

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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TRIALGRAPHIX, INC. :

Plaintiff, :

- against - :

FTI CONSULTING, INC., SCOTT BARRETT, :

MAUREEN T. HARRISON, STEVEN R. SCHWARTZ, :

AND MARCO CAREGA, :

Defendants. :

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Index No. _____

SUMMONS

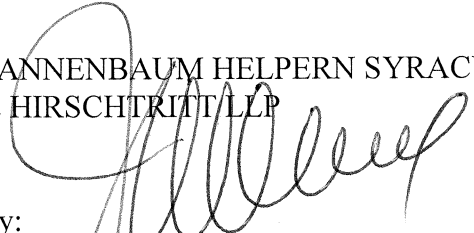
TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Plaintiff's attorney an answer to the complaint in this action within 20 days after the service of this summons, exclusive of the day of service, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is Plaintiff's place of business.

Dated: New York, New York
August 21, 2014

TANNENBAUM HELPERN SYRACUSE
& HIRSCHTRITT LLP

By:  _____

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To: See Attached Service List

SERVICE LIST

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Steven R. Schwartz
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Marco Carega
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Apartment 2B
New York, New York 10016

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TRIALGRAPHIX, INC.	:	
<i>Plaintiff,</i>	:	Index No. _____
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- against -	:	<u>COMPLAINT</u>
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FTI CONSULTING, INC., SCOTT BARRETT,	:	
MAUREEN T. HARRISON, STEVEN R. SCHWARTZ,	:	
AND MARCO CAREGA,	:	
	:	
<i>Defendants.</i>	:	
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Plaintiff TrialGraphix, Inc. (“TrialGraphix” or “Plaintiff”), by its attorneys Tannenbaum Helpen Syracuse & Hirschtritt LLP, as and for its Complaint against defendants FTI Consulting, Inc. (“FTI”), Scott Barrett (“Barrett”), Maureen T. Harrison (“Harrison”), Steven R. Schwartz (“Schwartz”) and Marco Carega (“Carega”, together with Barrett, Harrison and Schwartz the “Former Employees” and, along with FTI, “Defendants”), alleges as follows:

NATURE OF THE CASE

1. This is an action for damages arising from Defendants’ breaches of contract, fiduciary duty, unfair competition and tortious interference with contractual and business relations. TrialGraphix is a litigation consulting firm that provides a variety of trial support and presentation services for attorneys and law firms. FTI provides trial support and various other litigation-related services in many of the same markets as TrialGraphix (most notably, New York City), making it a direct competitor to TrialGraphix. On June 25, 2014, defendants Barrett, Harrison and Schwartz, all high-ranking employees and officers of TrialGraphix, resigned from their positions simultaneously, submitting resignation letters that were all but identical to one

another (the “Resignation Letters”). Upon information and belief, almost immediately after resigning their positions at TrialGraphix, Barrett, Harrison and Schwartz accepted similar positions at FTI, working out of one or more of its six New York offices. Approximately one month after their departure from TrialGraphix, Marco Carega, another high-ranking employee of TrialGraphix, also resigned from his job and accepted a similar position at FTI.

2. Upon information and belief, FTI’s poaching of four key, high-ranking TrialGraphix employees amounts to a raid on TrialGraphix’s New York office and constitutes a calculated attempt by FTI to steal critical TrialGraphix personnel and customers, as well as damage TrialGraphix. Upon information and belief, certain of TrialGraphix’s customers have defected and are now utilizing FTI for the very same services TrialGraphix used to provide.

3. Upon information and belief, while employed by TrialGraphix the Former Employees conspired with FTI to abandon TrialGraphix for its competitor and exploit the confidential and proprietary information they obtained while employed by TrialGraphix to solicit and steal TrialGraphix’s customers. For example, on August 15, 2014, in the immediate wake of his resignation, Carega contacted one of TrialGraphix’s customers for the express purpose of informing the customer that he, Barrett and “a couple of other colleagues” were leaving TrialGraphix and moving to FTI. Carega conveniently pointed out that his departure would put the customer in “precarious position regarding the work that [he had] done thus far” and provided the customer with his contact information with the apparent hope of luring the customer away from TrialGraphix and toward FTI. Upon information and belief, all of the Former Employees made similar overtures to TrialGraphix’s customers and exploited TrialGraphix’s confidential information in order to unlawfully interfere with, and ultimately steal, its customers.

