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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

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Attorneys for Plaintiff
Leadfusion, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

LEADFUSION, INC., a Delaware Corporation)
)
Plaintiff,)
)
v.)
)
BILL POLLOCK, an Individual,)
FINTACTIX, LLC a Limited Liability Company,)
and DOES 1-10,)
)
Defendants.)

CASE NO.:

COMPLAINT FOR:

(1) BREACH OF CONTRACT
(2) MISAPPROPRIATION OF
TRADE SECRETS

JURY TRIAL DEMANDED

RIC 1216290

Plaintiff Leadfusion, Inc. ("Plaintiff" or "Leadfusion"), by and through its attorneys
Wilson Sonsini Goodrich & Rosati, complains and alleges against Defendant Bill Pollock
("Defendant" or "Mr. Pollock") as follows:

This lawsuit arises because a former employee went too far when developing a
competing software offering. That former employee, Defendant Pollock, took unlawful

1 advantage of non-public information about Leadfusion's customer accounts and not-yet-released
2 Leadfusion product functionality, to the point of approaching Leadfusion's key customer
3 contacts just before Leadfusion's contract renewal periods and including features in his
4 competitive software that mimic those that Leadfusion has not yet released. Leadfusion
5 welcomes fair competition, but cannot tolerate misappropriation of its valuable, non-public trade
6 secrets.

7 THE PARTIES

8 1. Plaintiff Leadfusion, Inc. is a company organized under the laws of the State of
9 Delaware, with its principal place of business in San Diego, California.

10 2. Leadfusion is informed and believes, and thereon alleges, that Mr. Pollock is, and
11 at all times mentioned herein was, an individual residing in Murrieta, California. Leadfusion is
12 informed and believes that Defendant Fintactix is a California LLC operated by Defendant
13 Pollack in Murrieta, California.

14 3. The true names or capacities, whether individual or corporate, associate or
15 otherwise, of defendants named herein as DOES 1 through 10 are presently unknown to
16 Leadfusion. Therefore, Leadfusion sues said defendants by such fictitious names, and will
17 amend this Complaint to show their true names and capacities when the same has been
18 ascertained. Leadfusion is informed and believes, and based on such information and belief,
19 alleges that defendants sued as DOES 1 through 10, and each of them, are liable in whole or part
20 for the wrongful acts alleged herein. Leadfusion will seek leave of Court to amend this
21 Complaint to insert the name of each Defendant sued as a DOE Defendant herein upon
22 discovering the name and capacity of such DOE Defendant.

23 JURISDICTION AND VENUE

24 4. Jurisdiction is proper in this Court in that the total amount of damages sought in
25 this action, actual and exemplary, is within the jurisdiction of the Superior Court.

26 5. Venue is proper in Riverside County because the Defendants reside in this county,
27 and because Defendants undertook a substantial portion of the wrongful actions alleged in this
28 Complaint in this county.

1 **FACTUAL BACKGROUND**

2 **A. Plaintiff Leadfusion, Inc.**

3 6. Leadfusion is a pioneer in Financial Experience Management ("FEM") solutions
4 for the financial services industry. Financial institutions use Leadfusion's products to build
5 trusted relationships and long term brand loyalty. Over 250 financial institutions, including 36 of
6 the top 50 banks, more than 65 credit unions and two of the top three insurance companies trust
7 Leadfusion to educate and empower their consumers. Over several years, Leadfusion has
8 evolved from a provider of a calculator point solution to a comprehensive FEM offering,
9 complete with an eMarketing platform and a unique guided selling solution. The company has
10 also diversified its channel support with offerings for mobile, social, web, email, and branch
11 environments.

12 7. Over the course of many years, and at substantial expense, Leadfusion has
13 developed and maintained significant amounts of trade secret information that is proprietary to
14 the company, and not released to the public.

15 8. Because of the competitive nature of the marketplace it operates in, and because
16 Leadfusion needs to maintain its competitive position through the protection of its sensitive
17 business data, Leadfusion takes reasonable steps to ensure that its trade secret business data is
18 protected.

19 **B. Mr. Pollock Held a Position Of Trust at Leadfusion**

20 9. Mr. Pollock began his employment with Leadfusion on October 18, 2004 as the
21 Senior Production Manager. Within two years of his hiring, Mr. Pollock was promoted to the
22 Director of Products within the company. The Director of Products position is the most senior
23 product leadership position within Leadfusion. Mr. Pollock reported directly to the CEO and
24 was a central participant in all product ideation, design, planning, and strategy meetings. In
25 connection with his duties at Leadfusion, Mr. Pollock had full access to Leadfusion's customer
26 data, contracts, partners, specifications, engineering documents, and other repositories of
27 Leadfusion's trade secret information.

