assuming the role of shadow prosecutors. And even to the extent an argument can be made that the OMM attorneys assisted with the prosecution in some meaningful way, the amount of billing is grossly disproportionate relative to the benefit they conferred. Consequently, this Court should reject the government's request for $119,037.28 of billing accrued during March-April of 2013 and reduce the restitution award by that amount.

5. <u>This Court should adhere to the exclusions set forth in the defense revision of the billing spreadsheet and, therefore, reduce the amount of recoverable attorneys' fees to no more than $54,942.60</u>.

The purpose of the preceding sections is to both alert the Court to broad categories of excludable billing entries and also to illustrate the government's misapplication of the Ninth Circuit's guiding principles. It takes no more than a cursory glance at the billing records to recognize that the government is wildly overstating the amount of attorneys' fees that KFI should be permitted to recover. For that reason, this Court should accept the defense's accounting, which provides for $54,942.60 of recoverable attorneys' fees.

While the broad categories described above encompass a large portion of the improper billing, there are numerous other entries that must be excluded for one reason or another

pursuant to the Ninth Circuit's mandate. Examples include the excessive amount of billing related to the timelines purportedly prepared by OMM counsel (which, in addition to being disproportionate to the task, also reflect OMM attorneys usurping the role of the prosecution), travel time spent going to and from the U.S. Attorney's Office, preparing witnesses in advance of the government's witnesses prep sessions, reviewing pleadings, researching legal issues, discussing scheduling issues, reviewing unspecified documents, attending and sitting in on unspecified and unnecessary meetings, duplicating the work of KFI employees, and myriad other disproportionate and improper tasks. The government's refusal to honestly apply the Ninth Circuit's instructions is disappointing. This Court should, therefore, adopt the defense position and set the recoverable amount of attorneys' fees at $54,942.60, bringing the total amount of restitution to $287,167.60 (which includes the $27,400 for response costs and the $204,825 for KFI employee costs that was already affirmed on appeal).

III.

CONCLUSION

In light of KFI's recent theft of trade secrets, proprietary documentation, and other confidential materials from SSI, as well as other equitable considerations detailed above, this Court should refuse to award KFI any amount of restitution. It is fundamentally unjust to allow KFI to recoup its supposed losses when, as shown by its actions toward SSI, it has engaged in the same and worse behavior as Nosal with no criminal consequences whatsoever. If this Court is disinclined to eliminate all restitution, it should, in accordance with the principles enunciated Ninth Circuit's opinion, reduce the amount of recoverable attorneys' fees to $54,942.60.

DATED: January 17, 2018

Respectfully submitted,

/s/ Steven F. Gruel, Esq.
STEVEN F. GRUEL
Attorney for Defendant
DAVID NOSAL

EXHIBIT B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SSI (US), INC., d/b/a SPENCER STUART, a Delaware Corporation,	)	
Plaintiff,	)	Hon. Diane J. Larsen
v.	)	
	)	Case No. 2017-CH-04510
FRANÇOIS P. TRUC and KORN/FERRY INTERNATIONAL, a Delaware Corporation,	)	
Defendants.	)	

AGREED ORDER OF DISMISSAL

This matter coming to be heard on the parties' Stipulation of Dismissal With Prejudice, due notice having been given, and the Court being duly advised in the premises:

IT IS HEREBY ORDERED:

This cause is dismissed with prejudice and without costs by agreement of the parties.

Date:_____

Entered: Diane Joan Larsen
Judge Diane J. Larsen

ENTERED
JUDGE DIANE J. LARSEN-1771
AUG 21 2017
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK_____

ORDER PREPARED BY:
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Attorney for Petitioner **David Nosal**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DAVID NOSAL, Petitioner.	Case No. CR 08-0237 EMC **PETITION FOR WRIT OF ERROR *CORAM NOBIS* TO REOPEN SENTENCING AND VACATE CUSTODIAL SENTENCE PURSUANT TO 28 U.S.C. §1651** Hon. Edward M. Chen Date: February 7, 2018 Time: 2:30 p.m.

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I.

INTRODUCTION

With this Petition for Writ of Error *Coram Nobis*, Mr. Nosal is not seeking to overturn his conviction, avoid the imposed community service, ask to be reimbursed for the fine, or escape a reasonable amount of restitution, if any applies. Rather, as detailed below, Mr. Nosal petitions this Court to correct a fundamental breakdown of fairness in imposing a custodial sentence, in light of recent conduct by Korn Ferry. Simply put, the Court sentenced Mr. Nosal to prison, at the government's urging, to send a message for general deterrence: The stealing of trade secrets would not be tolerated and would be fully prosecuted. Yet, Korn Ferry, obviously aware of the Court's clear message, nonetheless ignored this warning and was subsequently caught stealing trade secrets from an executive search competitor, Spencer Stuart, Inc. While Mr. Nosal was criminally prosecuted and sentenced to prison, Korn Ferry's theft was, by contrast, quickly resolved by way of civil lawsuit. Apparently, no criminal investigation or prosecution of Korn Ferry ever took place.

Therefore, the facts and law outlined below support granting this Petition to eliminate or reduce the disproportionate custodial portion of the sentence. Alternatively, this Court may choose to replace it with home detention and/or additional community service, such that the sentence imposed comports with the basic concept of fundamental fairness.

II.

JURISDICTION

This Court has subject matter jurisdiction pursuant to the All Writs Act, *28 U.S.C. §1651* and *18 U.S.C. §3231*.

III.

SUMMARY OF ARGUMENT

In fashioning an appropriate sentence, considerations of fairness and proportionality are intrinsic components of the analysis. It is fundamentally unjust to sentence an individual to prison for committing a crime when the alleged victim in the same case commits the exact same offenses on an even grander scale, especially with that victim is a multinational corporation.

When deciding whether to impose a custodial sentence against David Nosal, this Court believed, and the Government agreed, that Nosal was extremely unlikely to commit any offense in the future. The Court was impressed by Nosal's history of hard work, his resourcefulness, and his generosity to those around him. There were no individual victims in this case; unlike many white-collar crimes, this had no demonstrable impact on consumers or the public at large. The only alleged victim here was Nosal's former employer, Korn Ferry International (KFI), a powerful multinational corporation. Other than the costs associated with responding to the perceived theft of three source lists compiled from KFI's Searcher database, there were no other quantifiable losses suffered by KFI. A civil suit or restitution order would have been sufficient to make KFI whole again.[1]

[1] Interestingly enough, the Nosal case was solely in the civil courts for three years before the government decided to charge the case. In fact, as seen in the Declaration of Steven Gruel and as attached as Exhibit L, on May 15, 2008, Defendant David Nosal's First Status Memorandum was filed before the Honorable Marilyn Hall Patel. The Status Memorandum described in some detail the dispute between Korn Ferry and Mr. Nosal that had been in the civil courts. It further mentioned that the newly filed criminal case essentially mirrored the matters already presented or pending in civil court and in an arbitration proceeding. Counsel recalls that during this first status hearing, Judge Patel asked why this criminal case wasn't simply handled as a civil

So, if there was no unrecoverable loss and no need for retribution or incapacitation, why was it necessary to impose a custodial sentence? The Court indicated that it felt compelled to send Nosal to prison to achieve the goal of general deterrence—to send a message to the industry that this sort of behavior would not be tolerated.

One would be tempted to believe that the victim in this case, KFI, being the most closely related party, would be the first to feel the deterrent effect. As it turns out, shortly after the present case went up on appeal, KFI recruited two employees from one of its competitors, Spencer Stuart, Inc (SSI), to surreptitiously defect from that company and to bring with them a large volume of sensitive documents and trade secrets. The congruency of the behavior at issue in the present case compared with KFI's actions toward SSI is manifest, but the outcomes of the two situations are worlds apart.

Citing the need for general deterrence, this Court sentenced Nosal to one year and one day in prison. Meanwhile, KFI, after orchestrating an even greater intrusion into SSI's computer system, stealing a significant amount of current and proprietary information which was then deleted from SSI's database, and secretly arranging for multiple employees to defect to KFI, suffered no criminal penalty whatsoever. Compounding this injustice is the fact that Nosal is an individual, a "self-made man" who worked his way up from nothing to being among the most highly regarded in his field. KFI, by contrast, is a highly successful multinational corporation, and the two men from SSI who participated in KFI's scheme continue to be employed by KFI, enjoying all the executive benefits attendant to their positions.

matter. In sharp contrast, the recent KFI, Truc, and Paquet thefts from Spencer Stuart, it seems, were quietly handled as civil cases.

These are like alternate realities in which, for one, criminal activity is rewarded with success and luxury, and, in the other, a man is condemned to prison for much lesser allegations. The massive disproportionality of the outcomes in these two situations undermines all of the considerations that informed this Court's decision to impose a custodial sentence in the present case.

The Ninth Circuit's remand, though directing the Court to consider only the restitution portion of the sentence, has nevertheless given this Court jurisdiction over the matter once more, and this petition for a writ of error *coram nobis* is the only means by which Nosal can obtain a just result. This Court spent a considerable amount of time and exerted a great deal of effort to arrive at a sentence that it perceived as fair; however, KFI's subsequent criminal actions spoil the impact of the Court's sentence and render it unjust. For the reasons detailed below, this Court should grant this petition and reopen the sentencing in this case. If necessary, this Court should order an evidentiary hearing related to KFI's action—and, perhaps, the Justice Department's inaction—and how they affect the setting of a sentence for Nosal. Finally, Nosal believes that, after taking all of the evidence into consideration and applying it to the present case, this Court will also recognize the tremendous injustice of sentencing Nosal to prison while KFI continues to cross the line ethically and prosper while trampling on the backs of its competitors.

IV.

STATEMENT OF FACTS[2]

1. On April 24, 2013, Petitioner David Nosal was convicted by a jury on six counts based on three occasions of unauthorized access by one individual to three source lists containing in total approximately 200 names of executives (along with their titles, company names and in some cases a phone number) maintained in databases by Korn Ferry International (KFI), Petitioner's former employer. Three of charges arose out of alleged violations of the Computer Fraud and Abuse Act (CFAA), two alleged trade secret violations, and the last count was a conspiracy charge.

2. According to the Government's case, Petitioner David Nosal, a former employee of Korn/Ferry International (KFI), resigned from his position at the company, but agreed to stay on for another year as an independent contractor. Nosal was to receive $25,000 per month in addition to commissions earned for completing 15 searches begun prior to his resignation and collecting more than $3 million in fee revenue for KFI. Based on the terms of his separation agreement, Nosal was supposed to receive $1.2 million in commissions for completing this work. Although Nosal fulfilled the terms of his agreement, KFI reneged on its obligation to pay Nosal the commissions it owed him. He signed an agreement not to compete with KFI during that period.

3. A number of individuals who were going to join Nosal either already had their own executive search firms or established executive search firms through which to execute search assignments until joining his company. One of these individuals (not Nosal) used another

[2] The facts presented in this Petition derive from the trial and appellate records as well as the declaration of Steven F. Gruel, Esq. filed contemporaneously with this Petition.

employee who was still working at KFI to obtain access to the KFI database called Searcher. That database is, according to KFI, a proprietary asset containing information (i.e., employment history, salaries, resumes, contact information, etc.) about more than one million executives. The acquisition of "source lists" using the Searcher program on three occasions was the basis for the charges against Nosal. *See United States v. Nosal*, 844 F.3d 1024, 1030-1031 (9th Cir. 2016).

4. On January 8, 2014, this Court sentenced Petitioner to one year and one day in custody, three years of supervised release, a fine of $60,000, and community service. The Court granted Petitioner's motion for release pending appeal. *See* Dkt. 523. Following additional briefing from the parties, the Court ordered restitution in the amount of $827,983.25. *See* Dkt. 547.

5. On Appeal, a panel of the Ninth Circuit rejected the legal claims Petitioner raised in attacking the convictions notwithstanding Judge Reinhardt's thorough and reasoned dissenting opinion. The court did, however, remand the case for reconsideration of the restitution order.

6. In March 2017, while Nosal's case remained pending on appeal, one of KFI's major competitors, Spencer-Stuart, Inc. (SSI) filed a civil complaint in the Circuit Court of Cook County, Illinois and another in the Federal District Court for the Eastern District of Illinois. In these complaints, SSI alleged that two of its former employees, Francois Truc and Pierre-Edouard Paquet, acting at the direction of KFI, defected from SSI and took with them a substantial amount of confidential and proprietary information.[3] *See* Gruel Decl., Exh. A (Truc Complaint); *See also* Gruel Decl., Exh. C (Paquet Complaint).

[3] Because Paquet resides outside of the United States, SSI filed separate lawsuits. It filed the Truc complaint in Illinois state court and identified Paquet as a "relevant non-party." The federal complaint referred to Paquet as a citizen of France and focused on Paquet's activities.

7. KFI and SSI settled both cases subject to a non-disclosure agreement, and to Petitioner's knowledge, no criminal charges were ever filed against Truc, Paquet, or KFI. *See* Gruel Decl., Exh. B (dismissal of Truc Complaint).

V.

ARGUMENT

A. Writ relief is appropriate in this case; no other remedy is presently available to right the injustice at the heart of the current sentence.

The Supreme Court and the Ninth Circuit "have long made clear that the writ of error *coram nobis* is a highly unusual remedy, available only to correct grave injustices in a narrow range of cases where no more conventional remedy is applicable." *United States v. Riedl*, 496 F.3d 1003, 1005 (9th Cir. 2007). Petitions for writs of error *coram nobis* are frequently used "to attack an unconstitutional or unlawful conviction in cases when the petitioner already has fully served a sentence." *Telink, Inc. v. United States*, 24 F.3d 42, 45-46 (9th Cir. 1994). The idea is that, once a defendant is confined in custody, he or she may file a traditional petition for writ of *habeas corpus* pursuant to *28 U.S.C. §2255*; however, after the defendant has been released from custody, a habeas petition is no longer permitted. Thus, the petition for writ of *coram nobis* "fills a very precise gap in federal criminal procedure." *Id*. Despite this common usage of it, the writ of error *coram nobis* is not expressly limited to situations in which an individual has served his or her sentence; its purpose is for use in situations for which there is no other available remedy. "Although Federal Rule of Civil Procedure 60(b) expressly abolishes the writ of *coram nobis* in civil cases, the extraordinary writ still provides a remedy in criminal proceedings where no other relief is available and sound reasons exist for failure to seek appropriate earlier relief." *Hirabayashi v. United States*, 828 F.2d 591, 604 (9th Cir. 1987).

Petitioner's case presents a procedurally analogous situation for which the petition for writ of error *coram nobis* should also be recognized as the appropriate mechanism by which to address the issues discussed below. As in the case of a petitioner who has already completed his or her sentence, Nosal, who is not yet in custody, has no other means by which to raise issues relating to the sentence imposed by the Court.[4] Just like those individuals who have already served their sentence and use the writ to challenge collateral consequences of their conviction, Nosal is out of custody, and, therefore, cannot presently file a §2255 motion. He faces an imminent order to serve one year and one day in prison. If he waits and files a §2255 petition after going into custody, he risks having to serve a substantial portion, or perhaps all, of his sentence before this Court could fully adjudicate the petition.

The Ninth Circuit has established four criteria for assessing the propriety of a petition for writ of error *coram nobis*: "(1) a more usual remedy is not available; (2) valid reasons exist for not attacking the conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case or controversy requirement of Article III; and (4) the error is of the most fundamental character." *Hirabayashi*, *supra*, 828 F.2d at 604. These requirements are all met with respect to the present case.

First, as noted above, there is no "more usual remedy" available to Petitioner. He has been convicted and sentenced to one year and one day imprisonment, but has not yet served that sentence due to this Court's agreement that he should remain out on bail during the

[4] Although the motion is arguably based on "newly discovered evidence," *Rule 33* of the *Federal Rules of Criminal Procedure* requires that motions for new trial based on such evidence be presented within three years "after the verdict or finding of guilty." *Fed. R. Crim. Pro. 33(b)(1)*. Thus, Nosal apparently cannot rely on a *Rule 33* motion to raise these issues.

appellate proceedings. He, therefore, cannot file a *section 2255* motion, and because more than three years elapsed since the verdict, a motion for new trial pursuant to *Rule 33* is also disallowed. Therefore, no other remedy is available to Nosal at this time.

Nosal could not have raised this issue any earlier. First, SSI filed the complaint against KFI at the end of March 2017. Nosal and his attorneys had no way of knowing before then that KFI was actively engaging in the same sorts of conduct that caused Mr. Nosal to resign in 2004 and for which Nosal was convicted. Moreover, by August 2017, the case was settled and SSI signed a non-disclosure agreement, making it even more difficult to acquire information about KFI's wrongdoing.

Because Nosal must still serve the custodial portion of his sentence, there is no question that there still exists a case or controversy within the meaning of Article III. Furthermore, the error for which Nosal seeks redress is clearly fundamental. As discussed in greater depth below, this Court imposed the sentence upon Petitioner specifically for its general deterrence value. Indeed, the Court and the Government agreed that Nosal was personally unlikely to ever reoffend and, therefore, that personal deterrence was not a consideration in the sentencing. The primary function of the sentence, the Court explained, was to deter other individuals and corporations from engaging in identical criminal conduct *after* this Court sentenced Nosal in 2013.

The error, therefore, is of the "most fundamental character" because it is manifestly improper to punish an individual for criminal activity and then permit the supposed victim, a multinational corporation, to turn around and engage in the same activity but in a more egregious manner. This is especially true when the Government argued, and the Court agreed,

that general deterrence was the only penological interest served by the imposition of a custodial sentence.

The four prerequisites for consideration of a petition for writ of error *coram nobis* are all met in this case. Petitioner has no other available remedy, could not have raised this issue previously, and will be unjustly imprisoned if this Court orders him to serve his sentence without considering KFI's own subsequent and substantially similar criminal behavior.

B. Korn-Ferry engaged with impunity in conduct that was substantially similar—though decidedly more egregious—as that for which Nosal stands convicted; Korn-Ferry's unclean hands should necessitate a reconsideration of the sentence in this case, especially given that the principal consideration at sentencing—for both the Court and the Government—was general deterrence.

At the time of sentencing, when the Court was considering whether to depart downward from the guidelines range of 15 to 21 months, the Court thoughtfully considered what would be an appropriate custodial sentence. Citing the need for general deterrence, the Court sentenced Nosal—an individual, not a corporate entity—to one year and one day for his leadership role in the conspiracy, which involved leaving KFI, encouraging other employees to leave KFI, setting up a new company, and using a remaining KFI employee to access the KFI Searcher database on three occasions to obtain "source lists."

As it turns out, KFI—the multinational corporation "victim" of Nosal's scheme—masterminded a nearly identical scheme just a few years later against one of KFI's leading competitors, SSI. KFI facilitated the defection of two SSI employees, who both left under fraudulent pretenses, taking with them valuable trade secrets, reports and other proprietary and confidential information that KFI then used in its own business. The only distinction between

Nosal's alleged conduct and that of KFI and its employees is that KFI's actions were more egregious.

1. KFI and its employees, Truc and Paquet, committed the very same offenses for which Nosal was convicted and, yet, they have suffered no criminal consequences.

The complaints SSI filed in 2017 describe criminal activity by KFI and its employees that is strikingly similar to the crimes for which Nosal was convicted. SSI is a well-established competitor of KFI within the automotive industry. *See* Truc Complaint, ¶ 48.[5] Two SSI employees, Truc and Paquet, left SSI to work for KFI, but before leaving, both stole numerous documents and highly sensitive and confidential materials to use at their new positions with KFI. *See* Truc Complaint, ¶¶ 52-72, 91-104.

Truc began working with SSI in 2008, overseeing the global search origination and execution for SSI's Global Automotive Practice. *See* Truc Complaint, ¶¶ 36-37. In that capacity, Truc was privy to substantial amounts of confidential and proprietary information that was integral to SSI's business. *See* Truc Complaint, ¶¶ 38-40. A couple years later, in 2010, Paquet started working in the Global Automotive Practice division of SSI. *See* Truc Complaint, ¶ 42. In his role at SSI, Paquet was also exposed to sensitive, confidential, and proprietary information. *See* Truc Complaint, ¶¶ 45-46. Both Truc and Paquet signed confidentiality agreements. *See* Truc Complaint, ¶¶ 23-31, 44.

[5] The facts presented herein related to KFI's theft of trade secrets and proprietary materials from SSI are drawn from the Complaint filed by SSI against Truc and KFI, a true and correct copy of which is attached as Exhibit A to the Declaration of Steven F. Gruel. The complaint SSI filed against Paquet and KFI corroborates the narrative detailed in the Truc Complaint. *See* Gruel Decl., Exh. C.

Truc, while still employed by SSI but with the intention to defect to KFI, actively encouraged Paquet to leave the company and work for KFI in their Global Automotive Practice. *See* Truc Complaint, ¶ 47. Before resigning, "Paquet began secretly and without authorization to copy and to remove various confidential materials and information from Spencer Stuart's computer systems and to appropriate such materials for use in his employment with Korn Ferry." *See* Truc Complaint, ¶ 52. In anticipation of his new role at KFI, Paquet emailed a number of confidential SSI documents to his personal email account in the days leading up to his departure. *See* Truc Complaint, ¶¶ 52-72. He also took steps to conceal his theft, such as deleting emails and files from his work-issued computer and the use of a personal USB device to obtain other documents. *See* Truc Complaint, ¶¶ 64-67. After he left SSI, Paquet personally emailed (while cc'ing Truc) a "candidate involved in an ongoing Spencer Stuart search for The Automotive Client." *See* Truc Complaint, ¶ 71.

Working directly with KFI, Truc arranged a scheme to leave SSI in such a way as to circumvent the non-solicitation obligations in his employment agreement. *See* Truc Complaint, ¶ 78. After orchestrating Paquet's defection to KFI, Truc submitted his resignation the day after Paquet. *See* Truc Complaint, ¶ 76. Truc indicated to the CEO of SSI that he intended to work for "The Automotive Client," but, in fact, Truc admitted this was just a ruse so he could "run out Spencer Stuart's non-competition election period." *See* Truc Complaint, ¶¶ 78-79. In fact, it was Truc's intention all along to join KFI, and KFI coordinated with Truc and Paquet to effectuate their defections from SSI. *See* Truc Complaint, ¶ 79. Truc officially joined KFI in March 2017, just two months after leaving SSI. *See* Truc Complaint, ¶ 83. After learning this,

SSI attempted to enforce the remainder of Truc's non-competition restriction, but Truc and KFI disregarded SSI's orders. *See* Truc Complaint, ¶¶ 83-85.

Like Paquet, Truc, knowing he was leaving SSI for KFI, began sending confidential documents to his own personal email address in an effort to appropriate them for use at KFI. *See* Truc Complaint, ¶ 91. Truc sent numerous confidential and proprietary reports containing information about potential candidates and search prospects to his personal email account. *See* Truc Complaint, ¶¶ 92-100. Truc then used and disclosed this information to KFI during the course of his employment. *See* Truc Complaint, ¶¶ 100-104. Truc's and Paquet's usage of stolen confidential knowledge of SSI's clients and contacts put "SSI's legitimate protectable interests at grave risk, including confidential information; trade secrets; goodwill; and customer relationships, particularly in its Global Automotive Practice." *See* Truc Complaint, ¶¶ 86-88. Furthermore, KFI subsequently worked with Truc to persuade other SSI employees to resign and work for KFI instead. *See* Truc Complaint, ¶¶ 105-114.

There are many obvious similarities between KFI's active underhanded recruitment of Truc and Paquet and the crimes for which Nosal and his three codefendants were convicted. There are many factors that make KFI's actions with respect to SSI far more serious and yet, notwithstanding the egregiousness of KFI's behavior, the Government neither investigated nor brought any charges against KFI as a corporation or Truc and Paquet as individuals.