4. Upon information and belief, at all material times, FTI was aware of the restrictive covenants and confidentiality obligations of the Former Employees. Upon information and belief, FTI's and the Former Employees' exploitation of TrialGraphix's confidential information and their solicitation of TrialGraphix's actual and prospective customers has continued after the Former Employees' departure from TrialGraphix and are ongoing.

5. On July 1, 2014, counsel for TrialGraphix sent demand letters to Barrett, Schwartz and Harrison (the "Demand Letters"), informing them of certain of their various contractual and common law obligations to TrialGraphix. In each of the Demand Letters, counsel for TrialGraphix asked for written confirmation of their intent to comply with such obligations within ten days thereafter. Notably, neither Barrett, Schwartz not Harrison ever responded to this request. Instead, they have remained ominously silent and along with Carega, upon information and belief, are continuing to violate their contractual and common law obligations to TrialGraphix.

PARTIES

6. Plaintiff TrialGraphix is a corporation duly organized under the laws of Florida and licensed to do business in New York. Its management operates out of its New York offices, located at 216 East 45th Street, New York, New York 10017.

7. Upon information and belief, Barrett is an individual currently residing at 5 Fairview Avenue, Darien, Connecticut 06820.

8. Upon information and belief, Harrison is an individual currently residing at 231 Beach 131st Street Belle Harbor, New York 11694.

9. Upon information and belief, Schwartz is an individual currently residing at 30 Bayard Street, Apartment 4D Brooklyn, New York 11211.

10. Upon information and belief, Carega is an individual currently residing at 340 East 29th Street, Apartment 2B, New York, New York 10016.

11. Upon information and belief, FTI is a corporation organized under the laws of Maryland and is licensed to do business in New York. FTI currently maintains no fewer than six offices throughout the state of New York, including offices located at Three Times Square, 750 Third Avenue, 88 Pine Street, 156 West 56th Street, and 909 Third Avenue in New York County.

JURISDICTION AND VENUE

12. This Court has jurisdiction over defendant FTI pursuant to CPLR § 301 and/or § 302 because, upon information and belief, FTI had, and continues to have, continuous and systematic contacts with New York, maintains no fewer than six offices throughout the State of New York, regularly transacts business in New York, has committed tortious acts within the State of New York and/or committed tortious acts outside the State of New York causing injury to property within the state.

13. This Court has jurisdiction over defendant Barrett pursuant to CPLR § 301 and/or § 302 because, upon information and belief, Barrett has had, and continues to have, continuous and systematic contacts with New York, regularly transacts business in New York, has committed tortious acts within the State of New York and/or committed tortious acts outside the State of New York causing injury to property within the state and works out of one or more of FTI's six New York offices.

14. This Court has jurisdiction over defendant Harrison pursuant to CPLR § 301 and/or § 302 because, upon information and belief, Harrison is a New York resident and domiciliary, has had, and continues to have, continuous and systematic contacts with New York, regularly transacts business in New York, has committed tortious acts within the State of New York and/or committed tortious acts outside the State of New York causing injury to property within the state and works out of one or more of FTI's six New York offices.

15. This Court has jurisdiction over defendant Schwartz pursuant to CPLR § 301 and/or § 302 because, upon information and belief, Schwartz is a New York resident and domiciliary, has had, and continues to have, continuous and systematic contacts with New York, regularly transacts business in New York, has committed tortious acts within the State of New York and/or committed tortious acts outside the State of New York causing injury to property within the state and works out of one or more of FTI's six New York offices.

16. This Court has jurisdiction over defendant Carega pursuant to CPLR § 301 and/or § 302 because Carega is a New York resident and domiciliary, has had, and continues to have, continuous and systematic contacts with New York, regularly transacts business in New York, has committed tortious acts within the State of New York and/or committed tortious acts outside the State of New York causing injury to property within the state and works out of one or more of FTI's six New York offices.

17. Venue is proper in New York County pursuant to CPLR § 503 because Plaintiff resides in New York and Plaintiff has designated New York County as its chosen venue.

FACTS

The Former Employees' Employment History at TrialGraphix and the Closing of TrialGraphix's New York Office

18. Harrison was hired by TrialGraphix in 2001 and, at the time of her resignation, held the position of Managing Director.

19. Schwartz was hired by TrialGraphix in 2004 and, at the time of his resignation, held the position of Senior Project Consultant.

