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12 *Attorneys for Teachers Health Trust*

13 **EIGHTH JUDICIAL DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 Teachers Health Trust,	)	Case No.: A-17-757778-C
	)	
16 Plaintiff,	)	Department 26
17 vs.	)	COMPLAINT
	)	
18 Gary Earl, an individual, Philip DiGiacomo, an	)	<b>Exempt from Arbitration</b>
19 individual, Felipe Danglapin, an individual,	)	<b>(Action in Equity)</b>
20 and Michael Ielpi, an	)	
21 individual, Doe Individuals 1-5, and Roe	)	
22 Business Entities 6-10,	)	
23 Defendants.	)	

24 **PARTIES**

25 1. Teachers Health Trust (“THT” or the “Trust”) is a private, non-profit healthcare  
26 trust located in Clark County, Nevada, which was established by Nevada statute for the purpose  
27 of providing healthcare benefits to eligible public school teachers employed by the Clark County  
28 School District (“CCSD” or the “School District”) and their eligible dependents.

2. Defendant Gary Earl (“Earl”), at all times relevant to this matter, was residing in  
Clark County, Nevada and is the former Chief Executive Officer (“CEO”) of THT.



1           8.       THT is governed by a Board of Trustees (the “Board”), which consists of retired  
2 and active Clark County teachers who are appointed by the Clark County Education Association  
3 (the “Teachers Union”). The President of the Teachers Union is also a member of THT’s Board  
4 of Trustees.  
5

6           9.       Members of THT’s Board serve on a wholly volunteer basis. They devote  
7 substantial personal time to THT’s mission and efforts without receiving monetary compensation  
8 or any tangible reward.  
9

10          10.       The Board relies heavily on the experience, advice and recommendations of the  
11 Trust’s paid professional staff who carry out the Trust’s day-to-day operations with the oversight  
12 and direction of the Board.  
13

14          11.       Funding for the Trust is negotiated and bargained for on behalf of teachers by the  
15 Teachers Union and terms of such funding are governed by the applicable Collective Bargaining  
16 Agreement (“CBA”) between the Teachers Union and the School District. Funding for the Trust  
17 is provided through a combination of employee payroll withholdings and contributions from the  
18 School District.  
19

20          12.       At all times relevant to this matter, Defendants were the agents, servants and/or  
21 employees of THT and co-conspirators of each other for the unlawful objective of causing injury  
22 to THT while contemporaneously covering up their poor work performance, lack of diligence and  
23 other misconduct and attempting to position themselves for generous severance payments from  
24 THT or a lawsuit upon termination.  
25

26          13.       On March 10, 2016, THT hired Earl as its CEO pursuant to the terms of a written  
27 employment agreement (the “Employment Agreement”). Among various provisions in Earl’s  
28 Employment Agreement, Earl was contractually required to maintain confidentiality regarding the

1 Trust's business and information. The Employment Agreement provides, "Except as authorized  
2 in writing by the Trust, at no time during his employment nor at any time thereafter shall Gary  
3 Earl divulge to any person, organization, corporation, Trust, or other entity and confidential  
4 information obtained in the course and scope of, or by reason of, his employment with the Trust."  
5

6 14. The Employment Agreement further required Earl to "devote his best efforts and  
7 substantially all of his working time to the performance of his duties hereunder and shall promptly  
8 advise the THT Board of any actual or possible conflict of interest with the Trust."  
9

10 15. One of the "Core Accountabilities" under Earl's Employment Agreement includes,  
11 "Works closely with CCEA [Teachers Union] leadership and ensures that THT is in alignment  
12 with CCEA's members interests."  
13

14 16. The Board delegated responsibility for the management of the day-to-day  
15 operations to Earl as the CEO and gave him broad authority to carry out the operations of the Trust.  
16

17 17. The Board imbued Earl with the authority to carry out his management  
18 responsibilities in accordance with the policies established by the Board.  
19

20 18. THT provided the Defendants with mobile phones and other equipment for use in  
21 the performance of their duties. The Trust's equipment was to be used for Trust business and not  
22 for personal use.  
23

24 19. Per the Employment Agreement, Earl was to provide "direction and  
25 recommendations to the Board as it carried out its governance functions."  
26

27 20. The Board relied heavily on Earl's professed management expertise and experience  
28 in the healthcare industry to lead the staff, THT's third party administrators, vendors and potential  
community partners in the development of, and execution of, a strategic plan that achieved THT's  
mission of providing high quality, affordable healthcare to Clark County teachers.

1           21. Earl was specifically charged with negotiating contracts on behalf of the Trust,  
2 including contracts with the Trust's third party administrators.