2. <u>Because the Court and the Government both agreed that Nosal was highly unlikely to commit crimes in the future, the Court's stated purpose behind imposing a custodial sentence was general deterrence; KFI's subsequent actions necessitate a reexamination of that decision</u>.

The reason this revelation about KFI's subsequent conduct is relevant is because at Nosal's sentencing hearing, the Government and the Court focused ***only on general deterrence***

as the rationale for imposing a custodial sentence. The crimes at issue in this case were corporate in nature, but unlike many other "white collar" crimes, the victims were not consumers; there was no direct harm to the public that arose from Nosal's conduct. The only harm that was contemplated was to KFI, primarily with respect to the amount of time some KFI employees spent at work investigating the unauthorized use of Searcher and identifying those likely responsible for it. There was no quantifiable theft or loss. Indeed, throughout the protracted sentencing proceedings, Nosal's attorney argued strenuously that there was no quantifiable loss and that, even if there was, the Court should refrain from imposing a custodial sentence. *See* Dkt. 499; RT 1/8/14 at 43-47. The Government, on the other hand, asserted that, based on its loss calculations, the sentencing range should have been upwards of 33 months, but asked for 27 months instead[6]. *See* Dkt. 476, p. 15-16.

The Court took a middle path, concluding that the recommended sentence under the guidelines was 15 to 21 months; however, the Court then inquired from the parties whether it should impose a lower sentence based on the specific considerations of the case. RT 1/8/14 at 41-42. The Court specifically noted Nosal's lack of a criminal history, his generosity toward his employees and other people around him, his background and work ethic, and other positive attributes. RT 1/8/14 at 42. But the Court balanced these myriad favorable facts against the need for general deterrence. During defense counsel's argument, the Court interjected with the question, "On the other hand, what message does it send if there's no prison time for a

[6] The loss calculation for purposes of the guidelines drove the setting of a sentencing range in this case. It was a subject of intense debate between the parties. The immense variability in the sentencing range based upon different interpretations of the amount of loss vividly illustrates the ambiguity in the guidelines governing this sort of offense, leading to an unsettling degree of malleability in the sentencing analysis.

deliberate act of theft?" RT 1/8/14 at 46. The theme of general deterrence ran through the entire sentencing colloquy and was the core focus of the Court and the Government.

AUSA Waldinger, speaking on the Government's behalf, agreed with the defense and the Court that it was highly unlikely that Nosal would offend in the future: "I have no doubt that Mr. Nosal is not going to commit any more federal crimes in his life." RT 1/8/14 at 49:4-6. Nevertheless, he argued for a custodial sentence of more than one year *because of the need for general deterrence.* RT 1/8/14 at 48-50. Using strong language, the Government repeatedly emphasized the need for general deterrence in setting the sentence: "Cases involving white collar defendants present a special opportunity for this Court to achieve the goal of general deterrence. A prison sentence for the conduct in this case will serve as a powerful deterrent against the commission of such crimes by others." RT 1/8/14 at 49:11-15. AUSA Matthew Parella, who supervises the computer hacking intellectual property unit, also addressed the Court at the hearing and he, too, focused on general deterrence, stating, "The issue of general deterrence that Mr. Waldinger mentioned is tremendously important." RT 1/8/14 at 51:15-17. Parella emphasized this point, describing the effect he believed the sentence would have on other corporations, particularly those in Silicon Valley: "[T]the sentence that you give today will go through Silicon Valley like a bell. It will be known throughout the valley. And it is a unique opportunity for the Court to send a message, which a legitimate purpose of sentencing is general deterrence." RT 1/8/14 at 51:20-24.

As AUSA Waldinger put it, "At the end of the day, ***stealing is stealing***, whether you used a computer or a crowbar and whether you steal documents or data or dollars. It's stealing." RT 1/8/14 at 48:22-24 (emphasis added). Unless, that is, you are a multinational corporation

called Korn Ferry, in which case, the Government doesn't even bother investigating, much less bringing charges.[7]

When the Court announced the custodial sentence, it did so after giving the guidelines recommendation "serious consideration" and applying the factors from *18 U.S.C. §3553*. RT 1/8/14 at 59. The Court recognized the "extraordinary level of support" that Nosal had from friends and family, the lack of any criminal history, the generosity he is known to exhibit toward those around him, and the fact that he worked his way up from nothing to become very successful. RT 1/8/14 at 59:20-60:6. The Court reiterated that personal deterrence was not an issue in the case: "I don't think there is a need, and the Government concedes that they are convinced that Mr. Nosal will not commit a further crime. So in terms of the need for personal deterrence, that is not here. I am convinced that Mr. Nosal has learned a lesson and will not commit this or any other crime of any serious nature." RT 1/8/14 at 61:3-8. Instead, the Court exclusively focused on "deterrence to others, not just deterrence to this particular – or disablement of this particular defendant." RT 1/8/14 at 61:10-12. With that lone objective in mind, the Court sentenced Nosal to one year and one day to be followed by three years of supervised release, a $60,000 fine, and 400 hours of community service, which the Court acknowledged was more "meaningful" than time in custody in terms of the rehabilitation and retribution value: "I would rather see Mr. Nosal use his talents to help those who are disadvantaged." RT 1/8/14 at 61-62, 64.

[7] The Nosal defense filed a *Brady* motion herewith. Contrary to the government's belief, its *Brady* obligation does not end with a conviction; *Brady* equally applies and continues onto the sentencing phase.

Given that general deterrence was the only factor weighing in favor of the imposition of a custodial sentence, it is significant that the victim in this case, KFI committed the same sorts of offenses shortly after this Court sentenced Nosal. Such illegal action by KFI, given the emphasis placed on the need for general deterrence, is beyond hypocritical. In light of that fact that it was KFI that initiated the prosecution of David Nosal, assisted with its execution, and was essentially driving these proceedings, it would be outrageous to send Nosal to prison while KFI's own criminal behavior goes completely unchecked.[8]

3. <u>The Court selected one year and one day, at least in part, based upon the Government's reference to a 2004 case decided by Judge Hamilton, but in light of KFI's actions with respect to SSI and the factual basis of that 2004 case, a one year sentence in the present case is unreasonable</u>.

After concluding that some custodial sentence was necessary to effectuate the goal of general deterrence, the Court balanced that goal against the well-established principle that it should impose "the least restrictive imprisonment that accomplishes the objectives." RT 1/8/14 at 50:5-6. The Court sought input from the Government as to what it believed would be the least restrictive sentence to effectuate the goal of general deterrence. Responding to the Court, AUSA Waldinger to establish a benchmark cited a case in which the Honorable Judge Hamilton (*United States v. McKimmey*, Case No. 04-cr-00118-PJH) sentenced a defendant to

[8] Amazingly, this is not KFI's first attempt to poach of employees and steal proprietary information from SSI. At trial, on April 16, 2013, two former KFI employees testified on cross-examination (conducted by undersigned counsel) that they witnessed former SSI executives, Bob Damon and Joe Griesedieck, possess SSI materials with them at KFI. Mark Jacobson further testified that he saw them with SSI "Board Bible" (a blueprint on how to get and keep executive search clients). Michael Louie testified that Barbara Fletcher, Mr. Damon and Mr. Griesedieck's administrative assistant, showed him a CD entitled "Spencer Stuart Data Base." RT; Volume 6; 1216-1218; 1259 - 1260.

12 months in custody. RT 1/8/14 at 50:13-25. Defense counsel countered, explaining that the loss in that case was far more significant.

In actuality, based on two news articles that the Government cited in its sentencing memorandum (*see* Dkt. 461 at 9:5-12), the cases are worlds apart. According to those news articles[9], the defendants' criminal actions in the *McKimmey* case were more widespread, caused a much greater intrusion, and led to the theft of far more valuable information:

> Court documents from a related 2002 civil case against Business Engine brought by Niku, now owned by Computer Associates International, reveal the extent of the crime and how it was perpetrated. According to that complaint, Business Engine illegally obtained confidential account names and passwords that enabled broad administrative access to Niku's computers over the Internet. Both companies sell Web-based project management software.
>
> From October 2001 until July 2002, Business Engine used the passwords to gain unauthorized access to Niku's systems more than 6,000 times and downloaded over 1,000 confidential documents containing trade secrets, the complaint alleged. The stolen documents included technical specifications, product designs, prospective customers, customer proposals, client account information and pricing.

See Gruel Decl, Exh. H. This was a secret plot to *steal* passwords to the company's entire computer system, including ones that authorized administrative access. Unlike the present case, which involved a current employee accessing (on three occasions) KFI's database just to obtain particular source lists, McKimmey and his co-conspirators stole passwords and used them to hack into and obtain external access into Business Engine's entire computer system, a far more pernicious act. And McKimmey and his confederates did so on *more than 6,000 occasions*, while Nosal only accessed the Searcher database three times. Finally, the scope of the items

[9] Counsel attempted to access the case on PACER, and although the case is accessible, the particular filings are not. AUSA Waldinger could provide the plea agreement and other documents, if this Court wishes to review the factual bases for the convictions.

stolen by McKinney is far more damaging to the victim because it included items such as technical specifications and product designs. The Government was able to assess the value of the stolen information at more than $200,000, which is far more than the present case. *See* Gruel Decl, Exh. H. In fact, the Government was unable to actually quantify the actual value of the source lists in this case, a problem that led to a great deal of litigation surrounding the amount of loss needed to determine the appropriate Guideline range.

Significantly, while the criminal acts at issue in *McKimmey* were undeniably more culpable and damaging than Nosal's, the Court imposed an identical custodial sentence because the Government cited the *McKimmey* case and the need for general deterrence. The fine assessed against McKimmey, however, was dramatically lower than the one leveled against Nosal: McKimmey only had to pay $3,000, as opposed to $60,000.

Taking into consideration that the Government cited the *McKimmey* case as being a relevant benchmark to assess the deterrent value of a one year sentence, it is very significant that, in addition to the clear points of distinction between that case and the present one, the alleged victim in the present case, KFI, has engaged in undeterred criminal activity, as shown by the SSI complaint. This further supports the need to reevaluate the underlying basis for the custodial portion of the imposed sentence following the revelation of KFI's unprosecuted illegal misconduct.

4. <u>It is fundamentally unjust to permit a multinational corporation and its employees to flagrantly violate the law with impunity while holding Mr. Nosal personally accountable</u>.

One contrasting characteristic of the present case when compared against the SSI lawsuits is the fact that, here, the defendant was an individual and the victim, a multinational

corporation. The SSI lawsuits describe corporate subterfuge in which one multinational corporation, KFI, persuaded multiple high level SSI employees to leave SSI and come to work for KFI, bringing with them a wealth of confidential and proprietary information. Unlike the present case, those lawsuits were quietly settled, civilly, between the two major corporations, with no apparent adverse consequences for any of the individuals involved. Indeed, both of the primary individuals described in the Truc Complaint seem to be thriving in their new roles with KFI.[10]

That case was settled the way most corporate disputes are settled: with a monetary payment. KFI tried to weasel some employees and trade secrets away from SSI but got caught and had to pay some additional money to SSI. In the end, the impact on KFI and SSI was likely negligible. As they say, litigation is simply part of the cost of doing business.

Basic principles of fairness and justice mandate the question: Why should Nosal be treated any differently? After all, Nosal was an individual from extremely modest beginnings who worked his way up the Korn Ferry ladder before setting out to start his own company to compete with giants like SSI and KFI—a move that should be lauded for its boldness, not punished. It is profoundly unjust that David Nosal, the proverbial "little guy," would suffer such a harsh penalty while this massive corporation at the top of the industry committed the very same crimes with impunity. It would be like sentencing a street level drug dealer to prison

[10] Francois P. Truc is featured on Korn Ferry's website, identified as a "Senior Client Partner for the Automotive Practice" in Korn Ferry's Chicago office. *See* https://www.kornferry.com/consultants/francoistruc; *see also* Gruel Decl., Exh. D. Paquet was not a named defendant in the *Spencer Stuart v. Truc* case; however, SSI filed a separate federal complaint naming Paquet as defendant and alleging that Paquet is a citizen of France and working for Korn Ferry in its Global Automotive Practice. *See* Complaint, ¶ 9. According to his LinkedIn page, Paquet remains employed by KFI. *See* Gruel Decl., Exh. D.

while capturing the head of a powerful cartel, but allowing him to go free instead of prosecuting him.

Significantly, the Government brought these charges against Nosal, as an individual, not against his company. This decision underscores the injustice at issue. As an individual, Nosal is far less capable of weathering these charges. Indeed, the billing records indicate that KFI enlisted the assistance of a highly regarded law firm and purportedly spent nearly $1 million on legal fees related to this case. Nosal has had to withstand these charges as an individual, without the benefit of a corporate legal war chest at his disposal.

Furthermore, incarcerating Nosal will have collateral consequences for his company and his employees. KFI, Truc, and Paquet endured no meaningful consequences for their actions, which were more nefarious than Nosal's. If this Court proceeds to send Nosal to prison, even for a year, it will have repercussions that will affect totally innocent people who work for Nosal's company, which is a far more modest operation than KFI's. Again, this is something that KFI and its employees did not have to suffer. If anything, KFI's actions benefitted the company by bringing in new high level employees who had access to their competitor's confidential information and trade secrets.

5. <u>KFI's activities in this case and with respect to SSI are anti-competitive and antithetical to the basic economic principles underlying the laws of this country</u>.

In this case, KFI essentially harnessed the power of the United States Attorney's Office to suffocate newly emerging competition. This was a situation that should have been settled civilly. The set of circumstances in this case was unique inasmuch as, despite the acknowledgement that this sort of activity is commonplace, the Court elected to use Nosal as an

example to others: " . . . although one might argue that this is done commonly, it's done all the time in his field, it is a violation." RT 1/8/14 at 60:9-11. During the sentencing proceedings, the Government was unable to provide any case completely analogous to the current one, and, in fact, the Honorable Judge Stephen Reinhardt agreed with Nosal that his actions did not violate the CFAA. *See Nosal*, *supra*, 844 F.3d at 1058 ("Nosal may have incurred substantial civil liability, and may even be subject to criminal prosecution, but I do not believe he has violated the CFAA, properly construed.")

KFI's clear intention was to stifle Nosal's efforts to establish a company with which KFI would ultimately have to compete. KFI initially sought to show only that Nosal was acting in violation of the non-compete clause in his contract; it was later that KFI suspected that Nosal and his confederates might be accessing KFI's data. Make no mistake, KFI wanted to bring Nosal down, to prevent him from starting a company that might interfere with KFI's business. It was the same anti-competitive impulse that caused KFI to steal employees and confidential information from SSI. To be clear, this prosecution isn't about the three source lists or the vindication of KFI's rights; it is about KFI's desire to rid the marketplace of its competitors. As such, it undermines the core fundamentals of capitalism upon which our economy is based.

Moreover, Nosal's rise through the ranks of the industry is a tangible manifestation of the American Dream. He grew up in Sheboygan, Wisconsin, where he lived with his adoptive parents in a decidedly working class environment. He put himself through college and then entered the executive search industry, working his way up until he became one of the most prominent consultants in the field. After decades of working for some of the companies in the field, including KFI, Nosal decided to strike out on his own. RT 1/8/14 at 53-57. This is

precisely the sort of competitive drive that should be fostered in our economy. Of course, as with KFI's actions toward SSI, monetary compensation for wrongdoing is appropriate. In this case, Nosal suffered more than merely a monetary setback; he received six felony convictions. But he should not be sentenced to prison when the very corporation named as the victim in this case turned around and committed the same acts toward another competitor and suffered no significant consequences whatsoever.

VI.

CONCLUSION

Fairness is the basic goal of American jurisprudence. In light of the recently uncovered illegal actions by global corporate giant KFI against its competitor SSI, granting the writ of error *coram nobis* it the only legal vehicle available to achieve fairness and justice in this case. This Court should grant Nosal's petition and resentence him, striking the term of imprisonment the Court previously imposed.

DATED: January 17, 2018

Respectfully submitted,

/s/ Steven F. Gruel
STEVEN F. GRUEL
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, Vs. DAVID NOSAL, Defendant.	No. CR-08-0237-EMC DEFENDANT DAVID NOSAL'S MOTION FOR *BRADY* MATERIAL REGARDING KORN FERRY INTERNATIONAL'S THEFT OF TRADE SECRETS -and- REQUEST FOR EVIDENTIARY HEARING Honorable Edward M. Chen Hearing Date: February 7, 2018 Time: 2:30 pm

Defendant, David Nosal, by and through his attorney, Steven F. Gruel, hereby submits this DEFENDANT DAVID NOSAL'S MOTION FOR BRADY MATERIAL REGARDING KORN FERRY INTERNATIONAL'S THEFT OF TRADE SECRETS and REQUEST FOR AN EVIDENTIARY HEARING.

STATEMENT OF FACTS

On January 8, 2014, Mr. Nosal was sentenced. At sentencing, two federal prosecutors urged the Court to use Nosal's sentence to send a message to the community that illegal conduct consisting of trade secret theft would not be tolerated. A custodial sentence for Mr. Nosal, as one prosecutor observed, would ring like a "bell" warning that this conduct would not be tolerated. In describing trade secret theft, another prosecutor plainly put it that "stealing is stealing" whether its cash or data. If the message of general deterrence was to be effectively delivered, then Nosal, the prosecutors urged, had to go to prison.

Based on the prosecutors' arguments and representations, the Court agreed. Mr. Nosal was sentenced to 12 months and 1 day in federal custody.

The Nosal appeal then went forward. On July 5, 2016, the Ninth Circuit affirmed the conviction. Mr. Nosal next petitioned the United States Supreme Court for a Writ of Certiorari. On October 10, 2017, Nosal's petition was denied.

However, on March 29, 2017, while the Nosal Petition to the Supreme Court was pending, a large executive search company named Spencer Stuart (SSI) filed a lawsuit in Chicago, Illinois outlining that Korn Ferry International and two high executives at SSI (Mr. Truc and Mr. Paquet) engaged in a well-orchestrated ruse to steal highly confidential trade secret information from computers belonging to SSI. *Gruel Declaration; Exhibit A.* In fact, as alleged by SSI, the valuable trade secrets stolen by Korn Ferry with the ongoing assistance and deception by Truc and Paquet, resulted in Korn Ferry obtaining a "blueprint" for Spencer Stuart's confidential executive searches in the automotive industry, and thus, for how "most effectively to compete and to steal business away from Spencer Stuart."

Given that Mr. Paquet is a citizen of France, SSI filed a similar theft of trade secrets in federal court in the Eastern District of Illinois. *Gruel Declaration; Exhibit C.*

As outlined in undersigned counsel's supporting declaration, both civil lawsuits quietly settled within months. Mr. Truc and Mr. Paquet are now Korn Ferry employees. *Gruel Declaration; Exhibit D.* When contacted by undersigned defense counsel, an attorney for SSI said that because the civil suits were settled with nondisclosure provisions he could not discuss anything about these cases.

On December 20, 2017, defense counsel alerted the government about Korn Ferry's trade secret theft from SSI and the fraudulent scheme of directing two SSI executives to steal data from SSI computers before absconding to their new employer, global giant Korn Ferry. The government displayed no interest in this information. To the contrary, the government deemed the information irrelevant.

On January 8, 2018, the defense emailed a copy of the SSI lawsuit to the government. Pointing directly to *Brady v. Maryland*, 373 U.S. 83 (1963) the defense requested, via emails to the government, any and all *Brady* material directly pertaining to Korn Ferry and its two conspirators' illegal actions. Now, directly possessing this information and the SSI complaint against Korn Ferry and Mr. Truc, the government has a duty to investigate for *Brady* material. *Kyles v. Whitley*, 514 U.S. 419 (1995).

Although the government apparently located and provided the defense with a copy of the federal lawsuit against Paquet, no further information or material was disclosed. Instead, the government's apparent position is that because Mr. Nosal is convicted, Korn Ferry's recent trade secret thefts from a direct competitor are not relevant. Plus, the government believes that the Ninth Circuit remand strictly limits it obligations. In short, notwithstanding their previous laudable words for "general deterrence," or that "stealing is stealing," and symbolic "bell" ringing to the business community, the government's reaction to Korn Ferry's blatant disregard of the "message" from the Nosal sentencing is to do nothing.

The government's inaction is simply wrong: it is axiomatic that *Brady* equally applies at the punishment and sentencing phase. Some prosecutors may think of *Brady* myopically as only addressing evidence that relates to whether a defendant is guilty and, consequently, once a defendant has been convicted there cannot by definition be any *Brady* material. *Brady and Sentencing*, National Law Journal, October 27, 2008. *Gruel Declaration; Exhibit I.* One of the oft-overlooked aspects of *Brady* is that the decision expressly extends the government's disclosure obligation to the sentencing phase in addition to the guilt phase of criminal proceedings. *Brady*, 373 U.S. at 87. Id.

Given the backdrop of this case, including Mr. Nosal's Petition for Writ of Error *Corum Nobis* along with the Declaration of Steven Gruel, the defense respectfully requests that the Court order the government to investigate and provide to the defense all *Brady* material pertaining to Korn Ferry's theft of trade secrets from Spencer Stuart. In light of the obvious parallels between Mr. Nosal's case and the Korn Ferry – Spencer Stuart case, this *Brady* request should produce material which will undoubtedly have profound relevance and impact on the Court's custodial sentence and restitution order.

ARGUMENT

"Compliance with discovery obligations is important for a number of reasons. First and foremost, however, such compliance will facilitate a fair and just result in every case, which is the Department's singular goal in pursuing a criminal prosecution"

United States Attorney's Manual; Section 165 - Guidance for Prosecutors Regarding Criminal Discovery

The Department of Justice's singular goal expressed above remains true even at this stage in the Nosal case. The government, despite the goal expressed in its own manual, has taken the position that it is not in possession of any *Brady* information that has not already been disclosed to the defense regarding the conviction in this case and that material related to the Korn Ferry

theft is irrelevant. Likewise, the government pointing to the Ninth Circuit's remand, uses it as a further deflection from its *Brady* obligation.

However, a "fair and just result" in the Nosal case demands departure from the government's "myopic" approach to its *Brady* obligation. In conjunction with his Petition for Writ of Error *Corum Nobis*, Mr. Nosal respectfully requests disclosure of the following *Brady* material in order that the Court and the defense may fully evaluate Korn Ferry's illegal actions so as then compose a truly fair sentence.

Given the obvious similarities between Mr. Nosal's case and Korn Ferry's scheme with SSI's executives' (Truc and Paquet) "fairness" demands immediate disclosure of the following basic examples of *Brady* material in this case:

1. When did the government first learn of Korn Ferry's trade secret theft from SSI and what actions or investigations did the FBI, the United States Justice Department, the United States Attorney's Offices in the Northern District of California or the Eastern District of Illinois pursue as a result of learning of the scheme to steal by Korn Ferry, Mr. Truc and Mr. Paquet;
2. Did the FBI or any other state or federal law enforcement agency investigate the theft of SSI trade secrets from Korn Ferry, Truc and Paquet? If not, why not?
3. Was a request for prosecution of Korn Ferry, Mr. Truc or Mr. Paquet presented to any State or Federal prosecuting office?
4. Has anyone from Korn Ferry, Spencer Stuart, Mr. Truc or Mr. Paquet been interviewed by law enforcement regarding the allegations outlined in the Korn Ferry, Truc and Paquet complaints? If not, why not?
5. Was O'Melveny & Myers LLP involved in representing Korn Ferry, Mr. Truc or Mr. Paquet in the civil litigation that resulted from the trade secret theft described in the SSI complaints?
6. What are the terms of the confidential settlements with Korn Ferry, Mr. Truc, and Mr. Paquet reached in both civil lawsuits involving trade secret theft from Spencer Stuart?