20. Carega was hired by Kroll Ontrack, Inc. ("Kroll Ontrack"), a company subsequently acquired by and merged into TrialGraphix, in 2008 and, at the time of his resignation, was a Senior Design and Technology Consultant for TrialGraphix.

21. Barrett was hired by TrialGraphix in 2012 and, at the time of his resignation, held the position of Managing Director.

22. The Former Employees were among the most highly compensated members of the TrialGraphix staff. Throughout the duration of their employment with TrialGraphix, each of the Former Employees had access to, and used, TrialGraphix's confidential and proprietary information. TrialGraphix went to great lengths to preserve the confidentiality of such information, including requiring each new hire to sign some form of confidentiality agreement.

23. In addition, upon information and belief, each of the Former Employees had repeated contact with multiple actual and prospective customers of TrialGraphix. As high-ranking, managerial officers of TrialGraphix, the Former Employees oversaw many of TrialGraphix's core products and services and were responsible for building and maintaining relationships with TrialGraphix's customers. In short, the Former Employees were of critical importance to TrialGraphix and, in particular, to its New York-based operations.

24. Harrison, Schwartz and Barrett turned in their identical Resignation Letters on June 25, 2014. Upon information and belief, their resignation was premeditated, coordinated and, in part, the product of improper tortious interference by FTI. Carega resigned several weeks later and, upon information and belief, his resignation was also a product of FTI's tortious interference and of the efforts by Harrison, Schwartz and Barrett to solicit his employment on behalf of FTI and in violation of their respective Non-Competition Agreements.

25. Upon information and belief, all four of the Former Employees now work for FTI in and around New York County. The departure of the Former Employees combined with, upon information and belief, their disclosure and exploitation of TrialGraphix's confidential and proprietary information, resulted in the loss of TrialGraphix's customers.

**FTI's Targeted Hiring of TrialGraphix Employees
and Tortious Interference with TrialGraphix's Customer Relationships**

26. Upon information and belief, FTI recruited the Former Employees in a systematic and calculated fashion for the sole purpose of debilitating TrialGraphix's New York office and stealing its customer base. Upon information and belief, FTI actively targeted the Former Employees and used improper and unlawful means to induce them to violate their contractual and fiduciary obligations to TrialGraphix. In doing so, FTI tortiously interfered with TrialGraphix's contractual relationship with the Former Employees.

27. Moreover, upon information and belief, FTI encouraged and enabled the Former Employees to solicit TrialGraphix customers and to lay the groundwork for such solicitation prior to the Former Employees' official departure from TrialGraphix. Upon information and belief, FTI's goal was obtain an unfair competitive advantage over TrialGraphix and use that advantage to decimate TrialGraphix's New York business.

28. Upon information and belief, FTI has exploited, and continues to exploit, certain confidential and proprietary TrialGraphix information that the Former Employees obtained during their tenure at TrialGraphix. FTI has done so for the purpose of soliciting TrialGraphix's customers to abandon TrialGraphix. In short, upon information and belief, FTI's goal was and is to raid TrialGraphix's employees and exploit TrialGraphix's confidential information, as well as their relationships with TrialGraphix's customers, to solicit and divert business away from TrialGraphix and towards FTI.

The Former Employees' Contractual Obligations to TrialGraphix

29. At the onset of their respective tenures with TrialGraphix, each of the Former Employees signed, and agreed to be bound by the terms of, some form of non-competition and/or confidentiality agreement.

30. On April 19, 2004, Schwartz signed a Non-Competition Agreement (the "Schwartz Non-Competition Agreement"). Sections 1, 2 and 5 of the Schwartz Non-Competition Agreement required that, among other things, Schwartz keep strictly confidential and not use for his benefit any of TrialGraphix's customer information. In addition, Section 3 of the Schwartz Non-Competition Agreement stated that "Employee shall not, for twelve consecutive months after the date of termination of employment with Employer . . . be employed by . . . any business competing with Employer in the city of New York, the greater New York area, or in any other county in which Employer has an office." Section 4 of the Schwartz Non-Competition Agreement also prohibited Schwartz, for a period of 12 months following the termination of his employment, from "directly or indirectly employ[ing] or attempt[ing] to employ or solicit for employment, any other employees of [TrialGraphix]." The Schwartz Non-Competition Agreement also required that "Employee shall be liable to pay all costs, including

reasonable attorneys' fees, which Employer may incur in enforcing . . . the provisions of this Agreement.”