1 10. At the inception of his employment Mr. Pollock signed a proprietary information
2 agreement with Leadfusion (the "Confidentiality Agreement"). Under the terms of the
3 Confidentiality Agreement, Mr. Pollock agreed to the following:

4
5 Confidential Information: In the performance of Employee's duties on behalf of the
6 Company, Employee may have access to, receive or be entrusted with confidential
7 and proprietary information defined as Company's trade secrets and know-how,
8 including but in no way limited to source code and research, trade secrets, strategic
9 and development plans, marketing plans, organizational, financial conditions,
10 business plans, co-developer identities, data, business records, customer lists,
11 project records, market reports, employee lists and business manuals, policies and
12 procedures, technologies or theory, production information, distribution and sales
13 information, and specifications and processes presently owned or at any time in the
14 future developed by the Company or its agents or consultants, or used presently or
15 at any time in the future in the course of its business that is not otherwise part of the
16 public domain (collectively, the "Confidential Material"). Confidential Material
17 constitutes trade secrets which are the sole and exclusive property of Company.
18 All records, files, drawings, documents, equipment and other tangible items,
19 wherever located, relating in any way to the Confidential Material or otherwise to
20 the Company's business, which Employee prepares, uses or encounters, shall be
21 and remain the company's sole and exclusive property and shall be included in the
22 Confidential Material. Employee further agrees not to divulge or use any
23 information relating to trade secrets of previous employers during the course of
24 Employee's employment with Company.

25 Non-Disclosure: Employee promises and agrees to receive and hold the
26 Confidential Material in confidence. Except in the performance of duties on behalf
27 of the Company, Employee shall not, directly or indirectly for any reason
28 whatsoever, disclose or use any such Confidential Material, unless such
Confidential Material ceases (through no fault of Employee) to be confidential
because it has become part of the public domain. Without limiting the generality of
section 2, Employee further promises and agrees: (i) to protect and safeguard the
Confidential Material against unauthorized use, publication or disclosure; (ii) not to

1 use any of the Confidential Material except in performance of Employee's duties
2 on behalf of the Company; and (iii) not to, directly or indirectly, in any way, reveal,
3 report, publish, disclose, transfer or otherwise use any of the Confidential Material
4 except as specifically authorized by Company. Upon termination of this
5 Agreement by any means, or whenever requested by the Company, Employee shall
6 promptly deliver to the Company any and all of the Confidential Material, not
7 previously delivered to the Company, that may be or at any previous time has been
8 in Employee's possession or under Employee's control. Employee hereby
9 acknowledges that the sale or unauthorized use or disclosure of any of the
10 Company's Confidential Material by any means whatsoever any time before,
11 during or after Employee's employment with the Company shall constitute unfair
12 competition. Employee agrees that Employee shall not engage in unfair
13 competition either during the time Employee is employed by the Company or at
14 any time thereafter.

15 11. Mr. Pollock's employment with Leadfusion was terminated on July 11, 2011. In
16 connection with the termination, Leadfusion provided Mr. Pollock with a substantial severance
17 amount in exchange for Mr. Pollock's execution of a Separation Agreement and General Release
18 (the "Separation Agreement").

19 12. Under the Separation Agreement, Mr. Pollock further agreed to maintain the
20 confidentiality of all Leadfusion trade secret information and return all Leadfusion property.
21 Specifically, in exchange for payment of the severance amount under Separation Agreement, Mr.
22 Pollock agreed to the following:

23 Confidentiality Obligations: Employee and the Company agree to comply with and
24 to be bound by the Company's policy regarding confidentiality and proprietary
25 information. This Agreement in no manner reduced the existing obligations
26 Employee has under the confidentiality agreement previously executed by
27 Employee. Employee and the Company further agree to uphold the highest
28 standards of confidentiality. Employee shall not: 1) disclose any confidential or
proprietary information (specifically including, but not limited to, source code and
research, trade secrets, strategic and development plans, marketing plans, financial

1 conditions, business plans, data, business records, customer lists, market reports,
2 employee lists and business manuals, policies and procedures, technologies or
3 theory, production information, distribution and sales information not generally
4 known to the public) which Employee acquired as an employee of Leadfusion to
5 any other person or entity, or use such information in any manner that is
6 detrimental to the interest of Leadfusion; 2) for a period of one (1) year following
7 the date of this Agreement, directly or indirectly solicit any of the Company's
8 employees to work for any business, individual, partnership, firm, corporation, or
9 entity other than the Company; 3) make defamatory remarks related to Leadfusion,
10 its products, or management; 4) disclose the nature or details of this Agreement.