The above examples constitute the first step in fully learning the impact of the Korn Ferry trade secret thefts to this case. Depending on the *Brady* material disclosed or if the government continues to refuse to comply with Brady, a subsequent evidentiary hearing may be necessary. In either event, the defense may need additional time to review the materials in order to effectively present argument to the Court.

CONCLUSION

In our system of justice, striving for "fairness" does not end simply with the passage of time. Thomas Jefferson once observed that "*It is reasonable that everyone who asks Justice should do Justice."* In this case, it is nothing less than outrageous that Korn Ferry, given its longtime role in this case, ignored this Court's message of general deterrence and stole trade secrets from its longtime competitor. It would be equally outrageous to send Mr. Nosal to federal prison upon full consideration of Korn Ferry's egregious actions.

DATED: January 17, 2017

__/s/_____
STEVEN F. GRUEL
Attorney for David Nosal

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, Vs. DAVID NOSAL, Defendant.	No. CR-08-0237-EMC DECLARATION OF STEVEN F. GRUEL IN SUPPORT OF DEFENDANT DAVID NOSAL'S: (1) WRIT OF ERROR *CORUM NOBIS*; (2) RESPONSE REGARDING RESTITUTION and (3) MOTION FOR *BRADY* MATERIAL Honorable Edward M. Chen Hearing Date: February 7, 2018 Time: 2:30 pm

I, STEVEN F. GRUEL, under penalty of perjury hereby declare as follows:

1. I am an attorney licensed to practice law in both Wisconsin and California. I served as a federal prosecutor in the Northern District of California from 1989 to 2005. I submit this declaration in support of David Nosal's (1) Petition for Writ of Error *Corum Nobis*; (2) Response Regarding Restitution and (3) Motion for *Brady* Material.

2. Attached hereto as Exhibit A and fully incorporated herein is a true and correct copy of a civil lawsuit filed by SSI (US), Inc. d/b/a Spencer Stuart v. Francois P. Truc and Korn

Ferry International. The case was filed on March 29, 2017, in Circuit Court of Cook County, Illinois, County Department, Chancery Division, Case Number 2017-CH-04510. As seen in the complaint, Spencer Stuart alleged that two high ranking executives, Francois Truc and Pierre-Edouard Paquet, abruptly resigned from Spencer Stuart to work for Korn Ferry. It is alleged that the two executives, at the direction and participation of Korn Ferry, stole Spencer Stuart confidential and proprietary materials from the latter's computer system. In concert with Korn Ferry, Truc and Paquet absconded to Korn Ferry to directly compete with Spencer Stuart on executive searches "utilizing Spencer Stuart's confidential information." In short, Spencer Stuart claimed that its direct competitor Korn Ferry and Mr. Truc (the head of Spencer Stuart's Global Automotive Practice) "through a systematic, concerted and unlawful effort" deleted, copied and removed confidential and proprietary materials and information from Spencer Stuart's computer system. I hired a private investigation firm in Chicago to obtain a copy of this complaint attached as Exhibit A. I emailed a copy of this lawsuit to the government on January 8, 2018.

3. On August 21, 2017, the parties settled the Spencer Stuart v. Korn Ferry and Truc lawsuit. Attached as Exhibit B is a true and copy of that settlement with prejudice. I contacted Spencer Stuart's counsel, Daniel J. Fazio of Winston and Strawn, LP, who informed me that the settlement agreement contained a nondisclosure clause and he could not discuss the case or settlement with me.

4. Attached hereto as Exhibit C is a true and correct copy of a federal civil complaint entitled SSI (US), Inc., d/b/a Spencer Stuart v. Pierre-Edouard Paquet filed on June 23, 2017 in the Eastern District of Illinois, Case Number 17-cv-02409. As alleged in the federal complaint, Mr. Paquet, while employed at Spencer Stuart, working at the direction of his boss, Francois Truc and Korn Ferry (Paquet's new employer)

downloaded and stole highly confidential and proprietary information to take to Korn Ferry. As alleged in the federal complaint, Korn Ferry's two-month ruse with executive Francois Truc and Pierre-Edouard Paquet resulted in Korn Ferry obtaining" a blueprint for Spencer Stuart's confidential executive searches in the automotive industry, and thus, for how most effectively to compete and to steal business away from Spencer Stuart." On January 12, 2018, the government provided me a copy of this lawsuit found on PACER.

5. I reviewed the PACER docket for the Spencer Stuart v. Paquet federal lawsuit. The PACER docket shows that on August 21, 2017, this case was dismissed with prejudice.

6. Attached hereto as Exhibit D are true and correct copies of Francois Truc's current Korn Ferry profile as a Senior Client Partner for the Global Automotive Practice and Pierre-Edouard Paquet's Linkedin page as a Principal at Korn Ferry.

7. To my knowledge, no criminal investigation, much less a prosecution, has been initiated or pursued against Korn Ferry, Mr. Truc or Mr. Paquet. Since learning of Korn Ferry's theft of Spencer Stuart's trade secrets, I asked the government whether an investigation or prosecution took place. I asked whether Spencer Stuart or Korn Ferry personnel were interviewed regarding Korn Ferry's orchestrated theft of its competitor's trade secrets from the victim's computers. Although I requested these materials as discoverable under *Brady v. Maryland* and emailed copy of the Spencer Stuart trade secret theft lawsuit against Korn Ferry and Truc to the government, the government never answered these extremely relevant questions; instead apparently claiming that it has no obligation to investigate or disclose this *Brady* information because Mr. Nosal has already been convicted and that the Ninth Circuit's remand was limited to the amount of restitution based on Korn Ferry's attorney fees.

8. My investigation revealed that Korn Ferry International is a global executive search giant which boasts over 7,000 employees and quarterly gross revenues over a billion dollars. Korn Ferry is a publicly owned corporation which trades on the NYSE under the symbol KFY. As part of my investigation of Korn Ferry, I reviewed its required Securities and Exchange Commission (SEC) filings on the EDGAR (Electronic Data Gathering, Analysis, and Retrieval system used by the SEC) to determine whether Korn Ferry International publicly disclosed either Spencer Stuart's lawsuits for trade secret theft against Korn Ferry, Mr. Truc and Mr. Paquet or information concerning the quick settlements of those lawsuits. My review of the Korn Ferry's EDGAR filings is that these lawsuits and settlements were not disclosed. I reviewed Korn Ferry's 10-K filing of its Annual report for Fiscal year ended April 30, 2017 filed pursuant to Section 13 or 15(d) of the SEC Act of 1934. In its 10-K filing, the required disclosure regarding legal matters affecting Korn Ferry stated as follows: "***Item 3. Legal Proceedings. From time to time, we are involved in litigation both as a plaintiff and a defendant, relating to claims arising out of our operations. As of the date of this report, we are not engaged in any legal proceedings that are expected, individually or in the aggregate, to have a material adverse effect on our business, financial condition or results of operations***." I also reviewed Korn Ferry's 10-Q quarterly report ending on October 31, 2017. Again, there was no disclosure or mention of the Spencer Stuart lawsuits or settlements. Instead, the same phrase as stated in its April 30, 2017, 10-K SEC filing was merely repeated.

9. I reviewed the January 8, 2014 transcript of the sentencing hearing in this case. Excerpts from that transcript are attached as Exhibits E – G showing that although the parties and Court agreed that Mr. Nosal required no personal deterrence, the goal of the sending a

message for ***general deterrence*** to others regarding trade secret theft supported Mr. Nosal receiving a custodial sentence:

a) Attached as Exhibit E is a true and correct copy of an excerpt of the sentencing transcript wherein AUSA Waldinger argued that "**At the end of the day, stealing is stealing, whether you use a computer or a crowbar and whether you steal documents and data or dollars. It's stealing. A sentence of imprisonment will promote respect for the law. It will demonstrate that corporate executives will be held accountable when they break the law**. **A noncustodial sentence will undermine this goal. The promotion of respect for the law also ties into general deterrence. I have no doubt that Mr. Nosal is not going to commit any more federal crimes in his life."** RT; pages 47 – 50 (emphasis added);

b) Attached as Exhibit F is a true and correct excerpt of the sentencing transcript wherein AUSA Parella told the Court that he **"probably more than any other AUSA, had connections to the industry where I communicate with them about various different issues the issue of general deterrence that Mr. Waldinger mentioned is tremendously important . . . the sentence that you give today will go through Silicon Valley like a bell. It will be known throughout the valley. And it is a unique opportunity for the Court to send a message, which is a legitimate purpose of sentencing is general deterrence."** RT; pages 51 – 52 (emphasis added);

c) Attached hereto as Exhibit G is a true and correct excerpt of the January 8, 2014 sentencing hearing wherein the Court considered that the " . . **. 3553 factors does list as one factor, deterrence to others, not just deterrence to this particular . . . defendant. And there I think that is a factor [general deterrence] that we do**

have to consider as well as the need for the punishment for a very serious crime." RT, pages 61 – 62 (emphasis added).

10. Attached hereto as Exhibit H is a copy of the December 5, 2005 article of a case AUSA Waldinger mentioned in arguing to the Court that Mr. Nosal required a similar amount of prison time. AUSA Waldinger referenced a trade secret theft case he prosecuted before Judge Hamilton where a 12 month sentence was imposed and pointed to that case as a reference point claiming that the cases (*McKimmy* and *Nosal*) were similar and should receive the same treatment. The article, however, shows the two cases to be extremely different. In *United States v. McKimmey*, a former chief technology officer of Business Engine Software admitted to stealing over 1,000 confidential documents consisting of trade secrets (such as technical specifications, product designs, client lists, customer proposals, client account information and pricing) from its competitor, Niku. Using over 6,000 instances of hacking into Niku computers in just 10 months, Business Engine Software obtained all these critical, highly confidential information. In stark contrast, Mr. Nosal's case involved 3 Korn Ferry source lists comprised of executive names and contact information readily available in the general public.
11. Attached hereto as Exhibit I is a copy of the October 27, 2008 *National Law Journal* article entitled *'Brady' and Sentencing* in white collar cases.
12. Attached hereto as Exhibit J is a summary of the cost for the loss of and the replacement for computers due to the FBI's seizure of these items in August 2005. The costs totals $56,640.87.
13. Attached hereto as Exhibit K (filed under seal) is a summary of Mr. Nosal's attorney fees and related costs stemming from this criminal case. The costs totals $2,722,456.32.
14. Attached as Exhibit L is a copy of the May 15, 2008, Defendant David Nosal's First Status Memorandum filed before the Honorable Marilyn Hall Patel. The Status

Memorandum describes in some detail the dispute between Korn Ferry and Mr. Nosal that had been in the civil courts for approximately 3 years prior to the bringing of federal charges. It further mentions that the newly filed criminal case essentially mirrored the matters already presented or pending in civil court and in an arbitration proceeding. I recall that during this first status hearing Judge Patel asked why this criminal case wasn't simply handled as a civil matter.

15. As pointed out in Exhibit L, after resigning from Korn Ferry, Mr. Nosal worked as an independent contractor for KFI on approximately 14 -18 open searches with the understanding that he would be paid a commission for the searches he completed. Although he completed his KFI searches, Korn Ferry never paid Mr. Nosal. He is owed approximately $1.2 million with interest.

16. I reviewed the Government's Sentencing Briefs and the Judgments & Convictions for the 3 other individuals charged in this case (Becky Christian, Mark Jacobson and Jacqueline Froelich L' Heareaux). (Dkt numbers 560, 566; 68, 75 and 74, 77). The documents show that the government and Korn Ferry did not restitution from these 3 defendants. The Court did not order restitution from these 3 defendants.

I declare that the above is true and correct under penalty of perjury.

DATED: January 17, 2018 __/s/_____

STEVEN F. GRUEL
Attorney for David Nosal

EXHIBIT A

Chancery Division Civil Cover Sheet - General Chancery Section (Rev. 12/30/15) CCCH 0623

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SSI (US), INC., d/b/a SPENCER STUART
Plaintiff

v.

FRANÇOIS P. TRUC and KORN/FERRY INTERNATIONAL
Defendant

2017CH04510
CALENDAR/ROOM 07
TIME 00:00
Injunction

No.

CHANCERY DIVISION CIVIL COVER SHEET
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

0005 ☐ Administrative Review
0001 ☐ Class Action
0002 ☐ Declaratory Judgment
0004 ■ Injunction

0007 ☐ General Chancery
0010 ☐ Accounting
0011 ☐ Arbitration
0012 ☐ Certiorari
0013 ☐ Dissolution of Corporation
0014 ☐ Dissolution of Partnership
0015 ☐ Equitable Lien
0016 ☐ Interpleader
0017 ☐ Mandamus
0018 ☐ Ne Exeat

0019 ☐ Partition
0020 ☐ Quiet Title
0021 ☐ Quo Warranto
0022 ☐ Redemption Rights
0023 ☐ Reformation of a Contract
0024 ☐ Rescission of a Contract
0025 ☐ Specific Performance
0026 ☐ Trust Construction
☐ Other (specify) _____

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CIRCUIT COURT OF COOK COUNTY, IL

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Pro Se Only: ☐ **I have read and agree to the terms of the *Clerk's OfficeElectronicNoticePolicy* and choose to opt in to electronic notice from the Clerk's officeforthiscase at this email address:**

_____

Firm No. 90875

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SSI (US), INC., d/b/a SPENCER STUART, a Delaware Corporation,

Plaintiff,

v.

FRANÇOIS P. TRUC and KORN/FERRY INTERNATIONAL, a Delaware Corporation,

Defendants.

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COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff SSI (US), Inc. d/b/a Spencer Stuart ("Spencer Stuart"), for its Complaint for Injunctive Relief and Damages against Defendants Korn/Ferry International ("Korn Ferry") and François P. Truc ("Truc"), alleges as follows:

NATURE OF THE CASE

1. This is an action for relief from a persistent, well-orchestrated campaign of unfair competition by Truc, the former Head of Spencer Stuart's Global Automotive Practice, and Korn Ferry, a direct competitor of Spencer Stuart. Truc and Korn Ferry, through a systematic, concerted, and unlawful effort, are attempting to dismantle Spencer Stuart's Global Automotive Practice and move that business lock, stock, and barrel to Korn Ferry.

2. In furtherance of that deliberate scheme, Truc, in coordination with Korn Ferry, plotted and executed his defection from Spencer Stuart willfully and maliciously, with the intent of crippling Spencer Stuart's Global Automotive Practice and its ability to compete in that industry, while at the same time maximizing his ability to perform competitive work at Korn Ferry with entities and individuals with whom he had developed and cultivated professional

relationships during the course of, and as a result of, his employment at Spencer Stuart at Spencer Stuart's substantial expense.

3. Specifically, Truc, while still employed as a highly-compensated and trusted employee by Spencer Stuart and in coordination with Korn Ferry, solicited his underling, Pierre-Edouard Paquet ("Paquet"), to abruptly resign from Spencer Stuart and to work for Korn Ferry. Paquet, who refused to disclose to others at Spencer Stuart where he would be working and admittedly absconded with Spencer Stuart's confidential information, secretly and without authorization deleted, copied, and removed confidential and proprietary materials and information from Spencer Stuart's computer system in an effort to lay the groundwork for diverting searches and other valuable business opportunities properly belonging to Spencer Stuart to Korn Ferry. During this time, Truc, in anticipation of his own defection from Spencer Stuart to Korn Ferry, also unlawfully forwarded numerous highly confidential executive search documents to his personal email account. Truc, in coordination with Korn Ferry, would shortly thereafter abruptly resign ostensibly to work for a Spencer Stuart client, all the while fraudulently concealing that he was intending to work for Korn Ferry and that his tenure at the client was a subterfuge designed only to induce Spencer Stuart not to trigger his non-compete obligations. Indeed, in the two months he worked at the Spencer Stuart client, Truc was secretly working for the benefit of Korn Ferry while in possession of Spencer Stuart's confidential information he improperly retained following the end of his employment with Spencer Stuart. Notwithstanding their lack of forthrightness, dissembling, and outright lies to Spencer Stuart concerning their departures, Truc and Paquet have reconstituted themselves at Korn Ferry and are working on executive searches that are directly competitive with Spencer Stuart while utilizing Spencer Stuart's confidential information.

4. Despite its full awareness of Truc's legal and contractual obligations to Spencer Stuart, Korn Ferry has intentionally and unjustifiably caused and is causing Truc to breach those obligations in a campaign to overtake Spencer Stuart as a market leader in global automotive executive search industry. Indeed, Korn Ferry is continuing to act in concert with Truc to actively solicit Spencer Stuart employees and clients in clear violation of Truc's contractual obligations to Spencer Stuart.

5. As a result of the perfidious and unlawful acts described above, Spencer Stuart has suffered, and will continue to suffer, substantial monetary damages, as well as injuries not readily susceptible to calculation or fully compensable by monetary damages. Accordingly, in addition to an award of monetary damages, Spencer Stuart seeks an Order:

(i) enjoining Truc from any further use or disclosure of Spencer Stuart's confidential and proprietary business materials and information;

(ii) compelling Truc to return to Spencer Stuart all confidential and proprietary business materials and information of Spencer Stuart in his possession, custody, or control, including any hard copies and electronic copies thereof and materials derived therefrom;

(iii) enjoining Truc from continuing to breach his contractual restrictions by siphoning Spencer Stuart's employee workforce in an effort to transport Spencer Stuart's global automotive search practice to Korn Ferry;

(iv) enjoining Truc from continuing to breach his contractual restrictions and diluting and damaging the valuable goodwill and business reputation of Spencer Stuart by soliciting and serving the clients with which he developed professional relationships solely as a result of and in connection with his employment by Spencer Stuart; and

(v) enjoining Korn Ferry from further aiding and abetting or inducing Truc and Paquet to violate their confidentiality, non-competition, and non-solicitation obligations to Spencer Stuart.

Unless enjoined by the Court, Truc and Korn Ferry will continue to violate Spencer Stuart's contractual, statutory, and common law rights, cause irreparable injury to Spencer Stuart's business, and continue to compete unfairly with Spencer Stuart.

THE PARTIES

6. Spencer Stuart is a Delaware corporation with its principal place of business in Chicago, Illinois.

7. Korn Ferry is a Delaware corporation with its principal place of business in Los Angeles, California. Korn Ferry also operates out of an office located in Chicago, Illinois.

8. Truc is an individual and is a citizen of Illinois who resides upon information and belief, at 21622 Mockingbird Court, Kildeer, Illinois. Truc is the former leader of Spencer Stuart's Global Automotive Practice and was based in Spencer Stuart's Chicago office. Truc is currently working in Korn Ferry's Global Automotive Practice and is based in Korn Ferry's Chicago office.

RELEVANT NON-PARTY

9. Paquet is an individual and is a citizen of France, who resides, upon information and belief, in Paris, France. While employed by Spencer Stuart, Paquet worked in Spencer Stuart's Paris and Chicago offices. Paquet is currently working for Korn Ferry in its Global Automotive Practice and is based in Paris, France.

JURISDICTION AND VENUE

10. Jurisdiction is appropriate in Cook County because Truc is a resident of the State

of Illinois, he was employed by Spencer Stuart in this County, he committed tortious acts against Spencer Stuart in this County, and breached contractual obligations owed to Spencer Stuart in this County. Jurisdiction is also appropriate in Cook County because Korn Ferry is engaged in regular, substantial, and not isolated, activities within the State of Illinois, is registered to do business in Illinois, and is in fact actually doing substantial business in this County through an office located in this County. This Court also has personal jurisdiction over Korn Ferry because the claims stated against Korn Ferry arise from and are directly related to its contacts with and activities in this County.

11. Venue is proper in this Court because all or a substantial part of the events giving rise to these claims occurred in this County, including Truc's breaches and threatened breaches of duties owed to Spencer Stuart and Korn Ferry's efforts to interfere with those duties.

FACTUAL BACKGROUND

Spencer Stuart's Business

12. Spencer Stuart is one of the world's leading global executive search and leadership consulting firms, specializing in searches for top-level executives and board directors. The privately held firm operates in 56 offices in more than 30 countries.

13. Through its portfolio of services, Spencer Stuart has over 60 concentrated areas of expertise, including in the automotive industry. Indeed, Spencer Stuart offers executive search and leadership consulting for companies across automotive parts manufacturers and retailers; car, truck, and other vehicle original equipment manufacturers; automotive-related services; and connected car; infotainment, and software providers; and private equity funds investing in the automotive sector.

14. In conducting senior-level executive searches and board director appointments, Spencer Stuart has developed a range of proprietary tools and techniques to conduct rigorous

assessments of candidates' track records, knowledge, abilities, and potential.

15. Spencer Stuart's comprehensive proprietary executive assessment approach has led to immense success in the automotive industry. Spencer Stuart has access to more than 55,000 automotive executives across the globe and has conducted more than 500 senior-level executive searches and board director appointments over the past three years for the world's preeminent automotive organizations, including a certain major automotive client (hereafter, "The Automotive Client"), with whom Spencer Stuart has had a Master Services Agreement and from whom Spencer Stuart has generated millions of dollars in revenue.

Spencer Stuart Has Enacted Significant Measures to Safeguard its Sensitive Information

16. Spencer Stuart has expended, and continues to expend, millions of dollars and countless resources developing, maintaining, and updating the proprietary and confidential information used to provide leadership consulting and executive search services.

17. Spencer Stuart's confidential information and trade secrets are critical to its success. Accordingly, Spencer Stuart has implemented significant measures to maintain the confidentiality of such information, including requiring employees, such as Paquet and Truc, to sign confidentiality and non-disclosure agreements, implementing policies identifying company confidential information, prohibiting employee disclosure, and establishing safeguards against electronic and other disclosure.

18. In addition, Spencer Stuart requires employees to have an electronic proximity access card for physical building access; restricts access to confidential information to only those employees with a need to know such information; restricts access by non-employees to only those having specific authorization or permission; restricts computer access by user name and password and multi-factor authentication tokens; and restricts access to certain areas of its

facility to authorized employees only.

19. Spencer Stuart has also implemented and maintained numerous policies outlining its security measures and expectations concerning privacy and communications, including its Code of Conduct. During the period of Truc's and Paquet's employment with Spencer Stuart, the applicable Code of Business Conduct expressly required employees to hold in the strictest level of confidence Spencer Stuart and client confidential information during and after an employee's employment and strictly prohibited disclosures outside of Spencer Stuart. The Code of Conduct also instructed that electronic correspondence to clients and candidates should be sent using the secure e-mail address provided by Spencer Stuart.

Truc's Employment with and Contractual Obligations to Spencer Stuart

20. By letter dated February 11, 2008, Spencer Stuart extended Truc an offer of employment as a Consultant based in Chicago. As made clear in the offer letter, Truc was required to sign an agreement regarding confidentiality and non-solicitation/non-competition as a condition of employment. On February 24, 2008, Truc accepted Spencer Stuart's offer by countersigning the offer letter.

21. In consideration for his hiring by Spencer Stuart, Truc signed an Employee Agreement Regarding Confidentiality and Other Obligations ("Truc Employee Agreement") and a Non-Solicitation/Non-Competition Agreement ("Protective Agreement").

22. The written Protective Agreement contains a one-year non-competition clause as follows:

> So long as you are employed by or performing services for the Company and for a period of twelve (12) months after the later of the completion of work done, services performed or the termination of your employment, . . . you will not render any services, directly or indirectly, as an employee, officer, consultant or in any other capacity, to any individual, firm, corporation or partnership which provides Executive Search, Internet recruiting, Internet based Board or CEO community of interest sites/services or other services which are competitive with

> services by the Company or with services under development by the Company within the twelve (12) month period preceding the termination of your employment for any reason (the "Competitive Business"). . . . Nothing in this Agreement, however, shall prohibit you from becoming employed by, or otherwise rendering services to, an entity which has one or more divisions or operating units which engages in a Competitive Business so long as you do not, during the Restricted Period, have any involvement with, authority or responsibility for, the unit or operating division which engages in the Competitive Business.