31. On August 7, 2012, Barrett signed a Confidentiality, Non-Competition, Invention Assignment and Non-Solicitation Agreement (the Barrett Non-Competition Agreement”). Section 7 of the Barrett Non-Competition Agreement prohibited, among other things, Barrett from rendering “services to any Person in connection with the design, development, manufacture, marketing or sale of a Competitive Product” and from soliciting “any customer or prospective customer of TrialGraphix to whom [he had] directly or indirectly sold.” Like Section 4 of the Schwartz Non-Competition Agreement, Section 7 of the Barrett Non-Competition Agreement also prohibited the recruiting of other TrialGraphix employees.

32. Upon information and belief, the Non-Competition agreement signed by Harrison in August of 2001 had terms that were substantially similar or identical to those found in the Barrett Non-Competition Agreement.

33. On March 19, 2008, Carega executed a Confidentiality Agreement and Covenant not to Compete (the “Carega Non-Competition Agreement”). Section 7 of the Carega Non-Competition Agreement required, among other things, that he keep all employer information confidential and refrain from competing with the employer for a period of two years, as well as soliciting actual or prospective employer's customers. The employer referenced in this agreement was, as described *infra*, TrialGraphix's predecessor in interest, Kroll Ontrack. However, Carega owed TrialGraphix these same obligations as Kroll Ontrack's successor in interest.

34. Upon their hiring by TrialGraphix, Schwartz and Harrison also executed separate but identical Secrecy Agreements, which obligated them not to disclose any of TrialGraphix's confidential information during, or subsequent to, their employment with TrialGraphix.

The Former Employees Violation of their Contractual and Fiduciary Obligations to TrialGraphix

35. Upon information and belief, the Former Employees have violated their obligations under both their respective non-competition agreements and secrecy agreements by providing FTI with confidential information and soliciting TrialGraphix's customers while still employed by TrialGraphix and thereafter.

36. As outlined *infra*, on August 15, 2014, mere days after his formal departure from TrialGraphix, Carega informed a TrialGraphix customer of his departure and tacitly solicited the customer on behalf of FTI. Upon information and belief, this clear violation of Carega's ongoing contractual and common law duties to TrialGraphix represents just the tip of the iceberg. Upon information and belief, all of the Former Employees have solicited current or prospective TrialGraphix customers on behalf of FTI.

37. Upon information and belief, the Former Employees violated their various contractual and fiduciary obligations to TrialGraphix for the purpose of unlawfully enriching themselves and providing their new employer, FTI, with an unfair competitive advantage.

38. Upon information and belief, TrialGraphix has lost, and continues to lose, customers and business which whom it had long and established business relationships as a direct result of the unlawful actions of the Former Employees and FTI.

39. Upon information and belief, one or more of the Former Employees also breached their contractual obligation by failing to refrain from recruiting and/or employing other TrialGraphix's employees.

**AS FOR A FIRST CAUSE OF ACTION
AGAINST THE FORMER EMPLOYEES**
(Breach of Contract)

40. TrialGraphix incorporates by reference paragraphs 1 through 39 of this Complaint as if fully set forth herein.

41. Upon information and belief, the Former Employees agreed to be bound by the terms of non-competition agreements and/or the secrecy agreements, which were valid and enforceable contractual agreements.

42. TrialGraphix performed all of its obligations thereunder.

43. Upon information and belief, the Former Employees repeatedly breached their obligations under the non-competition agreements and the secrecy agreements by, among other things, disclosing TrialGraphix's confidential and proprietary information to its competitor FTI, and by soliciting TrialGraphix's actual and prospective customers for the benefit of FTI while still employed by TrialGraphix.

44. Upon information and belief, pursuant to both the non-competition agreements and the secrecy agreements, the Former Employees continued to be bound by their terms even after the termination of his employment with TrialGraphix.

45. Upon information and belief, the Former Employees continue to violate their obligations under the non-competition agreements and the secrecy agreements after leaving TrialGraphix by disclosing TrialGraphix's confidential information and soliciting its customers.

46. Upon information and belief, as a direct result of the Former Employees' multiple breaches of their contractual obligations under the non-competition agreements and the secrecy agreements, TrialGraphix has been damaged in an amount to be proven at trial.