11 Return of Property: Employee shall return all company property in their
12 possession, including but not limited to laptops, computer hardware, documents,
13 data, backups and all electronic copies of company information, data, and source
14 code. Furthermore, Employee agrees to cease all access to company systems and
15 networks which would not otherwise be available to the general public except as
16 outlined in paragraph 3. By Employee signature of the Separation Agreement and
17 General Release, Employee acknowledges all company property has been returned.

18 **C. Mr. Pollock Breached His Confidentiality Agreement With Leadfusion And**
19 **Misappropriated Trade Secrets**

20 13. Upon information and belief, prior to the termination of his employment with
21 Leadfusion, Mr. Pollock established the internet domain www.fintactix.com and began making
22 preparations for his new entity, Fintactix, LLC ("Fintactix").

23 14. By September 13, 2011, Fintactix was offering a full FEM product line through
24 its internet website in direct competition with Leadfusion.

25 15. Upon information and belief, Leadfusion alleges that Mr. Pollock directly copied
26 much of Fintactix's offerings, strategy, and tactics from Leadfusion's trade secret information.
27 Mr. Pollock apparently believed that if some, customer-facing Leadfusion user interfaces were
28 publicly available, that meant that he was entitled to copy and use non-public information as
well. Leadfusion's trade secrets include, but are not limited to, Leadfusion's non-public
customer and market information, including the dates when Leadfusion's contracts would be up

1 for renewal, and also including non-public details about product functionality Leadfusion had not
2 released to the public.

3 16. Upon information and belief, Mr. Pollock has used Leadfusion's trade secret
4 information relating to account information and the customers' relationship with Leadfusion
5 when soliciting Leadfusion customers. Leadfusion's nondisclosure contracts with its customers
6 make clear that contract terms and other relationship details are confidential. Mr. Pollock knew
7 that to be the case.

8 17. Specifically, Fintactix approached a number of Leadfusion's key contacts, at
9 longstanding Leadfusion client accounts, just before the time arose for the renewal of the
10 contracts between Leadfusion and the customer.

11 18. The wrongful misappropriation and use of Leadfusion's confidential and trade
12 secret information relating to Leadfusion's clients has caused significant harm to Leadfusion.
13 Specifically, at least one long-standing client has reduced its relationship with Leadfusion and
14 has instead engaged Fintactix after being approached just before the renewal period.

15 19. In addition, the majority of the Fintactix tools are copies of the Leadfusion tools
16 with only minor modifications to give the appearance of originality. Specifically, almost three-
17 quarters of Fintactix's financial calculators have a Leadfusion counterpart, and synonymous
18 results can be generated from most of them – which is highly indicative of common underlying
19 algorithms. Moreover, a subset of the common tools have a high degree of both algorithmic
20 complexity and similarity in the inputs requested and results presented. This is not a
21 coincidence, and goes far beyond mere surface similarity.

22 20. Fintactix also features tools which were identified, designed, and prototyped by
23 Leadfusion but have not yet been released to market. In his position with Leadfusion, Mr.
24 Pollock was central to the design and implementation discussions related to these features and to
25 Leadfusion's plans and schedule for their implementation. This information was confidential.
26 Mr. Pollock has wrongfully misappropriated these trade secrets, which were uniquely gained
27 through Leadfusion's extensive and confidential work with customers and internal development
28 and testing activities.

1 21. Indeed, some Fintactix tools are built from Leadfusion design documents which
2 have never been made public – tools that Leadfusion has not yet released to the market. The
3 degree of similarity of these tools to Leadfusion's specifications would not be possible without
4 the use of Leadfusion's trade secret information. For example, Fintactix has released specific
5 tools which mimic the designs of Leadfusion's Guided Selling Dialogs; these dialogs have been
6 developed but have not yet been sold into the market and as such have never been made publicly
7 available.

8 22. Leadfusion has done extensive market and target identification which is used to
9 target sales and marketing efforts. Upon information and belief, this trade secret information is
10 now serving as the basis for Mr. Pollock's sales strategy.

11 **FIRST CAUSE OF ACTION**

12 **(Breach of Contract)**

13 **Against Defendant Mr. Pollock**

14 23. Leadfusion realleges and incorporates by reference each and every allegation
15 contained in paragraphs 1 through 22 inclusive, of this Complaint.

16 24. As a condition of his employment with Leadfusion, Mr. Pollock entered into the
17 Confidentiality Agreement with Leadfusion that required him to maintain the secrecy of
18 Leadfusion's protected confidential information. He reaffirmed his existing confidentiality
19 promise in order to obtain severance payments.