23. The Protective Agreement further provides that Spencer Stuart has 30 days from the termination of Truc's employment to elect to enforce the covenant not to compete and, if it did so, it had to continue to pay Truc his base salary as of the date of his termination through the restricted period.

24. In the Protective Agreement, Truc also agreed to abide by a one-year client non-solicitation obligation as follows:

> During your employment and for a period of twelve (12) months after the completion of work done, services performed or termination of employment for any reason, you will not, directly or indirectly, solicit in any way, aid in such solicitation or entice away from the Company any person, partnership, corporation or other entity who was a client or prospective client of the Company during the twelve (12) month period preceding your termination for any reason.

25. The Protective Agreement also contained a one-year employee non-solicit clause as follows:

> So long as you are working or performing services for Spencer Stuart . . . and for a period of twelve (12) months after the completion of work done, services performed or termination employment for any reason, you shall not, directly or indirectly, by or for yourself, or as the employee of another, or through another as your employee, solicit for employment or employ or induce or advise to leave the Company's employ any Company employee, or any individual who was an employee of the Company within the six month period preceding the termination of your employment and you shall not assist others to do so.

26. Truc expressly agreed that the restrictions in the Protective Agreement were reasonable and necessary for the protection of the Company. Spencer Stuart is entitled to

injunctive relief in the event of a breach or threatened breach by Truc, who specifically acknowledged:

> the restrictive covenants set forth herein are reasonable and necessary for the protection of the Company and that they may not be adequately enforced by an action for damages and that, in the event of a breach thereof by you, the Company shall be entitled to apply for and obtain injunctive relief in any court of competent jurisdiction to restrain the breach or threatened breach of such violation or otherwise to enforce specifically such provisions against such violation, without the necessity of the posting of any bond by the Company.

27. In signing the Truc Employee Agreement, Truc acknowledged and agreed:

> In the course of work done or services performed for Spencer Stuart, [Truc] has had and may have access to information relating (but not limited) to technical, customer and business information in written, graphic, oral or other tangible or intangible forms, including but not limited to Spencer Stuart's clients, competitors, business, research, training manuals, accounting records, future plans, specifications, records, data, computer programs and documents, [and in particular, information described in Exhibit A] (herein collectively referred to as "Information") owned or controlled by Spencer Stuart. Such Information contains material which is proprietary or confidential in nature and involves the disclosure of copyrighted or potentially copyrightable software with respect to which copyrights may not have been filed or material which is subject to applicable laws regarding secrecy of communications or trade secrets.

28. The categories of Information enumerated in Exhibit A to the Truc Employee Agreement include Spencer Stuart's Worldwide Client List Database, Mailing List Database, Board of Directors' Database, Proprietary Training Manuals, and Confidential Candidate Reports and Resumes Received from Candidates and Prospects.

29. In signing the Truc Employee Agreement, Truc therefore agreed:

a. That all such Information acquired hereunder is and shall remain Spencer Stuart's exclusive property, whether or not obtained, acquired or developed by [Truc];

b. [Truc] is hereby informed of the confidential character of such Information and of the existence of applicable laws regarding secrecy of communications;

c. To hold such Information in confidence and to restrict disclosure of and limit access to such Information to only authorized Employees or Contractors of Spencer Stuart, unless granted prior written approval by Spencer Stuart stating otherwise;

d. Not to copy or publish or disclose such Information to others or authorize anyone else to copy or publish such Information to others without Spencer Stuart's prior written approval;

e. To, on Spencer Stuart's request, return all such Information in written, graphic or other tangible form to Spencer Stuart;

f. To use such Information only for purposes of fulfilling work performed for Spencer Stuart and for other purposes only upon terms as may in advance be agreed upon between [Truc] and Spencer Stuart in writing; and

g. That [Truc's] commitment not to disclose such Information continues after completion of work done or services performed for Spencer Stuart.

30. Spencer Stuart is entitled to injunctive relief in the event of a breach by Truc, who specifically acknowledged:

> [Truc] acknowledges that [he] has carefully read and considered the terms of this Agreement and that any breach of the conditions of this Agreement will cause serious and irreparable loss or damage to Spencer Stuart. Therefore, in the event of a breach of the conditions of this Agreement, Spencer Stuart will be entitled, without limitation, to any other remedies, equitable relief against [Truc], including, without limitation, any injunction to restrain [Truc] from such breach and to compel compliance with this Agreement in protecting or enforcing its rights and remedies.

31. In addition to the confidentiality obligations in Truc's Employee Agreement, Truc also expressly agreed to abide by ongoing confidentiality obligations within Spencer Stuart's Code of Conduct by executing acknowledgements dated April 12, 2010, and June 30, 2013.

32. The Protective Agreement and the Truc Employee Agreement are governed by New York law.

33. Truc's execution of the Protective Agreement and the Truc Employee Agreement

was knowing, willful, and informed.

34. Spencer Stuart has fully performed all of its obligations to Truc, including all conditions precedent under the Protective Agreement and the Truc Employee Agreement.

35. The Protective Agreement and the Truc Employee Agreement are supported by adequate consideration, are reasonable in scope, and are not more extensive than is reasonable and necessary for Spencer Stuart to protect its legitimate business interests, including but not limited to its confidential information and trade secrets, stable workforce, and client relationships.

36. Truc commenced his employment with Spencer Stuart on or about April 4, 2008, as a Consultant. Truc advanced in the Spencer Stuart organization throughout his employment, eventually ascending to become the leader of its Global Automotive Practice.

37. In this capacity, Truc oversaw Spencer Stuart's global search origination and execution for Spencer Stuart's Global Automotive Practice. His responsibilities included supervising the consultants and associates within the group. In this capacity, Truc had access to confidential, detailed reports regarding these consultants' performance metrics.

38. In connection with his involvement in numerous, high-level aspects of Spencer Stuart's global automotive search business, Truc was exposed to a broad range of highly sensitive information concerning Spencer Stuart's automotive search strategies and the proprietary executive assessment models used in furtherance of such strategies. For example, Truc had regular access to pending and prospective client searches, Spencer Stuart's Worldwide Client List Database, Mailing List Database, Board of Directors' Database, Confidential Candidate Reports, mapping data, organizational charts, and various proprietary industry-specific reports developed and/or purchased by Spencer Stuart. Truc was not authorized to share this

information with individuals who were not employed or retained by Spencer Stuart.

39. As the head of the Global Automotive Practice, Truc was also given access to and helped develop Spencer Stuart's substantial client, candidate, and employee relationships that he would not have had but for his employment with Spencer Stuart. Truc was responsible for cultivating these valuable relationships and developing and preserving the substantial goodwill that exists between Spencer Stuart and its clients and employees.

40. If a competitor obtained Truc's knowledge of Spencer Stuart's searches, clients, and candidates, it would potentially be able to use such information to eviscerate the competitive advantage that Spencer Stuart has spent years and millions of dollars developing. Indeed, given that Truc has the ability to map out the overall workings of Spencer Stuart's Global Automotive Practice and the specific searches it was working on, a competitor could use that information to replicate the very search strategies that are the core of Spencer Stuart's global automotive search business. Moreover, a competitor with access to Spencer Stuart's list of client and candidate contacts would have an unfair competitive advantage because it would not have to devote the substantial time and cost required to compile and to develop such information and could quickly gain access to clients and candidates that otherwise might not be possible.

41. Truc was well compensated by Spencer Stuart in exchange for the valuable services he provided. Indeed, Truc's collective compensation for fiscal years 2015-2016 alone equaled roughly $4 million.

Paquet's Employment with and Confidential Obligations to Spencer Stuart

42. Spencer Stuart hired Paquet as an associate in its Global Automotive Practice in February 11, 2010, in its Paris, France office.

43. On or around October 20, 2014, Paquet was assigned and hired into Spencer Stuart's Chicago, Illinois office, and worked closely under the supervision of Truc.

44. In consideration for Paquet's reassignment and continued employment by Spencer Stuart, Paquet executed a written Employee Agreement Regarding Confidentiality and other Obligations, in which Paquet agreed to only use Spencer Stuart's confidential information to fulfill his work duties and to not disclose such information outside of Spencer Stuart.

45. As a Senior Associate in Spencer Stuart's Global Automotive Practice, Paquet had regular direct contact with Spencer Stuart clients and candidates, and was involved in developing customized position and candidate specifications, conducting targeted research to determine search strategy, conducting rigorous competency-based interviews with candidates, performing in-depth executive assessments and analyses, and presenting candidates to the client.

46. In connection with his duties, Paquet participated in the development and cultivation of Spencer Stuart's substantial client and candidate relationships and was exposed to a broad range of highly sensitive information, including Spencer Stuart's search strategies, pending and prospective searches, Spencer Stuart's Worldwide Client List Database, Mailing List Database, and Board of Directors' Database, Confidential Candidate Reports, mapping data, organizational charts, and various proprietary industry-specific reports developed and/or purchased by Spencer Stuart. Paquet was not authorized to share this information with individuals who were not employed or retained by Spencer Stuart.

Truc Breaches His Common Law and Contractual Obligations to Spencer Stuart by Inducing Paquet to Join Korn Ferry and Korn Ferry Induces Same

47. In 2016, while still employed by Spencer Stuart and in violation of his contractual obligations and his duty of loyalty to Spencer Stuart, Truc encouraged and advised Paquet to quit his employment with Spencer Stuart and join Korn Ferry's Global Automotive Practice with Truc.

48. Korn Ferry is a global executive search and talent management firm engaged in

the business of providing executive recruitment and talent management services. Korn Ferry often competes against Spencer Stuart for the procurement of executive searches, including in the global automotive industry.

49. The market for services of the type offered by Spencer Stuart and Korn Ferry is highly competitive, requiring a combination of pricing, market contacts, effective search strategies, and interpersonal skills for success. Revenue from a single successful search is in the hundreds of thousands of dollars.

50. On information and belief, Korn Ferry, with full awareness of Truc's contractual non-solicitation obligations, aided, encouraged, or otherwise induced Truc's solicitation of Paquet to leave the employ of Spencer Stuart to join Korn Ferry.

51. As a direct result of Truc's solicitation, on December 12, 2016, Paquet abruptly notified Spencer Stuart of his intention to resign effective December 15, 2016. Upon inquiries from Spencer Stuart, Paquet refused to disclose where he was going to work. Spencer Stuart learned shortly thereafter that Paquet left Spencer Stuart to work in Korn Ferry's Global Automotive Practice and would be based in its Paris, France office.

Paquet Misappropriates Spencer Stuart's Confidential Information and Attempts to Conceal the Same

52. In furtherance of his intention to join Korn Ferry, shortly before and after giving notice of his resignation to Spencer Stuart, and in violation of his contractual and common law duties to Spencer Stuart, Paquet began secretly and without authorization to copy and to remove various confidential materials and information from Spencer Stuart's computer systems, and to appropriate such materials for use in his employment with Korn Ferry.

53. Indeed, in the days leading up to his departure from Spencer Stuart, Paquet sent a number of highly confidential documents to his personal email account of "ppaquet@laposte.net."

54. On December 7, 2016, Paquet sent to his personal email account a Progress Report for an ongoing VP Aftersales search for The Automotive Client. The report contained a confidential list of prospects for a search and identified their contact information, educational backgrounds, and career histories.

55. Similarly, on December 14, 2016, the day before the termination of his employment, Paquet forwarded to his personal account two highly confidential progress reports prepared by, among others, Paquet and Truc, for ongoing executive-level searches for The Automotive Client. The first report was related to The Automotive Client's search for a Vice President, Powertrain Performance, Control and Tuning. The report identified two candidates, two interested prospects, 23 potential prospects, and 58 prospects who were eliminated.

56. The second report was for an ongoing search related to The Automotive Client's search for a Vice President, Powertrain Projects. The report identified two proposed candidates, 10 interested prospects, 44 potential prospects, and 20 prospects eliminated.

57. Each report included a comprehensive profile for each candidate and prospect, which included educational background, languages, and career history.

58. In another email to his personal account on December 14, 2014, Paquet forwarded two candidate reports on the finalists for The Automotive Client's search for a Vice President, Powertrain Projects. These reports were prepared using Spencer Stuart's proprietary candidate assessment tools and contained, among other things, comprehensive information and analyses concerning the candidates' areas of strength against ideal experience; areas of strength against

critical competencies, including detailed reports on technical vision and process orientation, and collaboration and leadership; potential gaps versus the search specification; career transitions; and recruitment considerations.

59. Each of the reports that Paquet forwarded to his personal email account without authorization were highly confidential and of significant value. Indeed, each was expressly designated as confidential and stated: "This document and the information contained within is confidential and is provided to the named recipient. . . . Distribution or reproduction of this document and/or its contents is strictly prohibited."

60. Paquet had no legitimate purpose for sending the reports to his personal email account in anticipation of his departure.

61. The reports would be a great value to Spencer Stuart's competitors, including Korn Ferry.

62. On information and belief, Paquet has used and/or disclosed the information that he misappropriated from Spencer Stuart in the course of his employment for Korn Ferry.

63. In the days before his resignation, Paquet also connected two personal USB devices to his Spencer Stuart-issued computer and migrated and/or attempted to migrate work-related files.

64. Throughout the course of his scheme to pirate Spencer Stuart's confidential information, Paquet took extraordinary measures to conceal his faithless and illegal acts from Spencer Stuart, and to deliberately mislead Spencer Stuart of his intentions, erasing evidence of his scheme, by, among other things, deleting thousands of emails and other communications from Spencer Stuart's computer system.

65. Between December 7, 2016, and his termination on December 15, 2016, Paquet deleted thousands of work-related files from his Spencer Stuart-issued computer, with a high volume of the deletions occurring on Wednesday, December 7, and Sunday, December 11. Paquet transferred such files to his computer's recycle bin and then emptied the recycle bin in an effort to wipe all traces of such files.

66. Unbeknownst to Paquet, the deleted files were remained identifiable through the use of computer forensic techniques conducted by an outside computer forensic expert, who was engaged by Spencer Stuart to discover the extent and consequences of Paquet's unauthorized activities and damage to the integrity of Spencer Stuart's data.

67. On the date of his termination, Paquet was confronted by Spencer Stuart's General Counsel about Paquet's unauthorized transfer of Spencer Stuart's confidential information to his personal email account and his connection of a USB device to his computer and unauthorized migration of work-related documents to the USB.

68. In response, Paquet claimed that he only transferred personal documents and refused to hand over his USB drive for inspection.

69. On the following day, December 16, 2016, Paquet sent an email to Spencer Stuart's General Counsel, tacitly conceding that he transferred work-related documents to a personal USB device and to his personal email, but represented that he deleted all such documents.

70. Upon information and belief, Paquet remains in possession of Spencer Stuart's confidential information that he accessed and retained without authorization and is using such information in the course of his employment with Korn Ferry.

71. The termination of his employment did not stop Paquet from contacting a candidate involved in an ongoing Spencer Stuart search for The Automotive Client. On December 21, 2016, nearly a week after his termination of employment from Spencer Stuart, Paquet, from his personal email account and copying Truc, responded to an email from a search finalist regarding his interviews with The Automotive Client, to which Paquet stated that he would try to call the candidate the following day.

72. While Paquet refused to disclose the identity of his new employer upon inquiry from Spencer Stuart, Truc at all relevant times was aware that Paquet was joining Korn Ferry, and indeed actively encouraged and advised Paquet to make the career move. On December 24, 2016, nearly two weeks after Paquet's abrupt resignation, Truc emailed Paquet to see if he had disclosed his Korn Ferry employment with others at Spencer Stuart, stating: "Did you tell Coplen you were going to Korn? She is apparently going saying that."

Truc's Fraudulent Concealment of His Intention to Work for Korn Ferry, Breach of His Contractual Obligations, and Korn Ferry's Inducement of the Same

73. In late 2016, Truc devised a scheme to leave Spencer Stuart and join Korn Ferry.

74. Korn Ferry is and was at all relevant times aware of Truc's Protective Agreement and the restrictive covenants contained therein, including the one-year non-competition and non-solicitation restrictions.

75. Korn Ferry is a "Competitive Business" as that term is defined in the Protective Agreement.

76. On December 16, 2016, just one day after Paquet resigned from Spencer Stuart to join Korn Ferry, Truc submitted his resignation to Spencer Stuart's CEO. Truc indicated he was leaving Spencer Stuart to join The Automotive Client as its Head of Executive Recruiting and Strategic Projects.

77. While tendering his resignation, Truc was adamant that he would not be working for a competitor of Spencer Stuart, such as Korn Ferry.

78. At the time of his resignation, Truc intentionally omitted the fact that he was only joining The Automotive Client temporarily, as a ruse to influence Spencer Stuart not to elect to enforce the non-competition restriction in his Protective Agreement and that he was planning on joining Korn Ferry's Global Automotive Practice soon after the election period expired.

79. Indeed, after his resignation, Truc bragged to other participants in the industry that his period of employment at The Automotive Client was a subterfuge to run out Spencer Stuart's non-competition election period. Indeed, while at The Automotive Client, in coordination with Paquet and Korn Ferry and in in breach of the non-solicitation obligations in his Protective Agreement, Truc worked on searches for The Automotive Client on behalf of Korn Ferry.

80. Spencer Stuart reasonably and justifiably relied on Truc's affirmative representation that he was leaving Spencer Stuart to join The Automotive Client and his intentional omission that he was in fact planning on working for Korn Ferry when it decided to not elect to enforce Truc's non-competition obligations at the time of his resignation.

81. Had Truc announced his intention of working for Korn Ferry, Spencer Stuart would have elected to enforce Truc's non-competition obligation set forth in his Protective Agreement, which would have prevented Truc from performing competitive services for Korn Ferry for a period of one year.

82. Upon information and belief, Korn Ferry aided in Truc's plan to fraudulently conceal his intention of joining Korn Ferry by assisting Truc in securing temporary employment with The Automotive Client and not disclosing Truc's impending Korn Ferry employment.

83. On March 1, 2017, just two months after Truc left Spencer Stuart, Korn Ferry announced that Truc was joining Korn Ferry's Global Automotive Practice in its Chicago office.

84. On March 28, 2017, Spencer Stuart notified Truc, through his attorney, that it was electing to enforce the remainder of Truc's non-competition restriction. In connection with this notification, Spencer Stuart offered to continue to pay Truc's Spencer Stuart base salary for the duration of the restricted period, as well as an additional payment of no less than $200,000.

85. Truc rejected Spencer Stuart's demand and remains in active employment by Korn Ferry. In his employment at Korn Ferry, Truc will render services, directly or indirectly, to a Competitive Business in connection with searches that are, or would be, in actual competition, with Spencer Stuart, and such rendering of services will potentially involve the disclosure or use of Spencer Stuart's confidential and trade secret information. Therefore, Truc's employment in Korn Ferry's Global Automotive Practice violates the Protective Agreement and the Truc Employee Agreement.

86. Upon information and belief, in his employment with Korn Ferry and in coordination with Korn Ferry, Truc has solicited and provided services to Spencer Stuart clients in breach of the client non-solicitation obligations in his Protective Agreement.

87. Upon information and belief, Truc and Korn Ferry's improper solicitation of Spencer Stuart clients is ongoing.

88. The continued improper solicitation of Spencer Stuart clients by Truc and Korn Ferry puts Spencer Stuart's legitimate protectable interests at grave risk, including its confidential information; trade secrets; goodwill; and customer relationships, particularly in its Global Automotive Practice.

89. The continued improper solicitation of Spencer Stuart's clients by Truc and Korn Ferry has caused and will continue to cause irreparable harm for which no adequate remedy at law exists.

90. As a direct and proximate result of Truc's fraudulent concealment and breach of the Protective Agreement, Spencer Stuart has suffered and will continue to suffer substantial injuries and damages.

Truc Misappropriates Spencer Stuart's Confidential Information in Breach of His Common Law and Contractual Obligations to Spencer Stuart

91. In furtherance of his intention to join Korn Ferry, shortly before giving notice of his resignation to Spencer Stuart, and in violation of his contractual and common law duties to Spencer Stuart, Truc began without authorization sending Spencer Stuart's confidential information and materials to his personal email account of f_truc@yahoo.com in order to appropriate such materials for use in his employment with Korn Ferry.

92. For example, on November 29, 2016, Truc forwarded to his personal account two highly confidential progress reports prepared by, among others, Paquet and Truc, for ongoing executive-level searches for The Automotive Client. The first report related to The Automotive Client's search for a Vice President, Powertrain Performance, Control and Tuning. The report included comprehensive profiles of two candidates, seven interested prospects, and 67 potential prospects.

93. The second report was for an ongoing search related to The Automotive Client's search for a Vice President, Powertrain Projects. The report included comprehensive profiles of two proposed candidates, two interested prospects, and 23 potential prospects.

94. The next day, on November 30, 2016, Truc forwarded to his personal email account an organizational chart from The Automotive Client, which was designated as "Confidential" by The Automotive Client.

95. On December 9, 2016, Truc sent to his personal email account a progress report for an ongoing VP Aftersales search for The Automotive Client. The report detailed Spencer Stuart's "key findings," outlined Spencer Stuart's comprehensive search strategy for the position, and included a comprehensive profile for each prospect.

96. On December 5, 2016, forwarded to his personal email account confidential materials from Spencer Stuart's Enhanced Search Training Workshop, including (i) Spencer Stuart's proprietary framework for assessing candidate's leadership capability, which was labeled for "Internal Use Only"; (ii) a new position specification template, which was labeled "Confidential"; (iii) a new candidate report template, which was labeled "Confidential"; and (iv) examples of search strategy, position specification, and candidate report generation.

97. On December 14, 2016, just two days before Truc announced his abrupt resignation, Truc sent to his personal email account updated progress reports for The Automotive Client's Vice President, Powertrain Projects and Vice President, Powertrain Performance, Control and Tuning searches.

98. In another email to his personal account on December 14, 2014, Truc forwarded to his personal email details about an upcoming interview between The Automotive Client and a finalist for its Vice President, Powertrain Projects search.

99. Truc had no legitimate purpose for sending the confidential progress reports, search documents, and training workshop documents to his personal email account in anticipation of his departure.

100. Indeed, each of the progress reports that Truc forwarded to his personal email account without authorization were highly confidential and of significant value. Indeed, each was expressly designated as confidential and stated: "This document and the information contained within is confidential and is provided to the named recipient. . . . Distribution or reproduction of this document and/or its contents is strictly prohibited."

101. The reports, search documents, and training materials would be a great value to Spencer Stuart's competitors, including Korn Ferry.

102. In connection with his resignation, Truc acknowledged that he also had Spencer Stuart's confidential information relating to other clients, which he indicated he was going to inventory and return or delete. To date, Truc has yet to return any such confidential information or provide Spencer Stuart with an inventory of the same.

103. On information and belief, Truc has used and/or disclosed the information that he misappropriated from Spencer Stuart in the course of his employment for Korn Ferry.

104. Upon information and belief, Truc remains in possession of Spencer Stuart's confidential information that he accessed and retained without authorization and is using such information in the course of his employment with Korn Ferry.

Korn Ferry and Truc Act in Concert to Violate Truc's Non-Solicitation Obligations through Korn Ferry's Attempts to Recruit Other Spencer Stuart Employees

105. In addition to Truc and Paquet, Korn Ferry has recently attempted to recruit and to hire numerous Spencer Stuart employees, notwithstanding their contractual obligations to Spencer Stuart.

106. In early 2017, Korn Ferry hired Spencer Stuart employee Peter Bogin, who, like Truc, was subject to an enforceable non-competition restriction governed by New York law. In an effort to circumvent and interfere with Bogin's valid non-competition agreement, Bogin and

Marat Fookson, Korn Ferry's Vice President of Global Compensation and Benefits, discussed an extraordinary ruse under which, to attempt to avoid the application of New York law, Bogin would move to California, obtain a California driver's license, and pay taxes in California.