AS FOR A SECOND CAUSE OF ACTION AGAINST THE FORMER EMPLOYEES
(Breach of Fiduciary Duty)

47. TrialGraphix incorporates by reference paragraphs 1 through 46 of this Complaint as if fully set forth herein.

48. As agents and officers of TrialGraphix, the Former Employees had fiduciary duties to TrialGraphix.

49. The Former Employees developed business and personal relationships with TrialGraphix customers by virtue of resources, funds and confidential information provided to them by TrialGraphix in the course of their employment.

50. Upon information and belief, while employed by TrialGraphix and thereafter, the Former Employees solicited TrialGraphix's customers with whom they developed relationships at TrialGraphix to move their business to FTI, in part by using confidential information they had obtained at Trial Graphix.

51. Upon information and belief, as a direct result of the Former Employees' conduct, TrialGraphix has lost, and continues to lose, business opportunities and customers to FTI.

52. Upon information and belief, as a direct result of the Former Employees' wanton and willful breach of their fiduciary duties to TrialGraphix, TrialGraphix has been damaged in an amount to be proven at trial and is entitled to punitive damages.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS
(Intentional Interference with Prospective Economic Advantage)

53. TrialGraphix incorporates by reference paragraphs 1 through 52 of this Complaint as if fully set forth herein.

54. TrialGraphix had long-established business relationships with multiple third-party customers.

55. Upon information and belief, Defendants conspired to exploit TrialGraphix's confidential and proprietary information to interfere with the business relationships between TrialGraphix and these customers and solicit them.

56. Upon information and belief, Defendants acted with the sole purpose of harming TrialGraphix and enriching themselves through the dishonest, improper and unlawful means as set forth herein.

57. Upon information and belief, as a direct result of Defendants' wanton and willful conduct, TrialGraphix has been damaged in an amount to be proven at trial and is entitled to punitive damages.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT FTI
(Tortious Interference with Contract)

58. TrialGraphix incorporates by reference paragraphs 1 through 57 of this Complaint as if fully set forth herein.

59. TrialGraphix had contracts with its employees that prohibited employees from disclosing or using TrialGraphix confidential and proprietary information and from soliciting TrialGraphix's employees and customers other than for TrialGraphix's benefit.

60. Defendant FTI knew of these contractual relations.

61. Upon information and belief, FTI has improperly induced TrialGraphix employees to breach these contracts by, *inter alia*, soliciting the Former Employees to disclose and use TrialGraphix confidential and proprietary information for FTI's benefit and soliciting

TrialGraphix's employees and customers to move from TrialGraphix to FTI. FTI engaged in this conduct with the knowledge that it would damage TrialGraphix.

62. Upon information and belief, as a direct result of Defendants' wanton and willful conduct, TrialGraphix has been damaged in an amount to be proven at trial and is entitled to punitive damages.

AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS
(Unfair Competition)

63. TrialGraphix incorporates by reference paragraphs 1 through 62 of this Complaint as if fully set forth herein.

64. Upon information and belief, Defendants misappropriated TrialGraphix's confidential and proprietary information.

65. Upon information and belief, the Former Employees exploited this information for his own benefit while employed at FTI, a competing company.

66. Upon information and belief, FTI encouraged, enabled and exploited confidential information provided by the Former Employees as well as the relationships they had developed while employed by TrialGraphix.

67. Upon information and belief, TrialGraphix's confidential and proprietary information was used to gain a competitive advantage over TrialGraphix and steal TrialGraphix's customers.

68. Upon information and belief, as a direct result of Defendants' wanton and willful conduct, TrialGraphix has been damaged in an amount to be proven at trial and is entitled to punitive damages.

WHEREFORE, Plaintiff TrialGraphix demands judgment against defendants as follows:

- a) On the First Cause of Action against the Former Employees for Breach of Contract, damages in an amount to be proven at trial;
- b) On the Second Cause of Action against the Former Employees for Breach of Fiduciary Duty damages in an amount to be proven at trial, as well as punitive damages;
- c) On the Third Cause of Action against the Defendants for Intentional Interference with Prospective Economic Advantage damages in an amount to be proven at trial, as well as punitive damages;
- d) On the Fourth Cause of Action against Defendants for Tortious Interference with Contract damages in an amount to be proven at trial, as well as punitive damages;
- e) On the Fifth Cause of Action against FTI for Unfair Competition damages in an amount to be proven at trial, as well as punitive damages;
- f) For such other and further relief that the Court deems just and proper, including, without limitation, interest, attorneys' fees, costs and disbursements of this action.

Dated: New York, New York
August 21, 2014

TANNENBAUM HELPERN SYRACUSE
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By: 

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