20 25. Leadfusion has either performed or was excused from performing all of its
21 obligations under the Confidentiality Agreement.

22 26. Mr. Pollock unjustifiably and inexcusably breached his contractual obligations as
23 described above.

24 27. Defendant's actions have injured Leadfusion through the reduction in revenue
25 from at least one customer, and through the release of product functionality before Leadfusion
26 could achieve first-to-market advantages.

1 28. As a proximate result of Mr. Pollock's breach, Leadfusion has suffered, and will
2 continue to suffer, irreparable injury relating to the loss of control over its confidential
3 information, as well as general and special damages in an amount to be proven at trial.

4 **SECOND CAUSE OF ACTION**

5 **(Misappropriation of Trade Secrets)**

6 **Against All Defendants**

7 29. Leadfusion realleges and incorporates by reference each and every allegation
8 contained in paragraphs 1-29 inclusive, of this Complaint.

9 30. Leadfusion enjoys an advantage over its existing and would-be competitors based,
10 in part, on the trade secret information it has developed and implemented in its effort to become
11 and remain the market leader FEM provider.

12 31. Leadfusion has made reasonable efforts under the circumstances to preserve the
13 confidentiality of its trade secrets. Such information derives independent economic value from
14 not being generally known to the public or to other persons who can obtain economic value from
15 its disclosure or use.

16 32. Leadfusion will identify such trade secrets with reasonable particularity prior to
17 commencement of discovery in this action pursuant to California Code of Civil Procedure §
18 2019.210, and once a confidentiality and protective order is reached.

19 33. Mr. Pollock's unlawful use of such information through Fintactix constitutes
20 misappropriation of Leadfusion's trade secrets.

21 34. As described above, Leadfusion has suffered actual injury as a proximate result of
22 this trade secret misappropriation.

23 35. Leadfusion has no adequate remedy at law for the injuries currently being
24 suffered, and the additional injuries that are threatened, because it would be difficult to quantify
25 in dollars the loss sustained pending final adjudication of this matter and Leadfusion will
26 continue to suffer irreparable injury that cannot be adequately remedied at law unless Mr.
27 Pollock is enjoined from engaging in further misappropriation.

36. In addition, as a direct and proximate cause of Mr. Pollock's misappropriation of Leadfusion's trade secrets, Mr. Pollock has been unjustly enriched in an amount to be ascertained at trial, and Leadfusion has sustained, and will continue to sustain, actual damages in an amount to be proven at trial.

37. Mr. Pollock's misappropriation was willful and malicious. Leadfusion is therefore entitled to its attorneys' fees and costs incurred in this litigation.

PRAYER FOR RELIEF

WHEREFORE, Leadfusion requests entry of judgment against Mr. Pollock and Fintactix as follows:

1. For an order of specific performance and injunctive relief in the nature of a temporary, preliminary, and permanent injunction under which Defendants and all those acting in active concert or participation with them are:

- a) ordered to immediately return to Leadfusion all copies of any documents, records, files or computer disks originating from Leadfusion and containing Leadfusion property,
- b) ordered to allow Leadfusion, or a third party forensic specialist selected by Leadfusion, to immediately inspect all of Defendants' personal computers, handheld devices, personal email accounts, portable drives, and software under a confidentiality protocol for information belonging to Leadfusion, for evidence that external drives used with an Leadfusion computer were connected to other devices, for evidence that Leadfusion-owned information was deleted from such devices, for evidence that Leadfusion-owned information was transferred to others, and for evidence that the software is based upon use of non-public Leadfusion information;
- c) enjoined from obtaining, accessing, using, retaining, or disclosing any Leadfusion trade secrets, including through the continued use of software that contains trade secrets or was the product of trade secret misappropriation.

2. For an accounting of all Leadfusion files and documents in Defendants' possession, custody, or control;

1 3. Damages and/or unjust enrichment according to proof, together with interest
2 thereon for all damages caused by Defendants, or a reasonable royalty in lieu of actual loss or
3 unjust enrichment, if warranted;

4 4. For exemplary damages, if warranted;

5 5. For costs of suit, including reasonable attorneys' fees and costs, to the extent
6 recoverable; and

7 6. For such other and further relief as the Court deems just and proper.

8
9 Dated: November 2, 2012

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

10
11 By: 
12 Charles Graves

13 Attorneys for Plaintiff

14 LEADFUSION, INC.
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DEMAND FOR JURY TRIAL

Plaintiff LEADFUSION, INC. hereby demands a jury trial of all issues triable by a jury.

Dated: November 2, 2012

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 
Charles Graves

Attorneys for Plaintiff
LEADFUSION, INC.