107. In early 2017, Anahita Kagti, a junior researcher in Spencer Stuart's Global Automotive Practice who worked closely with Truc in Spencer Stuart's Chicago office, was recruited and hired by Korn Ferry.

108. Upon information and belief, Truc, in coordination with Korn Ferry, directly or indirectly solicited Kagti to join Korn Ferry and now works closely with Kagti in Korn Ferry's Global Automotive Practice.

109. In addition to the foregoing successful solicitation attempts, Korn Ferry unsuccessfully attempted to recruit and hire another executive search consultant in Spencer Stuart's industrial practice.

110. Upon information and belief, Truc, in coordination with Korn Ferry, directly or indirectly solicited this consultant to join Korn Ferry and Truc, in violation of Truc's non-solicitation obligations.

111. Truc acquired knowledge of Kagti and this consultant during his employment with Spencer Stuart.

112. Upon information and belief, Truc and Korn Ferry's improper solicitation of Spencer Stuart employees is ongoing.

113. The continued improper solicitation of Spencer Stuart employees by Truc and Korn Ferry puts Spencer Stuart's legitimate protectable interests at grave risk, including its confidential information; trade secrets; goodwill; customer relationships; and its interest in maintaining a stable workforce of employees, particularly in its Global Automotive Practice.

114. The continued improper solicitation of Spencer Stuart's employees by Truc and Korn Ferry has caused and will continue to cause irreparable harm for which no adequate remedy at law exists.

COUNT I
BREACH AND THREATENED BREACH OF THE TRUC PROTECTIVE AGREEMENT
(AGAINST TRUC ONLY)

115. Spencer Stuart realleges and restates paragraphs 1–114 as if fully restated herein.

116. The written Protective Agreement signed by Truc is a valid and enforceable contract entered into in exchange for good and valuable mutual consideration.

117. The restrictive covenants in the written Protective Agreement are reasonably necessary to protect Spencer Stuart's legitimate protectable business interests and are reasonable in terms of scope.

118. Spencer Stuart has fully performed every material obligation it owes to Truc under the Protective Agreement.

119. The Protective Agreement prohibits Truc, for a period of one year after the termination of his Spencer Stuart employment, from (a) upon Spender Stuart's election, engaging in a Competitive Business for one year, (b) soliciting Spencer Stuart employees to leave the employ of Spencer Stuart, and (c) soliciting Spencer Stuart clients.

120. Korn Ferry is a "Competitive Business," as that term is defined in the Protective Agreement.

121. Spencer Stuart has elected to enforce Truc's non-competition obligations as set forth in the Protective Agreement.

122. Truc has breached and threatens to continue breaching his Protective Agreement by, among other wrongful acts, (a) working for Korn Ferry in a similar capacity to that which he had at Spencer Stuart, and by providing services to, and having responsibilities at, Korn Ferry

that are similar to those he had during his employment with Spencer Stuart, (b) taking part in the solicitation of Spencer Stuart employees, including Paquet, and (c) taking part in the solicitation of Spencer Stuart clients, including The Automotive Client.

123. Spencer Stuart has suffered, and will continue to suffer, damages as a result of Truc's breaches.

124. Unless Truc is enjoined from violating the terms of the Truc Protective Agreement, Spencer Stuart will suffer irreparable and incalculable harm, including the loss of goodwill, client relationships, and the stability of its workforce. No adequate remedy at law exists for this breach.

COUNT II
BREACH AND THREATENED BREACH OF THE TRUC EMPLOYEE AGREEMENT
(AGAINST TRUC ONLY)

125. Spencer Stuart realleges and restates paragraphs 1–124 as if fully restated herein.

126. The Employee Agreement signed by Truc is a valid and enforceable contract.

127. Spencer Stuart has fully performed every obligation it owes to Truc under the Employee Agreement.

128. The Employee Agreement prohibits Truc from using or disclosing Spencer Stuart's confidential information.

129. Upon information and belief, Truc has breached and threatens to continue breaching his Employee Agreement by using or disclosing Spencer Stuart's confidential information on behalf of Korn Ferry.

130. Spencer Stuart has suffered, and will continue to suffer, damages a result of Truc's breaches.

131. Unless Truc is enjoined from violating the Employee Agreement, Spencer Stuart will suffer irreparable and incalculable harm, including the loss of proprietary and confidential

information for which it can never be compensated. No adequate remedy at law exists for this breach.

COUNT III
TORTIOUS INTERFERENCE WITH CONTRACT – TRUC PROTECTIVE AGREEMENT
(AGAINST KORN FERRY ONLY)

132. Spencer Stuart realleges and restates paragraphs 1–131 as if fully restated herein.

133. Truc's Protective Agreement is a valid and enforceable contract.

134. Korn Ferry is and was at all relevant times aware of Truc's Protective Agreement and the restrictive covenants contained therein.

135. Korn Ferry intentionally and unjustifiably induced and/or is threatening to induce Truc to breach the Truc Protective Agreement by, among other wrongful acts, aiding and abetting, persuading, encouraging, inciting, and/or causing Truc (a) to engage in competition with Spencer Stuart in violation of his contractual non-competition obligations, (b) to solicit and/or to attempt to solicit Spencer Stuart clients in violation of his contractual non-solicitation obligations, and (c) to solicit and/or to attempt to solicit Spencer Stuart employees to leave Spencer Stuart's employ in violation of his contractual non-solicitation obligations.

136. As a result of Korn Ferry's tortious interference and inducement, Truc has breached and will continue to breach the Truc Employee Agreement and Protective Agreement by, among other wrongful acts, (a) engaging in competition with Spencer Stuart as an employee of Korn Ferry in violation of his contractual non-competition obligations, (b) directly, and/or indirectly through intermediaries, soliciting Spencer Stuart clients in violation of his contractual non-solicitation obligations, and (c) directly, and/or indirectly through intermediaries, soliciting Spencer Stuart employees in violation of his contractual non-solicitation obligations.

137. Spencer Stuart has suffered, and will continue to suffer, damages because of Korn Ferry's conduct.

138. Unless Korn Ferry is enjoined from tortiously interfering with the Truc Employee Agreement and Protective Agreement, Spencer Stuart will be irreparably harmed. No adequate remedy at law exists for this tortious interference.

COUNT IV
TORTIOUS INTERFERENCE WITH CONTRACT – TRUC EMPLOYEE AGREEMENT
(AGAINST KORN FERRY ONLY)

139. Spencer Stuart realleges and restates paragraphs 1–138 as if fully restated herein.

140. Truc's Employee Agreement is a valid and enforceable contract.

141. Korn Ferry is and was at all relevant times aware Truc's Employee Agreement and the restrictive covenants contained therein.

142. Korn Ferry intentionally and unjustifiably induced and/or is threatening to induce Truc to breach the Truc Employee Agreement by, among other wrongful acts, knowingly and intentionally placing Truc in a position in which he would violate his confidentiality obligations to Spencer Stuart.

143. As a result of Korn Ferry's tortious interference and inducement, Truc has breached and will continue to breach the Truc Employee Agreement by, among other wrongful acts, using or disclosing Spencer Stuart's confidential and proprietary business information learned while in the employ of Korn Ferry.

144. Spencer Stuart has suffered, and will continue to suffer, damages because of Korn Ferry's conduct.

145. Unless Korn Ferry is enjoined from tortiously interfering with the Truc Employee Agreement, Spencer Stuart will be irreparably harmed. No adequate remedy at law exists for this tortious interference.

COUNT V
TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
(AGAINST KORN FERRY ONLY)

146. Spencer Stuart realleges and restates paragraphs 1–144 as if fully restated herein.

147. Prior to the wrongful conduct of Spencer Stuart, Spencer Stuart enjoyed an ongoing employment relationships with Truc and Paquet and had a reasonable expectancy that these employment relationships would continue.

148. Korn Ferry knew or should have known that Spencer Stuart had a reasonable expectancy regarding its employment relationships with Truc and Paquet.

149. Korn Ferry intentionally, maliciously, and in bad faith interfered with Spencer Stuart's employment relationships with Truc and Paquet in a scheme to interfere with Spencer Stuart's contractual relations with its former employees, induce Spencer Stuart employees to breach their fiduciary duties, and cause Spencer Stuart employees fraudulently to mislead and to deceive Spencer Stuart.

150. Upon information and belief, Korn Ferry will continue to solicit remaining Spencer Stuart employees in Spencer Stuart's Global Automotive Practice to terminate their employment relationship with Spencer Stuart to join Korn Ferry's competing business, further disrupting Spencer Stuart's Global Automotive Practice.

151. Spencer Stuart has been, is, and will continue to be damaged by Korn Ferry's conduct.

152. As a direct and proximate result of Korn Ferry's acts of tortious interference with Spencer Stuart's relationships with its employees, Spencer Stuart has suffered and will continue

to suffer an imminent risk of further irreparable harm, including but not limited to the loss of valuable employee relationships with trained employees and damage to Spencer Stuart's reputation and goodwill, for which Spencer Stuart has no adequate remedy at law.

COUNT VI
BREACH OF DUTY OF LOYALTY
(AGAINST TRUC ONLY)

153. Spencer Stuart realleges and restates paragraphs 1–152 as if fully restated herein.

154. Truc, as an employee of Spencer Stewart, owed a duty of loyalty to Spencer Stuart. That duty included the obligation to deal honestly, loyally, fairly and openly with Spencer Stuart and to not usurp business opportunities and clients or to solicit Spencer Stuart employees to resign in favor of competitive employment.

155. Truc breached his duty of loyalty to Spencer Stuart by, among other wrongful acts, (a) failing to devote his entire time, energy, attention, and loyalty to the business of Spencer Stuart, and (b) soliciting, encouraging, or inducing Spencer Stuart employees, including Paquet, to terminate their employment with Spencer Stuart in order to join Korn Ferry while Truc was still employed by Spencer Stuart, (c) improperly acquiring Spencer Stuart's proprietary and confidential information for the benefit of Korn Ferry; and (d) preparing to divert Spencer Stuart clients and business to Korn Ferry while still employed by Spencer Stuart.

156. Truc's breaches were intentional, willful, and without just cause.

157. By reason of the foregoing, Truc has directly and proximately caused injury to Spencer Stuart, and Spencer Stuart has suffered, and continues to suffer, substantial injury as a result of Truc's actions.

COUNT VII
INDUCING BREACH OF DUTY OF LOYALTY
(AGAINST KORN FERRY ONLY)

158. Spencer Stuart realleges and restates paragraphs 1–157 as if fully restated herein.

159. Korn Ferry, being fully aware and in complete disregard of Truc's employment with Spencer Stuart, and duty of loyalty to Spencer Stuart, actively encouraged, induced, and persuaded Truc to breach his duty of loyalty to Spencer Stuart by, among other wrongful acts, (a) failing to devote his entire time, energy, attention, and loyalty to the business of Spencer Stuart, and (b) soliciting, encouraging, or inducing Spencer Stuart employees to terminate their employment with Spencer Stuart in order to join Korn Ferry while Truc was still employed by Spencer Stuart.

160. As a recipient of the services of the former Spencer Stuart employees who were induced by Truc to leave Spencer Stuart's employ in breach of Truc's fiduciary duties, Korn Ferry has benefited from Truc's breach of his fiduciary duties.

161. By reason of the foregoing, Korn Ferry has directly and proximately caused injury to Spencer Stuart, and Spencer Stuart has suffered, and continues to suffer, substantial injury as a result of Korn Ferry's actions.

COUNT VIII
FRAUDULENT CONCEALMENT
(AGAINST TRUC ONLY)

162. Spencer Stuart realleges and restates paragraphs 1–161 as if fully restated herein.

163. When resigning from his Spencer Stuart employment, Truc represented to Spencer Stuart that he was going to work for The Automotive Client, and that he would not be working for a competitor of Spencer Stuart.

164. Truc intentionally, willfully, or recklessly failed to disclose and/or concealed material facts that he was only joining The Automotive Client in order to induce Spencer Stuart to not elect to enforce his non-competition obligations, at which time he was intending to and did in fact join Spencer Stuart's direct competitor, Korn Ferry.

165. By expressly raising the issue of his future employment and disclaiming any intention of working for a competitor, while actively concealing his intent to work for Korn Ferry, Truc breached his duty to reveal all material facts of which he had notice or actual knowledge, in order not to deceive or to mislead Spencer Stuart. Truc's concealment of such material information concerning his future employment at Korn Ferry constitutes material and actionable concealment.

166. Truc engaged in this course of active concealment for the purpose of misleading Spencer Stuart and to induce it to not enforce his covenant not to compete, despite Truc's duty to disclose all material information about his future employment plans.

167. Truc knew and had reason to know that he omitted material facts from Spencer Stuart and that Spencer Stuart had no way to determine the truth behind the concealments and omissions of material fact concerning Truc's future Korn Ferry employment.

168. The facts concealed by Truc about his future Korn Ferry employment were material in that Spencer Stuart would have considered them important in deciding whether to enforce the non-compete against Truc.

169. Spencer Stuart reasonably and justifiably relied on Truc's nondisclosures of material facts about his impending employment at Korn Ferry. As a result of such reliance, Spencer Stuart declined to elect to enforce Truc's non-compete to protect its legitimate business interests.

170. Had Spencer Stuart been aware of Truc's intention to work for Korn Ferry in its Global Automotive Practice, it would have elected to enforce Truc's non-competition obligations at the time of his resignation as set forth in Truc's Protective Agreement.

171. As a direct and proximate result of Truc's fraudulent concealment, Spencer Stuart has suffered and will continue to suffer substantial injuries and damages for which Spencer Stuart is entitled to recovery.

COUNT IX
CIVIL CONSPIRACY
(AGAINST KORN FERRY AND TRUC)

172. Spencer Stuart realleges and restates paragraphs 1–171 as if fully restated herein.

173. Truc and Korn Ferry knowingly, intentionally, and recklessly conspired to conceal, suppress, and hide Truc's Korn Ferry impending employment in order to induce Spencer Stuart not to elect to enforce Truc's non-compete at the time of Truc's resignation.

174. Spencer Stuart reasonably and justifiably relied on Truc's and Korn Ferry's concealment, suppression, and omission of these material facts when, to its detriment, it did not elect to enforce Truc's non-competition obligations at the time of his resignation.

175. Truc and Korn Ferry knowingly, intentionally, or recklessly conspired to raid the employees in Spencer Stuart's Automotive Global Practice in violation of Truc's contractual and fiduciary duties and have, as a result of such conspiracy, successfully recruited employees from Spencer Stuart's employ.

176. Throughout the time relevant to this Complaint, Truc and Korn Ferry knowingly, intentionally, or recklessly conspired to divert clients from Spencer Stuart to Korn Ferry in violation of Truc's contractual and fiduciary duties and, upon information and belief, have successfully diverted clients from Spencer Stuart.

177. As a result of the conspiracy and acts in furtherance of the conspiracy, Spencer Stuart has been damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Spencer Stuart respectfully requests that this Court:

(i) Enjoin Truc, and anyone acting in concert with him, from using, copying, analyzing, or disseminating Spencer Stuart's confidential and proprietary information in any fashion;

(ii) Enjoin Truc, and anyone acting in concert with him, from, directly or indirectly, soliciting, encouraging, or advising any Spencer Stuart employee to leave the employ of Spencer Stuart in violation of the contractual obligations Truc owes to Spencer Stuart contained in the Truc Protective Agreement with Spencer Stuart;

(iii) Enjoin Truc, and anyone acting in concert with him, from, directly or indirectly, soliciting or enticing away any person, partnership, corporation, or other entity that was a client or prospective client in violation of the contractual obligations Truc owes Spencer Stuart as contained in the Truc Protective Agreement with Spencer Stuart;

(iv) Enjoin Truc from rendering any services, directly or indirectly, as an employee, officer, consultant or in any other capacity, to Korn Ferry, in violation of the contractual obligations Truc owes Spencer Stuart as contained in the Truc Protective Agreement with Spencer Stuart;

(v) Enjoin Korn Ferry, its officers, agents, servants, employees, and attorneys, and those acting in concert with them, from aiding or abetting or causing Truc to violate the contractual obligations he owes to Spencer Stuart as contained in the Truc Employee Agreement and Truc Protective Agreement;

(vi) Order Truc to return any and all copies, reproductions, summaries, or notes made from any confidential or proprietary information that came into his possession through his employment with Spencer Stuart, or obtained by him thereafter;

(vii) Order Truc to forfeit all of the compensation he received from Spencer Stuart during the period of time he breached his duty of loyalty to Spencer Stuart;

(viii) Award Spencer Stuart compensatory, incidental, consequential, and punitive damages in an amount to be determined at trial;

(ix) Award Spencer Stuart its costs and expenses, including attorneys' fees and costs; and

(x) Grant Spencer Stuart such other and further relief as the Court deems just and proper.

Dated: March 29, 2017

Respectfully submitted,

SSI (US), INC., D/B/A/ SPENCER STUART

By: _____
One of Its Attorneys

Thomas L. Kirsch (tkirsch@winston.com)
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Firm No. 90875

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SSI (US), INC., d/b/a SPENCER STUART, a Delaware Corporation,

Plaintiff,

v.

FRANÇOIS P. TRUC and KORN/FERRY INTERNATIONAL, a Delaware Corporation,

Defendants.

2017CH04510
CALENDAR/ROOM 07
TIME 00:00
No:Injunction

MOTION FOR APPOINTMENT OF SPECIAL PROCESS SERVER

SSI (US), Inc., d/b/a Spencer Stuart ("Spencer Stuart"), through its undersigned attorneys, moves this Court, pursuant to 735 ILCS 5/2-202, for leave to serve Defendants François P. Truc and Korn/Ferry International by a private process server. In support of this motion, Spencer Stuart states as follows:

1. Spencer Stuart seeks the appointment of ATG LegalServe Inc. ("ATG"), 105 West Adams Street, Suite 1350, Chicago, Illinois 60603, PERC No. 117.001494, as special process server in this case.

2. ATG is not a party to this action and will use a process server over the age of 18.

3. Exigent circumstances exist for the appointment of a special process server. Specifically, as set forth more fully in the Complaint for Injunctive and Other Relief filed simultaneously herewith, Truc, in coordination with Korn Ferry, is in breach of his non-competition and non-solicitation obligations to Spencer Stuart as part of a systematic, concerted, and unlawful effort to dismantle Spencer Stuart's Global Automotive Practice and move that business to Korn Ferry.

4. Based upon the foregoing, it is imperative that Spencer Stuart proceed quickly and, if at all possible, avoid any delay which may otherwise occur should service of process be attempted through the office of the Sheriff.

5. Service of the summons and the Complaint will be in accordance with the Illinois Code of Civil Procedure and Illinois Supreme Court Rules.

6. Under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth herein are true and correct or on information and belief, certifies that he believes the same to be true.

WHEREFORE, Spencer Stuart requests that its motion be granted.

Dated: March 29, 2017

Respectfully submitted,

SSI (US), INC., D/B/A/ SPENCER STUART

By: _____
One of Its Attorneys

Thomas L. Kirsch (tkirsch@winston.com)
Daniel J. Fazio (dfazio@winston.com)
Joseph L. Motto (jmotto@winston.com)
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Jaime Simon (jrsimon@winston.com)
WINSTON & STRAWN LLP (Firm No. 90875)
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600
(312) 558-5700 (fax)

2120 - Served
2220 - Not Served
2320 - Served By Mail
2420 - Served By Publication
Summons - Alias Summons

2121 - Served
2221 - Not Served
2321 - Served By Mail
2421 - Served By Publication

(12/31/15) CCG N001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

SSI (US), INC., d/b/a SPENCER STUART
(Name all parties)
v.
FRANÇOIS P. TRUC and KORN/FERRY INTERNATIONAL

2017CH04510
CALENDAR/ROOM 07
TIME 00:00
No. Injunction

⊙ SUMMONS ○ ALIAS SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

☑ Richard J. Daley Center, 50 W. Washington, Room 802, Chicago, Illinois 60602

☐ District 2 - Skokie
5600 Old Orchard Rd.
Skokie, IL 60077

☐ District 3 - Rolling Meadows
2121 Euclid 1500
Rolling Meadows, IL 60008

☐ District 4 - Maywood
Maybrook Ave.
Maywood, IL 60153

☐ District 5 - Bridgeview
10220 S. 76th Ave.
Bridgeview, IL 60455

☐ District 6 - Markham
16501 S. Kedzie Pkwy.
Markham, IL 60428

☐ Child Support: 50 W. Washington, LL-01, Chicago, IL 60602

You must file within 30 days after service of this Summons, not counting the day of service.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the Officer:
This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than thirty (30) days after its date.

☑ Atty. No.: 90875
Name: Daniel J. Fazio, Winston & Strawn LLP
Atty. for: Plaintiff, SSI (US), Inc., d/b/a Spencer Stuart
Address: 35 W. Wacker Drive
City/State/Zip Code: Chicago, Illinois 60601
Telephone: (312) 558-5600
Primary Email Address:
dfazio@winston.com
Secondary Email Address(es):
tkirsch@winston.com; jmotto@winston.com
bostrander@winston.com; jrsimon@winston.com

Witness: DOROTHY BROWN MAR 29 2017

DOROTHY BROWN, Clerk of Court

Date of Service:
(To be inserted by officer on copy left with Defendant or other person)

**Service by Facsimile Transmission will be accepted at:

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SSI (US), INC., d/b/a SPENCER STUART, a Delaware Corporation,	)	
Plaintiff,	)	Hon. Diane J. Larsen
v.	)	
	)	Case No. 2017-CH-04510
FRANÇOIS P. TRUC and KORN/FERRY INTERNATIONAL, a Delaware Corporation,	)	
Defendants.	)	

AGREED ORDER OF DISMISSAL

This matter coming to be heard on the parties' Stipulation of Dismissal With Prejudice, due notice having been given, and the Court being duly advised in the premises:

IT IS HEREBY ORDERED:

This cause is dismissed with prejudice and without costs by agreement of the parties.

Date:_____

Entered: Diane Joan Larsen
Judge Diane J. Larsen

ENTERED
JUDGE DIANE J. LARSEN-1771
AUG 21 2017
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK_____

ORDER PREPARED BY:
WINSTON & STRAWN LLP
35 W. Wacker Dr.
Chicago, IL 60601

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SSI (US), INC., d/b/a SPENCER STUART, a Delaware Corporation,	)	
Plaintiff,	)	Case No. 17 cv 2409
v.	)	Judge: Hon. Ruben Castillo
PIERRE-EDOUARD PAQUET,	)	Magistrate Judge: Hon. Jeffrey T. Gilbert
Defendant.	)	

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff SSI (US), Inc., d/b/a Spencer Stuart ("Spencer Stuart"), by and through its attorneys, Winston & Strawn LLP, for its First Amended Complaint for Injunctive and Other Relief against Defendant Pierre-Edouard Paquet ("Paquet") alleges as follows:

INTRODUCTION

1. This is an action to remedy the theft by Defendant Pierre-Edouard Paquet ("Paquet") of Spencer Stuart's highly-valuable confidential information, as well as Paquet's breaches and threatened breaches of his non-solicitation agreement with Spencer Stuart. Paquet, who until recently was employed by Spencer Stuart in its Chicago office, unlawfully downloaded and absconded with dozens of Spencer Stuart's confidential files on his way out the door to join Spencer Stuart's direct competitor, Korn Ferry. The files Paquet unlawfully took provide him and Korn Ferry with a blueprint for Spencer Stuart's confidential executive searches in the automotive industry, and thus, for how most effectively to compete with and to steal business away from Spencer Stuart. Paquet has also been attempting to solicit Spencer Stuart employees

to join him at Korn Ferry in violation of his employee non-solicitation agreement with Spencer Stuart.

2. Paquet abruptly resigned from Spencer Stuart on December 11, 2016. His last day at Spencer Stuart was December 15, 2016. Paquet refused to disclose where he would be working. Given the suspicious circumstances surrounding his departure, Spencer Stuart initiated an investigation into Paquet's computer activities in the weeks leading to his departure. The preliminary findings indicated that Paquet had improperly uploaded company information to his own external storage devices shortly before giving notice of his resignation. When confronted with this information, Paquet initially denied having taken any company information. Shortly after his departure, however, Paquet sent Spencer Stuart's General Counsel an email in which he tacitly admitted to taking the company's confidential information. Subsequent investigation into Paquet's activities has revealed that Paquet, secretly and without authorization, improperly downloaded and copied possibly hundreds of confidential Spencer Stuart files from Spencer Stuart's computer systems, and then attempted to conceal his activities by permanently deleting the files from his Spencer Stuart laptop before returning it. Paquet undertook these unlawful activities in an effort to lay the groundwork for diverting searches and other valuable business opportunities properly belonging to Spencer Stuart to his new employer, Korn Ferry. Paquet's unlawful activities have already borne fruit for his new employer, as least one valuable search that had been underway at Spencer Stuart has been transferred to Korn Ferry.

3. Paquet's efforts in this regard were part of a larger conspiracy by Paquet, his former boss at Spencer Stuart, François Truc, as well as Korn Ferry itself, to compete improperly with Spencer Stuart by absconding not only with its confidential and proprietary information, but also with its clients and employees. Indeed, Truc and Korn Ferry hatched an elaborate scheme to

work an end-run around Truc's non-compete agreement with Spencer Stuart, by having Truc tell Spencer Stuart he was leaving to take a job with a client, then actually going to work for that client as a ruse for two months, only then to reunite with Paquet at Korn Ferry just after Spencer Stuart's non-compete election period expired. Truc has been bragging in the industry about this charade he and Korn Ferry orchestrated. Now Truc, along with Paquet, are working together at Korn Ferry, utilizing Spencer Stuart's confidential information against it in direct competition with Spencer Stuart and attempting to solicit more Spencer Stuart employees to join them at Korn Ferry.[1]

4. As a result of the perfidious and unlawful acts described above, Spencer Stuart has suffered, and will continue to suffer, substantial monetary damages, as well as injuries not readily susceptible to calculation or fully compensable by monetary damages. Accordingly, in addition to an award of monetary damages, Spencer Stuart seeks an Order: (i) enjoining Paquet from any further use or disclosure of Spencer Stuart's confidential and proprietary business materials and information; (ii) compelling Paquet immediately to return to Spencer Stuart all confidential and proprietary business materials and information of Spencer Stuart in his possession, custody or control, including any hard copies and electronic copies thereof and materials derived therefrom; and (iii) enjoining Paquet from continuing, in breach of his employee non-solicitation obligations, to attempt to siphon Spencer Stuart's employee workforce in an effort to transport Spencer Stuart's global automotive search practice to Korn Ferry. Unless enjoined by the Court, Paquet will continue to violate Spencer Stuart's contractual, statutory, and common law rights and cause irreparable injury to Spencer Stuart's business.

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[1] Spencer Stuart has initiated litigation against Truc and Korn Ferry in Cook County Chancery Court in connection with their wrongdoing.

THE PARTIES

5. Plaintiff Spencer Stuart is a Delaware corporation with its principle place of business in Chicago, Illinois.

6. Defendant Pierre-Edouard Paquet is a citizen of France, currently residing in Paris, France. While employed by Spencer Stuart until December 2016, Paquet lived in Chicago, Illinois, and worked in Spencer Stuart's Chicago office. Paquet is currently working for Korn Ferry in its Global Automotive Practice and is based in Paris, France.

JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1332, and 1367. Spencer Stuart's claims arise, in part, under federal law, specifically the Computer Fraud and Abuse Act, 28 U.S.C. §1030 *et seq.* This court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1), because the parties are completely diverse in citizenship and the amount in controversy exceeds $75,000. Additionally, pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Spencer Stuart's state law claims because all of the claims are so related to each other that they form part of the same case or controversy.

8. The Court has personal jurisdiction over Paquet because he was employed by Spencer Stuart in Chicago, Illinois during the time period relevant to this action, he committed tortious acts against Spencer Stuart in Illinois, and breached contractual obligations owed to Spencer Stuart in Illinois.

9. Venue is appropriate in the Northern District of Illinois pursuant to 28 U.S.C. §1391 because all or a substantial part of the events giving rise to these claims occurred in this district.

FACTUAL BACKGROUND

Spencer Stuart's Business

10. Spencer Stuart is one of the world's leading global executive search and leadership consulting firms, specializing in searches for top-level executives and board directors. The privately held firm operates in 56 offices in more than 30 countries.

11. Spencer Stuart's largest office is in New York, New York. This office houses much of Spencer Stuart's senior management, including, historically, its Chief Executive Officer.

12. Through its portfolio of services, Spencer Stuart has over 60 concentrated areas of expertise, including in the automotive industry. Indeed, Spencer Stuart offers executive search and leadership consulting for companies across automotive parts manufacturers and retailers; car, truck, and other vehicle original equipment manufacturers; automotive-related services; and connected car; infotainment, and software providers; and private equity funds investing in the automotive sector.

13. In conducting senior-level executive searches and board director appointments, Spencer Stuart has developed a range of proprietary tools and techniques to conduct rigorous assessments of candidates' track records, knowledge, abilities, and potential.

14. Spencer Stuart's comprehensive proprietary executive assessment approach has led to immense success in the automotive industry. Spencer Stuart has access to more than 55,000 automotive executives across the globe and has conducted more than 500 senior-level executive searches and board director appointments over the past three years for the world's preeminent automotive organizations, including a certain major automotive client (hereafter, "The Automotive Client"), with whom Spencer Stuart has had a Master Services Agreement and from whom Spencer Stuart has generated millions of dollars in revenue.

Spencer Stuart Has Enacted Significant Measures to Safeguard its Sensitive Information

15. Spencer Stuart has expended, and continues to expend, millions of dollars and countless resources developing, maintaining, and updating the proprietary and confidential information used to provide leadership consulting and executive search services.

16. Spencer Stuart's confidential information and trade secrets are critical to its success. Accordingly, Spencer Stuart has implemented significant measures to maintain the confidentiality of such information, including requiring employees, such as Paquet, to sign confidentiality and non-disclosure agreements, implementing policies identifying company confidential information, prohibiting employee disclosure, and establishing safeguards against electronic and other disclosure.

17. In addition, Spencer Stuart requires employees to have an electronic proximity access card for physical building access; restricts access to confidential information to only those employees with a need to know such information; restricts access by non-employees to only those having specific authorization or permission; restricts computer access by user name and password and multi-factor authentication tokens; and restricts access to certain areas of its facility to authorized employees only.

18. Spencer Stuart has also implemented and maintained numerous policies outlining its security measures and expectations concerning privacy and communications, including its Code of Conduct. During the period of Paquet's employment with Spencer Stuart, the applicable Code of Conduct expressly required employees to hold in the strictest level of confidence Spencer Stuart and client confidential information during and after an employee's employment and strictly prohibited disclosures outside of Spencer Stuart. The Code of Conduct also

instructed that all electronic correspondence to clients and candidates should be sent using the secure e-mail address provided by Spencer Stuart.

Paquet's Employment with and Confidentiality Obligations to Spencer Stuart

19. Spencer Stuart hired Paquet as a Senior Associate in its Global Automotive Practice in February 11, 2010, in its Paris, France office.

20. On or around September 1, 2014, Paquet was assigned to Spencer Stuart's Chicago, Illinois office, where he worked until December 15, 2016.

21. While working in Spencer Stuart's Chicago, Illinois office, Paquet worked closely with Truc, who was at that time the head of Spencer Stuart's Global Automotive Practice.

22. In consideration for Paquet's reassignment and continued employment by Spencer Stuart, Paquet executed a written Employee Agreement Regarding Confidentiality and other Obligations ("Employee Agreement"), dated October 27, 2014, a true and correct copy of which is attached hereto as Exhibit A.

23. In executing the Employee Agreement, Paquet agreed not to solicit Spencer Stuart's employees. Specifically, Paquet agreed as follows:

> So long as [Paquet] is working or performing services for Spencer Stuart and for a period of one (1) year after the completion of work done or services performed, [Paquet] shall not, directly or indirectly, by or for himself . . . or as the employee or contractor of another, or through another as his/her employee contractor, solicit for employment or employ any then current Spencer Stuart employee or induce or advise any then current employee to leave Spencer Stuart's employ.

24. In the signing the Employee Agreement, Paquet also explicitly agreed that (i) all of Spencer Stuart's confidential information, whether or not obtained, acquired or developed by Paquet, remains Spencer Stuart's exclusive property, (ii) he would hold such information in confidence, would only use such information for purposes of fulfilling work duties, and would

restrict disclosure of and limit access to such information only to authorized Spencer Stuart employees or contractors, (iii) during and after his employment, he would not copy or disclose Spencer Stuart's confidential information to others or authorize anyone else to copy or publish such information to others without Spencer Stuart's prior written approval, and (iv) upon Spencer Stuart's request, he would return all such confidential information.

25. The Employee Agreement enumerated certain, non-exclusive categories of confidential information, including, without limitation, technical, customer and business information in any form, including but not limited to Spencer Stuart's Worldwide Client List Database, Mailing List Database, Board of Director's Database, Proprietary Training Manuals, and Confidential Candidate Reports and resumes received from candidates and prospects.

26. In executing the Employee Agreement, Paquet specifically acknowledged that:

> Any breach of the conditions of this Agreement will cause serious and irreparable loss or damage to Spencer Stuart. Therefore, in the event of a breach of the conditions of this Agreement, Spencer Stuart shall be entitled, without limitation, to any other remedies, equitable relief against [Paquet], including, without limitation, any injunction to restrain [Paquet] from such breach and to compel compliance with this Agreement in protecting or enforcing its rights and remedies.

27. The Employee Agreement is governed by New York law.

28. Given that its largest office is in New York, and in order to promote uniformity in application, Spencer Stuart has used and continues to use New York choice of law provisions in virtually all, if not all, of its U.S. employment contracts.

29. Paquet's execution of the Employee Agreement was knowing, willful, and informed.

30. Spencer Stuart has fully performed all its obligations to Paquet, including all conditions precedent under the Employee Agreement.

31. The Employee Agreement was supported by adequate consideration, is reasonable in scope, and is not more extensive than is reasonable and necessary for Spencer Stuart to protect its legitimate business interests, including but not limited to its confidential information and trade secrets.

32. As a Senior Associate in Spencer Stuart's Global Automotive Practice, Paquet had regular direct contact with Spencer Stuart clients and candidates, and was involved in developing customized position and candidate specifications, conducting targeted research to determine search strategy, conducting rigorous competency-based interviews with candidates, performing in-depth executive assessments and analyses, and presenting candidates to the client.

33. In connection with his duties, Paquet participated in the development and cultivation of Spencer Stuart's substantial client and candidate relationships and was exposed to a broad range of highly sensitive information, including Spencer Stuart's search strategies, pending and prospective searches, Spencer Stuart's Worldwide Client List Database, Mailing List Database, and Board of Directors' Database, Confidential Candidate Reports, mapping data, organizational charts, and various proprietary industry-specific reports developed and/or purchased by Spencer Stuart. Paquet was not authorized to share this information with individuals who were not employed or retained by Spencer Stuart.

34. If a competitor obtained Paquet's knowledge of Spencer Stuart's searches, clients, and candidates, it would potentially be able to use such information to eviscerate the competitive advantage that Spencer Stuart has spent years and millions of dollars developing. Indeed, given that Paquet has the ability to map out the overall workings of Spencer Stuart's Global Automotive Practice and the specific searches it was working on, a competitor could be able to use that information to replicate the very search strategies that are the core of Spencer Stuart's

global automotive search business. Moreover, a competitor with access to Spencer Stuart's list of client and candidate contacts would have an unfair competitive advantage because it would not have to devote the substantial time and cost required to compile and develop such information and could quickly gain access to clients and candidates that otherwise might not be possible.

35. Paquet abruptly tendered his resignation to Spencer Stuart on December 11, 2016. Upon questioning from Spencer Stuart, Paquet refused to disclose where he was going to work. Spencer Stuart learned shortly thereafter that Paquet left Spencer Stuart to work in Korn Ferry's Global Automotive Practice and would be based in its Paris, France office.

36. Korn Ferry is a global executive search and talent management firm engaged in the business of providing executive recruitment and talent management services. Korn Ferry often competes against Spencer Stuart for the procurement of executive searches, including in the global automotive industry.

Truc's Employment with Spencer Stuart

37. Truc commenced his employment with Spencer Stuart on or about April 4, 2008, as a Consultant. Truc advanced in the Spencer Stuart organization throughout his employment, eventually ascending to become the leader of its Global Automotive Practice.

38. In this capacity, Truc oversaw Spencer Stuart's global search origination and execution for Spencer Stuart's Global Automotive Practice. His responsibilities included supervising the consultants and associates within the group. In this capacity, Truc had access to confidential, detailed reports regarding these consultants' performance metrics.

39. Paquet and Truc worked together on executive and board searches in the global automotive industry.

40. Truc submitted his resignation to Spencer Stuart's CEO on December 16, 2016. Truc told Spencer Stuart he was leaving Spencer Stuart to join The Automotive Client as its Head of Executive Recruiting and Strategic Projects.

Paquet's Misappropriation of Spencer Stuart's Confidential Information and Attempts to Conceal the Same

41. In furtherance of his intention to join Korn Ferry, shortly before and after giving notice of his resignation to Spencer Stuart, and in violation of his contractual and common law duties to Spencer Stuart, Paquet began secretly and without authorization to copy and remove various confidential materials and information from Spencer Stuart's computer systems, and to appropriate such materials for use in his employment with Korn Ferry.

42. Indeed, in the days leading up to his departure from Spencer Stuart, Paquet sent a number of highly confidential documents to his personal email account of "ppaquet@laposte.net."

43. On December 7, 2016, Paquet sent to his personal email account a progress report for an ongoing VP Aftersales search for The Automotive Client. The report contained a confidential list of prospects for a search and identified their contact information, educational backgrounds, and career histories.

44. Similarly, on December 14, 2016, the day before the termination of his employment, Paquet forwarded to his personal account two highly confidential progress reports prepared by, among others, Paquet and Truc, for ongoing executive-level searches for The Automotive Client. The first report was related to The Automotive Client's search for a Vice President, Powertrain Performance, Control and Tuning. The report identified two candidates, two interested prospects, 23 potential prospects, and 58 prospects who were eliminated.

45. The second report was for an ongoing search related to The Automotive Client's search for a Vice President, Powertrain Projects. The report identified two proposed candidates, 10 interested prospects, 44 potential prospects, and 20 prospects eliminated.

46. Each report included a comprehensive profile for each candidate and prospect, which included educational background, languages, and career history.

47. In another email to his personal account on December 14, 2016, Paquet forwarded two candidate reports on the finalists for The Automotive Client's search for a Vice President, Powertrain Projects. These reports were prepared using Spencer Stuart's proprietary candidate assessment tools and contained, among other things, comprehensive information and analyses concerning the candidates' areas of strength against ideal experience; areas of strength against critical competencies, including detailed reports on technical vision and process orientation, and collaboration and leadership; potential gaps versus the search specification; career transitions; and recruitment considerations.

48. Each of the reports that Paquet forwarded to his personal email account without authorization were highly confidential and of significant value. Indeed, each was expressly designated as confidential and stated: "This document and the information contained within is confidential and is provided to the named recipient. . . . Distribution or reproduction of this document and/or its contents is strictly prohibited."

49. Paquet had no legitimate purpose for sending the reports to his personal email account in anticipation of his departure.

50. The reports would be a great value to Spencer Stuart's competitors, including Korn Ferry.

51. On information and belief, Paquet has used and/or disclosed the information that he misappropriated from Spencer Stuart in the course of his employment for Korn Ferry.

52. In the days before his resignation, Paquet also connected two personal USB devices to his Spencer Stuart-issued computer and migrated and/or attempted to migrate work-related files.

53. Throughout the course of his scheme to pirate Spencer Stuart's confidential information, Paquet took extraordinary measures to conceal his faithless and illegal acts from Spencer Stuart, and to deliberately mislead Spencer Stuart of his intentions, erasing evidence of his scheme, by, among other things, deleting thousands of emails and other communications from Spencer Stuart's computer system.

54. Between December 7, 2016, and his termination on December 15, 2016, Paquet deleted thousands of work-related files from his Spencer Stuart-issued computer, with a high volume of the deletions occurring on Wednesday, December 7, and Sunday, December 11. Paquet transferred such files to his computer's recycle bin and then emptied the recycle bin in an effort to wipe all traces of such files.

55. Unbeknownst to Paquet, the identity of some of the deleted files was ascertainable through the use of computer forensic techniques conducted by an outside computer forensic expert, who was engaged by Spencer Stuart to discover the extent and consequences of Paquet's unauthorized activities and damage to the integrity of Spencer Stuart's data.

56. Nevertheless, while the identity of some of the deleted files was ascertainable, Spencer Stuart has been unable to recover the contents of many of those deleted files.

57. Among the thousands of work-related files Paquet deleted from his Spencer Stuart computer were confidential files related to a certain "C Level" search that Spencer Stuart had been engaged to undertake on behalf of a certain automotive client.

58. On information and belief, before deleting these files, Paquet copied, printed, and/or transferred files related to the "C Level" search (among others) to himself and retained copies of these files.

59. The extent of Paquet's unauthorized downloading and deletion activities is not fully known at this time.

60. On the date of his termination, Paquet was confronted by Spencer Stuart's General Counsel about Paquet's unauthorized transfer of Spencer Stuart's confidential information to his personal email account and his connection of a USB device to his computer and unauthorized migration of work-related documents to the USB.

61. In response, Paquet claimed that he only transferred personal documents, not Spencer Stuart confidential information, and refused to hand over his USB drive for inspection.

62. On the following day, December 16, 2016, Paquet sent an email to Spencer Stuart's General Counsel, tacitly conceding that he transferred work-related documents to a personal USB device and to his personal email, but represented that he deleted all such documents.

63. Paquet did not provide his personal USB drive to Spencer Stuart for inspection.

64. Paquet did not provide an accounting of the work-related items he transferred to his personal USB device or personal email.

65. Paquet also did not provide an accounting of the confidential work-related materials he claimed to have deleted.

66. Upon information and belief, Paquet remains in possession of Spencer Stuart's confidential information that he accessed and retained without authorization and is using such information in the course of his employment with Korn Ferry.

67. The termination of his employment did not stop Paquet from contacting a candidate involved in an ongoing Spencer Stuart search for The Automotive Client. On December 21, 2016, nearly a week after his termination of employment from Spencer Stuart, Paquet, from his personal email account and copying Truc, responded to an email from a search finalist regarding his interviews with The Automotive Client, to which Paquet stated that he would try to call the candidate the following day.

Paquet and Truc Reunite at Korn Ferry to Compete Against Spencer Stuart

68. On December 16, 2016, just one day after Paquet resigned from Spencer Stuart to join Korn Ferry, Truc submitted his resignation to Spencer Stuart's CEO. Truc indicated he was leaving Spencer Stuart to join The Automotive Client as its Head of Executive Recruiting and Strategic Projects.

69. At the time of his resignation, Truc intentionally omitted the fact that he was only joining The Automotive Client temporarily, as a ruse to influence Spencer Stuart not to elect to enforce the non-competition restriction in Truc's Non-Solicitation/Non-Competition Agreement and that he was planning on joining Korn Ferry's Global Automotive Practice soon after the election period expired.

70. Indeed, after his resignation, Truc bragged to other participants in the industry that his period of employment at The Automotive Client was a subterfuge to run out Spencer Stuart's non-competition election period. Indeed, while at The Automotive Client, in coordination with Paquet and Korn Ferry and in in breach of the non-solicitation obligations in

his Non-Solicitation/Non-Competition Agreement, Truc worked on searches for The Automotive Client on behalf of Korn Ferry.

71. On March 1, 2017, just two months after Truc left Spencer Stuart, Korn Ferry announced that Truc was joining Korn Ferry's Global Automotive Practice in its Chicago office.

72. Truc and Paquet have thus reconstituted themselves at Korn Ferry and are working on executive searches that are directly competitive with Spencer Stuart while utilizing Spencer Stuart's confidential information.

73. For example, Korn Ferry is now working on the certain "C Level" search referenced above that Spencer Stuart had been engaged on, and is, upon information and belief, doing so while utilizing information that Paquet obtained while performing the same search at Spencer Stuart prior to his departure, including, without limitation, information contained in the files referenced in Paragraphs 57–58 above.

Paquet Violates His Non-Solicitation Obligations
By Attempting to Recruit Other Spencer Stuart Employees

74. Notwithstanding his contractual obligations to Spencer Stuart, Paquet has recently attempted to induce other Spencer Stuart employees to join Korn Ferry.

75. In early 2017, Anahit Kagti, a junior researcher in Spencer Stuart's Global Automotive Practice who worked with Paquet in Spencer Stuart's Chicago office, was recruited and hired by Korn Ferry.

76. Upon information and belief, Paquet, in coordination with Korn Ferry, directly or indirectly solicited Kagti to join Korn Ferry and now works with Kagti in Korn Ferry's Global Automotive Practice.

77. In addition to the foregoing successful solicitation attempts, Korn Ferry unsuccessfully attempted to recruit and hire another certain executive search consultant in Korn Ferry's industrial practice.

78. Upon information and belief, Paquet, in coordination with Korn Ferry, directly or indirectly solicited that executive search consultant to join Korn Ferry and Paquet, in violation of Paquet's non-solicitation obligations.

79. Paquet acquired knowledge of Kagti and the other executive search consultant during his employment with Spencer Stuart.

80. Upon information and belief, Paquet and Korn Ferry's improper solicitation of Spencer Stuart employees is ongoing.

81. The continued improper solicitation of Spencer Stuart employees by Paquet and Korn Ferry puts Spencer Stuart's legitimate protectable interests at grave risk, including its confidential information; trade secrets; goodwill; customer relationships; and its interest in maintaining a stable workforce of employees, particularly in its Global Automotive Practice.

82. The continued improper solicitation of Spencer Stuart's employees by Paquet and Korn Ferry has caused and will continue to cause irreparable harm for which no adequate remedy at law exists.

Paquet's Conduct Has Harmed and Will Continue to Harm Spencer Stuart

83. Paquet's conduct has harmed and will harm Spencer Stuart in an amount to be proven at trial, but which is reasonably expected to well exceed $75,000, including, among other ways, through lost clients and search engagements, and the costs incurred by Spencer Stuart investigating Paquet's unauthorized accessing and downloading of Spencer Stuart's confidential and proprietary information.

84. While Spencer Stuart's investigation into Paquet's unauthorized activities and damage to Spencer Stuart's data is ongoing, Spencer Stuart has incurred more than $5,000 in expenses as a result of Spencer Stuart having to retain an outside computer forensic experts to discover the extent and consequences of Paquet's unlawful activities.

85. The market for services of the type offered by Spencer Stuart and Korn Ferry is highly competitive, requiring a combination of pricing, market contacts, effective search strategies, and interpersonal skills for success. Revenue from a single successful search can sometimes be in the hundreds of thousands of dollars.

86. Moreover, upon information and belief, Paquet has disclosed or used, or intends to disclose or use, Spencer Stuart's confidential and proprietary information. To the extent Paquet makes, or has made, use of the information to unfairly compete with Spencer Stuart's business, Spencer Stuart will suffer irreparable harm, including through the loss of customers.

87. Among other things, the documents accessed and downloaded by Paquet contain non-public information that provides a blueprint for how Spencer Stuart performs its searches and, thus for how to most effectively compete with and steal customers and business away from Spencer Stuart. It also provides him with information sufficient to target specific current and prospective clients of Spencer Stuart to undercut Spencer Stuart's current and targeted relationships with such clients.

COUNT I
VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT
18 U.S.C. § 1030

88. Spencer Stuart re-alleges and restates paragraphs 1–87 as if fully restated herein.

89. The Computer Fraud and Abuse Act ("CFAA") provides for a private right of action against anyone who intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains information from any protected computer and, as a result

of that conduct, causes damage and/or loss. 18 U.S.C. §§ 1030(a)(2)(C), (g). The CFAA also provides for a private right of action against anyone who accesses a protected computer without authorization and, as a result of that conduct, causes damage and/or loss. 18 U.S.C. §§ 1030(a)(5)(C), (g).

90. Spencer Stuart's computers are used in interstate and foreign commerce and communication and are thus "protected computers" within the meaning of the CFAA. 18 U.S.C. § 1030(e)(2).

91. In the days before his resignation, Paquet, in breach of his contractual and common law duties and without Spencer Stuart's authorization, intentionally accessed Spencer Stuart's computers to obtain confidential information and then deleted thousands of files on Spencer Stuart's computer system, rendering them inaccessible to Spencer Stuart.

92. Spencer Stuart has suffered losses exceeding $5,000 as the result of Paquet's actions, in the form of, among other things, (a) time expended and costs incurred for measures aimed at discovering the extent and consequences of Paquet's unauthorized activities and damage to the integrity of Spencer Stuart's data; and (b) costs incurred as a result of Spencer Stuart having to retain an outside computer forensic experts to discover the extent and consequences of Paquet's unauthorized activities and damage to the integrity of Spencer Stuart's data.

COUNT II
CONVERSION

93. Spencer Stuart re-alleges and restates paragraphs 1–92 as if fully restated herein.

94. Paquet improperly acquired and retained, without authorization, Spencer Stuart's proprietary and confidential information in anticipation of the termination of his Spencer Stuart employment and the commencement of his employment with Korn Ferry.

95. Spencer Stuart is the rightful owner of this property. Spencer Stuart is lawfully entitled to the possession thereof, and it has an absolute and unconditional right to the immediate possession of all information relating to Spencer Stuart in Paquet's possession.

96. Paquet has wrongfully and without authorization obtained and/or retained control, dominion, and/or ownership of this property. After his employment was terminated, Paquet no longer had any right to possess or obtain this property.

97. Under the Employee Agreement, Paquet was required, upon request, to immediately return to Spencer Stuart all of Spencer Stuart's confidential information in his possession. (Ex. A.) After Paquet resigned, his employer, Spencer Stuart, demanded the return of this property.

98. Despite his obligation to return all Spencer Stuart property and information, Paquet, on information and belief, continues to possess Spencer Stuart property and information, either in its original form or as incorporated by Paquet into other forms.

99. Paquet's unauthorized deletion activities prior to his departure caused Spencer Stuart to permanently lose access to the contents of numerous of the documents and files that had been on his Spencer Stuart laptop.

100. Paquet's possession and retention of Spencer Stuart's property and information constitute conversion and have harmed and continue to harm Spencer Stuart.

COUNT III
BREACH AND THREATENED BREACH OF THE PAQUET EMPLOYEE AGREEMENT

101. Spencer Stuart re-alleges and restates paragraphs 1–100 as if fully restated herein.

102. The Employee Agreement signed by Paquet is a valid and enforceable contract.

103. The restrictive covenants in the Employee Agreement are reasonably necessary to protect Spencer Stuart's legitimate protectable business interests and are reasonable in terms of scope and duration.

104. Spencer Stuart has fully performed every obligation it owes to Paquet under the Employee Agreement.

105. Paquet breached the Employee Agreement by, among other wrongful acts: (a) retaining Spencer Stuart's confidential information following his termination, (b) using Spencer Stuart's confidential information for purposes other than fulfilling work performed for Spencer Stuart, and (c) directly, and/or indirectly through intermediaries, soliciting, inducing, or advising Spencer Stuart employees to leave Spencer Stuart's employ during the applicable restricted period.

106. Upon information and belief, Paquet has further breached the Employee Agreement by disclosing confidential Spencer Stuart information to third parties, both during and after his employment with Spencer Stuart.

107. Spencer Stuart has suffered, and will continue to suffer, damages a result of Paquet's breaches. Such damages are in excess of $75,000, exclusive of interest and costs.

108. Spencer Stuart has no adequate remedy at law and will suffer irreparable harm unless Paquet's activities are enjoined by the Court and Paquet is required to cease disclosing or otherwise using Spencer Stuart's information, to return Spencer Stuart's confidential information, to provide a complete accounting of all of Spencer Stuart's documents and information (both hard and electronic copies) that he removed or retained from Spencer Stuart, and to cease soliciting or inducing Spencer Stuart employees to leave Spencer Stuart's employ through the remainder of the restricted period.

COUNT IV
BREACH OF DUTY OF LOYALTY

109. Spencer Stuart re-alleges and restates paragraphs 1–108 as if fully restated herein.

110. Paquet, as an employee of Spencer Stuart, owed a duty of loyalty to Spencer Stuart while he was in its employ. This duty of loyalty included the obligation not to compete with Spencer Stuart, not to solicit Spencer Stuart clients, and not to take Spencer Stuart's confidential and/or proprietary information.

111. Paquet breached his duty of loyalty to Spencer Stuart by, among other wrongful acts, (a) improperly acquiring Spencer Stuart's proprietary and confidential information for the benefit of Korn Ferry; and (b) preparing to divert Spencer Stuart clients and business to Korn Ferry while still employed by Spencer Stuart.

112. Paquet's breaches were intentional, willful, and without just cause.

113. By reason of the foregoing, Paquet has directly and proximately caused injury to Spencer Stuart, and Spencer Stuart has suffered, and continues to suffer, substantial injury as a result of Paquet's actions.

PRAYER FOR RELIEF

WHEREFORE, Spencer Stuart requests that judgment be granted in its favor and against Paquet, and the Court enter an Order:

(i) Enjoining Paquet, or anyone acting in concert with him, from using, copying, analyzing, or disseminating Spencer Stuart's confidential and proprietary information in any fashion;

(ii) Enjoining Paquet, and anyone acting in concert with him, from, directly or indirectly, soliciting, encouraging, or advising any Spencer Stuart employee to leave the employ of Spencer Stuart during the remainder of the applicable restricted period;

(iii) Mandating that Paquet immediately return any and all copies, reproductions, summaries, or notes made from any confidential or proprietary information that came into his possession through his employment with Spencer Stuart, or were obtained by him thereafter;

(iv) Requiring Paquet to forfeit all of the compensation he received from Spencer Stuart during the period of time he breached his duty of loyalty to Spencer Stuart;

(v) Imposing a constructive trust to collect the profits reaped by Paquet as a result of his breach of his duty of loyalty;

(vi) Awarding Spencer Stuart compensatory, incidental, consequential, and punitive damages in an amount to be determined at trial;

(vii) Awarding Spencer Stuart its reasonable attorneys' fees and costs; and

(viii) Awarding Spencer Stuart such other relief as this Court deems just and proper.

Dated: June 23, 2017

Respectfully submitted,

SSI (US), INC., D/B/A/ SPENCER STUART

By: /s/ Daniel J. Fazio
One of Its Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June, 2017, I caused a true and correct copy of the foregoing to be filed electronically with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all parties and counsel of record.

/s/ Daniel J. Fazio

EXHIBIT A

SpencerStuart

EMPLOYEE AGREEMENT REGARDING
CONFIDENTIALITY AND OTHER OBLIGATIONS

This Agreement is made between Employee and SSI (U.S.) Inc. (hereinafter "Spencer Stuart") this 27 day of October, 2014

In consideration of employment and continued employment with Spencer Stuart, Employee agrees to the following:

1. Maintaining Confidential Information

In the course of work done or services performed for Spencer Stuart, Employee has had and may have access to information relating (but not limited) to technical, customer and business information in written, graphic, oral or other tangible or intangible forms, including but not limited to Spencer Stuart's clients, competitors, business, research, training manuals, accounting records, future plans, specifications, records, data, computer programs and documents, [and in particular, information described in Exhibit A] (herein collectively referred to as "Information") owned or controlled by Spencer Stuart. Such Information contains material which is proprietary or confidential in nature and involves the disclosure of copyrighted or potentially copyrightable software with respect to which copyrights may not have been filed or material which is subject to applicable laws regarding secrecy of communications or trade secrets. Therefore, Employee agrees:

a. That all such Information acquired hereunder is and shall remain Spencer Stuart's exclusive property, whether or not obtained, acquired or developed by him/her;

b. That Employee is hereby informed of the confidential character of such Information and of the existence of applicable laws regarding secrecy of communications;

c. To hold such Information in confidence and to restrict disclosure of and limit access to such Information to only authorized Employees or Contractors of Spencer Stuart, unless granted prior written approval by Spencer Stuart stating otherwise;

d. Not to copy or publish or disclose such Information to others or authorize anyone else to copy or publish such Information to others without Spencer Stuart's prior written approval;

e. To, on Spencer Stuart's request, return all such Information in written, graphic or other tangible form to Spencer Stuart;

f. To use such Information only for purposes of fulfilling work performed for Spencer Stuart and for other purposes only upon terms as may in advance be agreed upon between Employee and Spencer Stuart in writing; and

g. That Employee's commitment not to disclose such Information continues after completion of work done or services performed for Spencer Stuart.

2. Non-Solicitation
So long as Employee is working or performing services for Spencer Stuart and for a period of one (1) year after the completion of work done or services performed, Employee shall not, directly or indirectly, by or for himself/herself, or as the employee or contractor of another, or through another as his/her employee or contractor, solicit for employment or employ any then current Spencer Stuart employee or induce or advise any then current employee to leave Spencer Stuart's employ.

3. Remedies
Employee acknowledges that he/she has carefully read and considered the terms of this Agreement and that any breach of the conditions of this Agreement will cause serious and irreparable loss or damage to Spencer Stuart. Therefore, in the event of a breach of the conditions of this Agreement, Spencer Stuart shall be entitled, without limitation, to any other remedies, equitable relief against Employee, including, without limitation, any injunction to restrain Employee from such breach and to compel compliance with this Agreement in protecting or enforcing its rights and remedies.

4. Choice of Law
This employment offer letter and attached Agreement shall be governed by the laws of the State of New York, without reference to conflict of laws principles. This document contains the entire agreement between the parties with respect to the subject matter hereof. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof. This Agreement may not be amended, nor any obligations waived, except by a writing signed by both parties.

5. Severability
In the event any term of this Agreement is found by any court to be void or otherwise unenforceable, the remainder of this agreement shall remain valid and enforceable as though such term were absent upon the date of its execution.

EXECUTED BY THE PARTIES on the dates and at the places set forth below:

PHYOET Pierre-Edouard Name of Employee (Printed)	10/7/2014 Date
 Signature of Employee	

EXHIBIT A

Software Programs Internally Referred to as QuestNT, Exl Action Form, Exl Report Builder, the Spencer Stuart Intranet, the Spencer Stuart Website, and the Client Extranet

Spencer Stuart's Worldwide Client List Database

Spencer Stuart's Mailing List Database

Spencer Stuart's Knowledge Management Resource Pages

Spencer Stuart's SmartCard

Spencer Stuart's Board of Director's Database

Spencer Stuart's Consultant & Associate Case Study

Spencer Stuart's Confidential Candidate Reports and Resumes Received from Candidate and Prospects

Spencer Stuart's Proprietary Training Manuals including but not limited to:

- Spencer Stuart Search Process Manual
- Spencer Stuart International Research Manual
- QuestNT Quick Start Guide
- QuestNT Global Codes & Documentation
- Spencer Stuart Document Standards Manual
- Spencer Stuart Research Tools & Resources Manual
- Spencer Stuart Multimedia Training Programs, both CD-ROM and Video based

Operations Survey

Annual Report

Operational Policies

Partner/Office Manager/Board/Consultant Conference and other meeting materials

EXHIBIT D

ANCOIS P. TRUC

SENIOR CLIENT PARTNER
CHICAGO

Francois P. Truc is a Senior Client Partner for the Global Automotive Practice located in Korn Ferry's Chicago office.

Before Korn Ferry, Mr. Truc worked for a major automobile manufacturer, where he was Head of Executive Recruiting & Strategic Projects. He brings over 20 years of diverse industry and consulting experience in North America, Europe and

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How can we help you? *

Asia, managing strong relationships with Fortune 500 privately held and equity backed companies.

Previously, Mr. Truc worked for a global executive recruiting firm, and prior to that served as Vice President and General Manager with Magna International, where he developed the company's entry strategy into automotive electronics and later managed its operations in North America and Asia.

Earlier in his career, Mr. Truc spent nearly a decade at Booz Allen Hamilton as Vice President in the Automotive Practice, focusing on innovation process improvements, large-scale transformation and expansion strategies for clients around the world.

Mr. Truc earned a B.S. in mathematics, physics and chemistry and a B.A. from École Supérieure de Commerce de Paris as well as an M.B.A., with distinction, from The Wharton School of the University of Pennsylvania. He is bilingual in French and English, and has working knowledge of German.

Pierre-Edouard Paquet

Paris Area, France

Principal | Executive Search | Global Industry

Experience

Principal at Korn Ferry
January 2017 - Present (1 year 1 month)

Pierre-Edouard is Principal at Korn Ferry, the preeminent global people and organizational advisory firm. Korn Ferry helps leaders, organizations and societies succeed by releasing the full power and potential of people. Its nearly 7,000 colleagues deliver services through Korn Ferry and its Hay Group and Futurestep divisions

Senior Associate at Spencer Stuart
October 2014 - December 2016 (2 years 3 months)

Senior Associate at Spencer Stuart
October 2013 - October 2014 (1 year 1 month)

Associate at Spencer Stuart
February 2011 - October 2013 (2 years 9 months)

Research Associate at Korn/Ferry International-Paris Office
September 2007 - January 2011 (3 years 5 months)

Executive Researcher at Alexander Hughes
September 2006 - September 2007 (1 year 1 month)

Education

Universidade de São Paulo
MBA, Economia e Administraçao, 2005 - 2006
KEDGE Business School
2003 - 2006

EXHIBIT E

Pages 1 - 71

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Edward M. Chen, Judge

UNITED STATES OF AMERICA,

Plaintiff,

V.

David Nosal,

Defendant.

NO. CR 08-0237 EMC

San Francisco, California
Wednesday, January 8, 2014

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

MELINDA HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102

BY: KYLE WALDINGER
ASSISTANT UNITED STATES ATTORNEY

For Defendant:

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BY: DENNIS PATRICK RIORDAN
ATTORNEY AT LAW

Reported By: Julie L. Ralston, CSR No. 13604
Pro Tem Reporter

enormous.

So I think all of those things have to be calculated in. I think at the end of day -- I mean, the Court is considering the issue, what message do I send? But it is also true that what messages will I send weighed against the practical consequences of imprisonment in this case, which indisputably are going to be used for a lot of people beyond Mr. Nosal. So, Your Honor --

THE COURT: You mentioned community service, and you mentioned that in your brief, as well, as one component that would be more constructive. What kind of community service are you thinking about that would be meaningful in this situation?

MR. RIORDAN: Well, I think what would be meaningful is for this Court to require Mr. Nosal to do something about and for the people that you've just mentioned, to have him engage in community service with people who have not had the advantages that he has, have not obtained the economic success that he has, and have him do it on a very hands-on way, and have the contribution be extremely considerable.

And I think that when you compare that to sending him to a federal institution for X amount of time, the benefits are exponentially greater in that situation, Your Honor.

THE COURT: All right. Let me hear from the Government.

MR. WALDINGER: Your Honor, of course Mr. Riordan

makes many great arguments and he's very persuasive. I think the Court absolutely needs to take into account Mr. Nosal's background and his contributions. But, as the Court indicated, his behavior here is not aberrant. It's not a lapse in judgment. It started in the middle of 2004, and it continued until August of 2005.

Mr. Riordan talks about the effect that a prison sentence would have on Mr. Nosal's employees. Mr. Nosal's conduct has already had impact on the employees that he had in 2005: Ms. Becky Christian, Mark Jacobson, and Jacqueline Froehlich-L'Heureaux. These were people that he had hired and had worked for him and who he directed to commit crimes.

He held himself out as a mentor to these people, and he used them to commit crimes. Whether or not the Court imposes the sentence requested by the Government, the Government believes some sentence of imprisonment is warranted here. As the Government said in its original brief, Mr. Nosal touts himself as being a person of high ethics and great moral character, that this case shows that his stripes were quite different when his actions could not be seen by those people who wrote all those letters for him.

At the end of the day, stealing is stealing, whether you use a computer or a crowbar and whether you steal documents and data or dollars. It's stealing.

A sentence of imprisonment will promote respect for

the law. It will demonstrate that corporate executives will be held accountable when they break the law. A noncustodial sentence would undermine this goal. The promotion of respect for the law also ties into general deterrence. I have no doubt that Mr. Nosal is not going to commit any more federal crimes in his life.

It is unremarkable that you have a white collar defendant standing in front of you that I can say that about. It is unremarkable that you have a white collar defendant in front of you who has no criminal history. That is common. Cases involving white collar defendants present a special opportunity for this Court to achieve the goal of general deterrence. A prison sentence for the conduct in this case will serve as a powerful deterrent against the commission of such crimes by others.

People who commit white collar crimes like the defendant are capable of calculating the costs and the benefits of their illegal activities relative to the severity of the punishments that they may receive, assuming they are even caught. In deed, it is very likely that one of the reasons that the defendant and his coconspirators did what they did is that they had not heard of anyone going to jail for what they were doing or even getting in trouble.

The defendant himself surely calculated the costs and benefits of committing these offenses and came down firmly on

the side of illegality. A sentence of imprisonment will help change the calculus for other individuals who are like him, and it will protect future potential victims of crimes.

THE COURT: What do you feel -- because under the Sentencing Reform Act, I am to impose sort of the least restrictive imprisonment that accomplishes the objectives. And one of the objectives you refer to is the need for general deterrence to make sure that crime doesn't go unpunished.

So what would you -- I know you've asked for 27 months. Do you have any idea what would be the least obtrusive or restrictive imprisonment term that would accomplish that goal?

MR. WALDINGER: The Government in its original sentencing memo cited a case that I did in this district before Judge Hamilton in which a corporate executive was involved in downloading documents, confidential information from a competitor. Judge Hamilton gave a 12-month sentence in that case. That was less than what the Government asked for.

But I know, from speaking with people in the tech community, that that case of a software executive going to prison for a year was heard about and talked about and known about by people.

I think when the Court gets above a year, that sends a message that the crime is serious. And that's the kind of deterrent effect that the Court wants to accomplish.

EXHIBIT F

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Edward M. Chen, Judge

UNITED STATES OF AMERICA, Plaintiff, V. David Nosal, Defendant.	)	NO. CR 08-0237 EMC

San Francisco, California
Wednesday, January 8, 2014

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

MELINDA HAAG
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BY: KYLE WALDINGER
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BY: DENNIS PATRICK RIORDAN
ATTORNEY AT LAW

Reported By: Julie L. Ralston, CSR No. 13604
Pro Tem Reporter

MR. RIORDAN: Let me just say, Your Honor, that case involved losses of hundreds of thousands of dollars in which a year was imposed.

MR. WALDINGER: If you don't mind, Your Honor, Mr. Parella wanted to talk for 30 seconds. He promises no more thank that.

MR. MATTHEW PARELLA: I'll try to keep it under 30.

Your Honor, what I do in this office actually is supervise the computer hacking intellectual property unit. And part of my duties is to review virtually every federal trade secret case that occurs in the Northern District of California, including this one, before they come in. And I screen them.

As part of that, my job, I also have, probably more than any other AUSA, connections to the industry where I communicate with them about various different issues. The issue of general deterrence that Mr. Waldinger mentioned is tremendously important. The sentence that you give today to this man who corrupted three of his friends in order to get them to commit a crime to get him money because $300,000 a year wasn't enough, the message -- the sentence that you give today will go through Silicon Valley like a bell. It will be known throughout the valley. And it is a unique opportunity for the Court to send a message, which a legitimate purpose of sentencing is general deterrence.

Mr. Waldinger addressed all the other concerns. I

think in that regard alone, it mandates a custodial sentence.

Thank you.

THE COURT: Thank you.

Mr. Riordan?

MR. RIORDAN: Well, Your Honor, the requirement is the least restrictive sentence for this defendant. This defendant. Mr. Nosal will speak about the other people involved in that case. I will leave it to him. But the Government is essentially saying that this is a vehicle to impose a prison sentence without consideration of the 3553 factors which are individual and unique to this case.

When this case was indicted, the Government thought it was a wire fraud case. It wasn't a wire fraud case. It thought it had multiple CFA accounts that were not criminal. It is what it is. And at the end of the day, a very, very powerful and rich corporation did not suffer any meaningful loss.

It's nine years ago. It's a man who has done a lot and can continue to do a lot. And if the Court feels that there's some period of incarceration that is involved or confinement, I would submit that it should be confinement in a home setting with an obligation to perform very extensive community service.

I think Mr. Nosal would like to say something.

THE COURT: Yes. I'd like to hear from Mr. Nosal if

EXHIBIT G

Pages 1 - 71

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Edward M. Chen, Judge

UNITED STATES OF AMERICA, Plaintiff,	)	
V.	)	NO. CR 08-0237 EMC
David Nosal, Defendant.	)	

San Francisco, California
Wednesday, January 8, 2014

TRANSCRIPT OF PROCEEDINGS

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BY: DENNIS PATRICK RIORDAN
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Reported By: Julie L. Ralston, CSR No. 13604
Pro Tem Reporter

have to accept. If that weren't the case and the jury found otherwise, we wouldn't be here.

So this is a serious offense. I don't think there is a need, and the Government concedes that they are convinced that Mr. Nosal will not commit a further crime. So in terms of the need for personal deterrence, that is not here. I am convinced that Mr. Nosal has learned a lesson and will not commit this or any other crime of any serious nature. Certainly, that is my hope.

On the other hand, the 3553 factors does list as one factor, deterrence to others, not just deterrence to this particular -- or disablement of this particular defendant. And there I think that is a factor that we do have to consider as well as the need for punishment for a very serious crime.

Weighing that all together, it appears to me that some variance is warranted even at the 15 to 21 months. I frankly don't see the utility of imposing something that exceeds that 12-month period that the Government refers to. On the other hand, I think the Government has merit in its discussion about both a comparison of the comparable cases and the cases that may not be directly comparable. But in the other download case -- I know it's different because it involves some economic harm -- but the sentence of 12 months imposed there and the need for punishment to reflect the seriousness of the crime and to effectuate deterrence.

And, therefore, I'm going to impose a sentence of 12 months and one day, one year and one day, which would make Mr. Nosal eligible for good time credits. And so, presumably, the time spent will actually be less than that. But I think that that is a fair variance. It's a substantial variance from the recommended guideline.

I also am going to impose, perhaps partly in exchange for the variance, a requirement of community service because I think that's the most meaningful time be spent rather than spending an additional several months in incarceration. I would rather see Mr. Nosal use his talents to help those who are disadvantaged. And I think community service over the period of supervised release of 400 hours is appropriate.

Therefore, pursuant to the Sentencing Reform Act of 1984, it is the judgment of this Court that David Nosal is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of one year and one day. This consists of the terms of one year and one day on Counts 1 through 6. All counts to be served concurrently.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years. The term consists of three years in Count 1 through 6. All such terms run concurrently.

Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the

EXHIBIT H

Former software chief admits stealing trade secrets

In a 3-year-old criminal case, guilty pleas by former software execs offer glimpse into world of corporate espionage.

BY **ALORIE GILBERT** / DECEMBER 9, 2005
5:12 PM PST

A former software executive's guilty plea to charges of breaking into a rival's computers and stealing trade secrets has offered a rare glimpse into the world of corporate espionage.

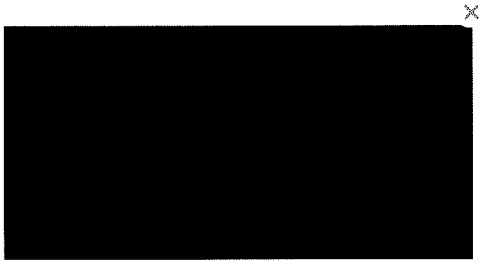
John O'Neil, former CEO of Business Engine Software, pleaded guilty in a San Francisco federal court on Wednesday to conspiracy to download and steal the trade secrets of software competitor Niku over a 10-month period.

O'Neil, 43, is the third former executive of the San Francisco company to admit guilt in a case that the FBI's computer intrusion squad helped to investigate in 2002. He faces a maximum sentence of 10 years in jail and a $250,000 fine. Sentencing is scheduled for next spring.

His plea brings to near conclusion a criminal case that uncovered, in unusual detail, one company's plunge into the world of corporate espionage in the digital age.

Court documents from a related 2002 civil case against Business Engine brought by Niku, now owned by Computer Associates International, reveal the extent of the crime and how it was perpetrated. According to that complaint, Business Engine illegally obtained confidential account names and passwords that

enabled broad administrative access to Niku's computers over the Internet. Both companies sell Web-based project management software.



CES goes dark, Galaxy S9... 00:04/00:05

From October 2001 until July 2002, Business Engine used the passwords to gain unauthorized access to Niku's systems more than 6,000 times and downloaded over 1,000 confidential documents containing trade secrets, the complaint alleged.The stolen documents included technical specifications, product designs, prospective customers, customer proposals, client account information and pricing.

Niku discovered the break-in after a Business Engine salesman made an unsolicited call to one of Niku's prospective clients, a Nike employee who happened to be related to Niku's chief information officer, Warren Leggett. The call raised suspicion because the Nike employee was not ordinarily responsible for software purchasing decisions, had never heard of Business Engine and had no idea how the salesman had obtained his contact information, according a declaration by Leggett.

The incident prompted Leggett to examine his company's computer logs and files from his recent meeting with Nike. He quickly determined from a trail of Internet network addresses that someone from outside the company had been stealing files. Leggett was able to trace the intrusions back to Business Engine by using Internet domain registration information and publicly available Internet tools, the declaration says. In the various break-ins, the perpetrators used 15 different user names and passwords associated with Niku employees.

How did Business Engine get its hands on 15 passwords and user names? The court documents don't discuss that and O'Neil's attorneys did not return calls requesting further information. But according to a CA executive, someone at Business Engine nabbed them from an online Niku employee training system that was not password-protected. "They hacked into a soft spot," said David Hurwitz, vice president of marketing at CA's Clarity unit, formerly Niku.

Hurwitz said he and his colleagues were pleased to learn of O'Neil's plea this week. "We think that justice has been served for these three crooks, and it definitely sends a message out to Silicon Valley that theft of intellectual property is serious theft, especially when done as brazenly as Business Engine did it," he said.

Business Engine spokesman Kazim Isfahani said the company has put the case behind it, noting that everyone involved in the crime no longer works there. "It's nothing we're involved with anymore," he said.

Business Engine settled the 2002 civil suit by agreeing to pay Niku $5 million and promising not to incorporate any of Niku's trade secrets into its products.

The criminal case, brought by U.S. Attorney Kevin Ryan, continues. Sentencing for O'Neil and the other two defendants, Robert McKimmey, former chief technology officer of Business Engine Software, and William McMenamin, its former sales chief, is scheduled for May 17 in the U.S. district court of Northern California in San Francisco.

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Next Article: Cook, Zuckerberg join 100 CEOs in calling for DACA extension

TECH INDUSTRY

Cook, Zuckerberg join 100 CEOs in calling for DACA extension

Tech leaders urge congressional leaders to pass legislation protecting undocumented immigrant children.

BY **STEVEN MUSIL** / JANUARY 10, 2018 4:25 PM PST

People protesting the cancellation of the Deferred Action for Childhood Arrivals rally on the steps to the Capitol Building on Capitol Hill in December.

Brendan Smialowski / AFP/Getty Images

EXHIBIT I

THE NATIONAL LAW JOURNAL
DAILY UPDATES ON WWW.NLJ.COM NEWS FOR THE PROFESSION MONDAY, OCTOBER 27, 2008
An incisivemedia publication

IN FOCUS

WHITE-COLLAR CRIME

'Brady' and Sentencing

ANDREW WEISSMANN AND KATYA JESTIN
October 27, 2008

Brady v. Maryland, 373 U.S. 83 (1963), has long been misconstrued by litigants on both sides of the "v." as only applying to the guilt phase of a criminal proceeding. That is a mistake: *Brady* applies at sentencing and never more so than right now. Recent U.S. Supreme Court decisions expanding the discretion of federal judges at sentencing should revitalize the importance of *Brady* at this critical stage of a criminal case. When the Supreme Court broadened what a sentencing court can consider, it tacitly expanded the scope of information that must be disclosed at sentencing under *Brady*.

Because the scope of what is relevant for courts to consider at sentencing has broadened, the government cannot hide behind the "materiality" prong of *Brady* to justify nondisclosure. In complex white-collar prosecutions, the revitalization of *Brady* at sentencing is particularly important, as the government may be uniquely positioned to disclose information concerning the role of the defendant in the charged crime, the mitigation of losses by victims, and the extent of "reasonably foreseeable pecuniary harm." Consider this: Information in the hands of the government that could lower a defendant's fine or his jail sentence by one day can be *Brady* material to which the defense is entitled.

Andrew Weissmann *and* ***Katya Jestin*** *are partners in the New York office of Chicago-based Jenner & Block and are members of the firm's white-collar criminal defense and counseling practice. Both are former federal prosecutors. Eric P. Brown, a former summer associate at the firm, contributed greatly to drafting this article.*

'Brady' obligations extend to the sentencing phase

One of the oft-overlooked aspects of *Brady* is that the decision expressly extends the government's disclosure obligation to the sentencing phase in addition to the guilt phase of criminal proceedings. *Brady*, 373 U.S. at 87. Indeed, much has been written about the government's *Brady* obligations during the guilt phase, but strikingly little attention has been paid to the punishment phase of criminal proceedings. Why? The answer may well be that prosecutors and defense attorneys alike believe that guilty pleas extinguish all trial rights and that *Brady* obligations end there. Some prosecutors may think of *Brady* myopically as only addressing evidence that relates to whether a defendant is guilty and, consequently, once a defendant pleads or has been convicted there cannot by definition be any *Brady* evidence.

Further, government plea agreements often require defendants to waive their entitlement to additional *Brady* disclosures, although many only waive the right to receive such disclosure in connection with the plea, not sentencing. These misconceptions, combined with the fact that an overwhelming proportion of federal criminal proceedings end in convictions — 90% in 2004, the vast majority of which, 96%, are resolved by a guilty plea — means that *Brady* receives scant attention at sentencing. Bureau of Justice Statistics, Compendium of Federal Justice Statistics 59 (2004), www.ojp.usdoj.gov/bjs/fed/htm.

JENNER & BLOCK'S ANDREW WEISSMANN

JENNER & BLOCK'S KATYA JESTIN

Now, in light of recent Supreme Court jurisprudence that greatly expands the discretion of the judiciary at sentencing, it is more critical than ever to remember that the government's obligations under *Brady* carry over into the critical sentencing phase.

The recent change to the sentencing process heralded by *U.S. v. Booker*, 543 U.S. 220 (2005), and its progeny should revitalize the application of

Brady rights at sentencing. Two recent decisions by the Supreme Court have expanded the wide discretion of sentencing judges post-*Booker*. Both decisions overruled circuit court panels that had rejected sentences that departed from the Federal Sentencing Guidelines range. The two cases authorize sentencing courts to consider almost all of the elements of a particular case when fashioning a sentence, including even the broader policy implications of the case at hand. In short, sentencing judges now enjoy far greater discretion and may consider factors that were previously off limits.

'Gall,' 'Kimbrough' further expand discretion of judges

In *Gall v. U.S.*, 128 S. Ct. 586 (2007), the Supreme Court held that appellate courts may not presume the unreasonableness of sentences that fall outside the guidelines range. See also *U.S. v. Jones*, 531 F.3d 163, 171 (2d Cir. 2008). The court held that the same abuse-of-discretion standard of review for sentencing decisions applied whether a sentence was inside or outside the guidelines range.

Decided the same day, *Kimbrough v. U.S.*, 128 S. Ct. 558 (2007), addressed whether a sentencing court was entitled to rely on its own view of policy matters addressed by the U.S. Sentencing Commission. The case dealt with the hot-button issue of the 100-to-1 ratio of powder to crack cocaine underlying guidelines sentencing ranges. The court held that, consonant with the guidelines being advisory, a sentencing court may deviate from the guidelines based on its own policy judgments, even if different from those embodied in the guidelines.

Considering 'Brady' 'materiality' at sentencing

For *Brady* purposes, the import of these cases is clear: Judges may consider a broader range of sentencing information. Thus, one of the key justifications relied on by prosecutors not to disclose information has been severely undermined.

Brady requires disclosure only if the information is favorable to the accused and "material" to the determination of guilt or punishment. "Materiality" is generally a high hurdle, requiring a reasonable probability that "the result of the proceeding would have been different" had the evidence been disclosed; a "reasonable probability" is one sufficient to undermine confidence in the outcome of the proceeding. *U.S. v. Bagley*, 473 U.S. 667, 682 (1985); *Kyles v. Whitley*, 514 U.S. 419, 433-34 (1995).

With *Booker* and its robust progeny, however, the "materiality" threshold should be much easier to meet at the sentencing phase than in the guilt phase. Given the lack of attention paid to *Brady* rights at sentencing, it is unsurprising that the materiality standard at sentencing has not been well defined in the case law.

Indeed, only a handful of decisions have given this standard any shape at all. See e.g., *U.S. v. Weintraub*, 871 F.2d 1257, 1264-65 (5th Cir. 1989); *U.S. v. Quinn*, 537 F. Supp. 2d 99, 117-18 (D.D.C. 2008). But surely any difference in a prison term — or in a fine or in conditions of supervised release — could be material under *Brady*.

As the Supreme Court expands the scope of information that a court can consider at sentencing, so too must a prosecutor recalibrate his or her decision to withhold evidence that previously would have been immaterial to the court's determination of the appropriate sentence. Because many facts can now be relevant to a sentence, *Brady* disclosure issues should become a field of battle for defendants preparing for or challenging their sentences. And judges are unlikely to look favorably upon prosecutors who fail to disclose information that could have affected their sentencing determination (as to jail, fine or supervised release).

In many cases, of course, it will be the defendant who has equal or even exclusive access to material information about his or her individual circumstances and mitigating facts, and *Brady* will not apply. But there are situations in which the government will be the party with exclusive access to such information.

Material information in white-collar fraud cases

For instance, in large white-collar fraud cases, the government may have information not available to the defense about "reasonably foreseeable pecuniary harm" that could affect how loss is measured. Likewise, it may be the government that can provide information on mitigation of losses by victims, or on loss causation attributable to a particular defendant — all potentially material information to a court's assessment of loss in a given case.

In addition, the government may be in the best position to understand the defendant's role in the charged crime. Designations such as manager, supervisor or leader can have a significant impact on a sentence, and a prosecutor who has spent years investigating a complex white-collar fraud may know far more about the relative positions of the participants than an individual defendant.

As a final example, consider the sentencing statistics examined by the court in *Kimbrough*: The government may have exclusive access to data pertaining to a sentencing policy that the court may deem relevant. If this information could be material to the defendant's sentence, it must be disclosed under *Brady*.

In sum, while certain sentencing information was "material" even under the previously mandatory guidelines, the scope of information that is material for *Brady* purposes at sentencing has expanded coextensively with the Supreme Court's expansion of judicial discretion in sentencing. Defense attorneys would do well to be insistent about their right to receive *Brady* material at sentencing, and prosecutors who seek to fulfill their constitutional duty under Brady will need to be cognizant of their expanded obligations in light of the Supreme Court's progressive chipping away at the Federal Sentencing Guidelines. NLJ

EXHIBIT J

Dell	1/20/05	$1,968.14
Dell	4/26/05	$22,721.76
Dell	6/24/05	$1,256.07
Dell	6/24/05	$1,217.15
Dell	6/27/05	$3,820.26
Dell	6/28/05	$1,911.12
Dell	7/20/05	$2,109.83
TOTAL		**$35,004.33**
Dell	10/6/05	$1,256.73
Dell	10/6/05	$7,968.19
Dell	12/12/05	$6,405.59
Dell	12/20/05	$1,510.15
Dell	12/20/05	$1,572.21
Dell	12/29/05	$1,238.71
Dell	12/29/05	$1,684.96
TOTAL		**$21,636.54**

EXHIBIT K

UNDER SEAL

EXHIBIT L

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, Vs. DAVID NOSAL, et. al., Defendants.	No. CR-08-0237-MHP DEFENDANT DAVID NOSAL'S FIRST STATUS MEMORANDUM Honorable Marilyn Hall Patel May 19, 2008 @ 10:00 a.m.

Defendant David Nosal, by and through his attorney, Steven F. Gruel, hereby submits this First Status Memorandum for the May 19, 2008 hearing scheduled before the Court.

I. FIRST STATUS MEMORANDUM

A. Introduction

Recently, the Honorable David O. Carter in the Central District of California warned of the dangers that result from private companies conducting their own investigations, and then subsequently presenting the "evidence" to the government for prosecution. Judge Carter noted that "When an investigation is driven by a private entity, the process is deprived of the same

level of prosecutorial judgment and discretion that accompanies a typical government investigation conducted from scratch." In United States v. Shiah, Case Number SA-CR-06-92-DOC, Judge Carter, in a bench trial, acquitted Tien Shiah of violating federal offenses alleging the stealing and misappropriating of "trade secrets" from his former employer Broadcom Corporation and then allegedly taking the secrets to his new employer Marvell Semiconductor, Incorporated. In acquitting Mr. Shiah, Judge Carter opined that Mr. Shiah's actions very likely subjected him to civil liability, but that a guilty verdict would have a "chilling effect on the ability of employees to move freely from one company to another." Although he didn't know it, Judge Carter's warning and sound reasoning apply to this case as well.

B. Summary of the Case

Korn / Ferry is a billion dollar executive search corporation headquartered in Los Angeles with offices throughout the globe. Executive search involves locating and placing high level executives in management openings for major domestic and foreign corporations.

David Nosal was an employee of Korn / Ferry from 1996 to October 2004. Mr. Nosal headed a Korn / Ferry office in the Bay Area. As an executive search partner, Mr. Nosal was Korn / Ferry's top performer for his entire tenure. Within the industry, Mr. Nosal's name carries considerable goodwill and influence.

The 2004 separation between Mr. Nosal and Korn / Ferry was not amicable. An agreement was crafted wherein for one year Mr. Nosal, although no longer an employee, was to continue to assist Korn / Ferry with 15 open searches, refrain from competing with Korn / Ferry and, at the end of July 2005, was to receive over $1,000,000 from the corporation as the bonus he had earned for the past year's work. Significantly, nothing prohibited Mr. Nosal from taking the

steps to set up his own executive search company which would, of course, compete with Korn / Ferry.

Shortly after his separation from Korn / Ferry, news of Mr. Nosal's departure spread. In fact, when a major Korn / Ferry prospective client inquired about rumors that Mr. Nosal was no longer with the corporation, Korn / Ferry personnel lied and assured the client that Mr. Nosal was still on the Korn / Ferry team.

From November 2004 to July 2005 Mr. Nosal worked on his open searches for Korn / Ferry. He also began to set up his own company which was expected to launch around November 2005. On August 2, 2005, however, instead paying Mr. Nosal the million dollar bonus it owed to Mr. Nosal, Korn /Ferry filed a civil lawsuit in San Mateo Superior Court against Mr. Nosal and others. Further, the corporation under its agreement with Mr. Nosal filed an arbitration complaint in Los Angeles. Additionally, in mid July 2005, it contacted the FBI and assisted in orchestrating several FBI raids.[1]

The Los Angeles branch of O'Melveny & Myers LLP filed these civil complaints. Initial discovery from the prosecution makes clear that they worked "hand-in-glove" with the government.[2]

These coordinated efforts were calculated efforts to mow down Mr. Nosal and preclude him from starting a company which would compete with Korn / Ferry. Since August 2005, Mr.

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[1] A *Wall Street Journal* story was planted by Korn / Ferry to coincide with the August 2, 2005 FBI searches. The timing of that detailed story, which ran the very next day after the search warrants, shows that the WSJ was informed well in advance of KFI's civil attack and FBI searches. Obviously, KFI was trying to get the most "bang for the buck" with a civil, criminal and media attack against its upcoming competitor, Mr. Nosal.

[2] The Los Angeles office of O'Melveny & Myers LLP also served as counsel for Broadcom Corporation in the private investigation which was the turned over to the United States Attorney's office in the Central District for prosecution in the case thrown out by Judge Carter.

Nosal's firm has had rapid industry success in the marketplace. This success, by the way, includes numerous former KFI employees *jumping ship* to work with Mr. Nosal.

Nearly three years after the FBI search warrants, the government decided to seek an indictment charging mail fraud, theft of trade secrets and illegal computer intrusion. The allegations in the indictment essentially mirror and stem from the very matters in litigation in the two civil matters. In fact, as this Court will learn, the government only interceded to put a stop to the arbitration proceeding when the Nosal civil litigation team began to depose Korn / Ferry's witnesses. The alleged trade secret allegedly stolen in this case is a data base called "Searcher." Numerous witnesses, mainly former Korn / Ferry employees describe "Searcher" as outdated, without safeguards and valueless.

1. <u>Summary of the Civil Litigation Involving The Complaint and Arbitration</u>

The Nosal defense does not intend at this stage to detail the events of the above civil matters. A few points are worth noting as this prosecution, however, goes forward. These points include:

a. Korn / Ferry clearly intended to take advantage of placing civil defendant David Nosal in the difficult position of being sued while also being investigated for criminal wrongdoing. In other words, Korn / Ferry wanted to squeeze Mr. Nosal with the invocation of his Fifth Amendment Right against self-incrimination while facing the consequences of the invocation of this Constitutional safeguard in the civil cases;

b. Korn / Ferry's attorneys repeatedly and vigorously opposed several civil motions by Mr. Nosal's counsel at the time, (Joseph Russionello and others from the Cooley Goddard law firm) to stay the civil matters until the criminal investigation concluded;

c. Civil discovery revealed that Korn / Ferry suspected trade secret and agreement violations by Mr. Nosal and others as early as March 2005. Yet, it appears from

the limited discovery thus received in the criminal case, that Korn / Ferry and its counsel waited until July 2005 to contact federal law enforcement about the alleged wrongdoing. The March 2005 detection of the alleged theft of Searcher material apparently did not genuinely concern Korn / Ferry until, of course, Mr. Nosal's work for them was complete and his $1,000,000 was due to be paid by the corporation;[3]

d. David Nosal waived his Fifth Amendment Rights in the civil cases, agreed to his deposition and also voluntarily talked to the FBI and prosecution about this case;

e. A civil deposition of Mark Jacobson, now a government cooperator, resulted in unearthing damaging testimony and numerous contradictions fatal to issues such as Mr. Nosal's knowledge of others' wrongdoing and the value or use of Searcher. On the eve of this deposition, O'Melveny & Myers prepared a declaration for Mr. Jacobson which has already surfaced in the prosecution's discovery;

f. After numerous previous objections by Mr. Nosal seeking a stay of the civil proceedings, Korn / Ferry's counsel embraced an unexpected request by the prosecution on March 15, 2007 to the Los Angeles arbitrator to stay all proceedings. Since that request, all civil proceedings have stopped, including the noticed depositions of Korn /Ferry's management and experts;

g. In numerous letters and discussions with the prosecution, counsel for Mr. Nosal outlined law, the facts and Department of Justice policy that overwhelming

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[3] Even the O'Melveny & Myers attorneys in the Broadcom case didn't wait if true trade secret was stolen. The lawyers immediately contacted the government the same month [September 2003] when it believed that a trade secret had been stolen.

establish that these disputes with KFI are civil, not criminal matters. Long time federal prosecutor and two-time United States Attorney, Mr. Russionello while with Cooley, completely agreed with this sound conclusion.

B. Procedural History of the Case / Pretrial Release

On April 25, 2008, Magistrate Judge James Larsen arraigned Mr. Nosal on the indictment. His not guilty pleas were entered to all counts. Mr. Nosal is on pretrial release awaiting trial.

C. Discovery To Date / Protective Order / Discovery in the Possession of KFI

To date the government has provided approximately 1995 pages of discovery. The government has circulated a Stipulation and Proposed Order for a Protective Order to receive an expected larger volume of materials that will be placed on a hard drive.

Given that Korn / Ferry and its counsel at O'Melveny & Myers played a critical role in independently investigating , referring and then working with the both the FBI and prosecution in this case, relevant discovery exists with these private parties. On May 1, 2008, Mr. Nosal's defense counsel requested and the prosecutor agreed to contact both Korn / Ferry and O'Melveny & Myers and notify them not to destroy any evidence in this case. The defense has not heard whether this government request has been issued and what response, if any, was given by the private parties. To that end, the Nosal defense will seek this Court's order preserving this evidence in the possession of Korn / Ferry and O'Melveny & Myers.

D. Speedy Trial

On May 19, 2008, the Speedy Trial date is calculated to be July 28, 2008. Although Mr. Nosal seeks trial on this matter as soon as possible, he is willing to agree to a finding of

excludable time until the next scheduled court date for effective preparation of counsel. The amount of discovery in this case, as well as defense counsel's heavy schedule which includes a wiretap trial before Judge Ware in August 2008 supports the finding of excludable time. The defense does not expect the government to object to this request.

E. Anticipated Pretrial Motions Pretrial Preparation By Mr. Nosal

The Nosal defense anticipates considerable pretrial work in this case. For instance, a severance motion based upon a Bruton issue is anticipated. Discovery motions and defense subpoenas *duces tecum* are likely to be presented to the Court. To date, pretrial motions and evidentiary hearings are likely to include:

a. A defense motion and evidentiary hearing wherein "Searcher" is argued not to be a trade secret;

b. A defense motion and evidentiary hearing wherein the agreement by Korn / Ferry against Mr. Nosal's competition is argued to be void and unenforceable because it violates California law, statues and public policy;

c. A defense motion to dismiss the indictment in its entirety pursuant to the Court's supervisory powers.

F. Waiver Matter

Prior to representing Mr. Nosal, undersigned counsel represented an individual who was subpoenaed by O'Melveny & Myers LLP as part of one of the civil cases. This individual was also interviewed by the FBI. This person may be a trial witness for the government or Mr. Nosal. Appropriate disclosures and waivers have been made to both this person and Mr. Nosal. If necessary, and to protect all privileged attorney-client communications, these disclosures and waivers can be shared with the Court *in camera*.

G. Mr. Nosal's Recommendation Regarding Scheduling

Mr. Nosal recommends that the case be continued for 6-8 weeks to allow for further discovery form the government. As mentioned above, the Speedy Trial Act provides several grounds (effective preparation of counsel) for excludable time.

Dated: May 15, 2008

/s/
STEVEN F. GRUEL
Attorney for David Nosal