3           22. In the Spring of 2016, the Board decided as a matter of policy to eliminate any  
4 existing at-will employment agreements with Trust employees and instructed Earl to carry out that  
5 directive according to the terms of the contracts and in compliance with applicable law.  
6

7           23. Danglapin, DiGiacomo and Ielpi each had at-will employment agreements with  
8 THT. The Board did not plan to terminate the employees affected by the aforementioned policy  
9 change. Rather, it was the Board's express intention that employees subject to the at-will  
10 employment agreements would *not* be terminated and instead that they would remain employed  
11 by the Trust without a written contract.  
12

13           24. However, not only did Earl fail to eliminate the written at-will employment  
14 contracts as directed, he intentionally misrepresented to co-Defendants that the Board wanted to  
15 terminate their employment. This caused the affected employees to view the Board with  
16 skepticism and mistrust while positioning Earl as their protector and defender.  
17

18           25. Pursuant to Danglapin's employment agreement, the Trust could terminate his  
19 employment "for cause" if Danglapin "discloses to third parties (either verbally or in writing)  
20 during the term of the agreement, trade secrets, confidential information or any other proprietary  
21 information or material which are vital to the continued successful operation of [the] Trust's  
22 business."  
23

24           26. DiGiacomo's and Ielpi's employment agreements provided that their employment  
25 could be terminated for "[d]isclosure of confidential information."  
26

27           27. THT maintained policies prohibiting disclosure of its confidential information.  
28

1           28. Earl was a Svengali-like figure to the co-Defendants, who prior to Earl’s hiring at  
2 the Trust were longstanding loyal employees of THT.

3           29. Throughout his employment with THT, Earl repeatedly and improperly disclosed  
4 confidential Board discussions and deliberations with his subordinates, the co-Defendants.  
5

6           30. Earl engaged in other misconduct wholly inconsistent with and violative of his  
7 duties and role as CEO. For example, on September 30, 2016, Earl bragged about telling lies to  
8 avoid performing some of his job duties. In a text message to DiGiacomo and Ielpi, Earl said,  
9 “Just got off the phone with the Guinness Book of World Records as I just pulled off tonight the  
10 world’s first double Bernie. Convinced someone else to do the new teacher hire because I had to  
11 go to a community event, which is true, and then told them that I had to present at the new teacher  
12 hire. . . I went to the gym :-)”  
13

14           31. Earl actively undermined the Board by making derogatory and offensive remarks  
15 regarding Board members. For example, using the phone provided to him and paid for by the  
16 Trust, Earl in text messages exchanged with the co-Defendants referred to the Board’s  
17 Chairperson, Michael Steinbrink, by the nickname “Stink-Brink” and called him a “pussy.”  
18 Following a Board meeting, Earl sent a text message to DiGiacomo telling him that he wanted to  
19 “punch” a Board member in the face for allegedly disrespecting DiGiacomo.  
20  
21

22           32. Earl engaged in improper fraternization with co-Defendants including using the  
23 Trust’s equipment to exchange text messages containing sexual references and innuendo,  
24 comments about “hot” women and excessive drinking, and other inappropriate remarks.  
25

26           33. Earl and the co-Defendants, both during and outside of work hours, would frequent  
27 bars, restaurants and casinos together, including using Trust credit cards to pay for meals, alcohol  
28 and personal gifts. They developed an extremely close personal relationship and spoke of their

1 “love” for each other, “brotherhood,” and “family”-like relationship. They promised to be loyal to  
2 each other and have each other’s back.

3 34. On December 23, 2016, without authorization or approval of the Board, DiGiacomo  
4 purchased over \$700 in alcohol and cigars for Earl as a “gift.” Specifically, DiGiacomo used a  
5 Trust credit card to purchase a bottle of “Jack Daniels Sinatra Select” for Earl costing \$129.77 at  
6 Lee’s Discount Liquor. That same day, he purchased cigars for Earl using a Trust credit card in a  
7 transaction totaling \$475 at Cigar Mart. Earl repeatedly thanked his co-Defendants for the gifts.  
8

9 35. At numerous times during his employment, the Board expressed concerns  
10 regarding Earl’s performance, leadership style and other problems. In May 2016, Earl was placed  
11 on probationary status by the Board after he embarrassed the Trust at a public function where he  
12 was officially representing THT. At a dinner/gala where one of the Trust’s third party  
13 administrators was an honoree and Board members and Earl were invited guests, Earl was  
14 extremely intoxicated and was removed by security when, among other drunken conduct, he was  
15 falling asleep at a table.  
16

17 36. In late 2016/early 2017, THT worked with an outside healthcare expert, Tom  
18 Zumtobel, to review Trust operations due to concerns about Earl’s performance. After conducting  
19 his review, Zumtobel issued a report and provided other commentary highly critical of Earl’s  
20 performance and leadership style. Earl was furious regarding the criticism of his performance.  
21

22 37. The Defendants, who all reported to Earl, took an “us” versus “them” mentality  
23 with respect to the Trust’s Board. The Defendants pledged “loyalty” to each other above loyalty  
24 to the Trust, calling themselves “brothers” and the “Good Ole’ [sic] Boys” and using the slogan  
25 with each other, “All for one and one for all.”  
26  
27  
28

1           38.     In a text message to Earl on November 22, 2016, DiGiacomo said, “Full scale war  
2 is underway and I want scorched earth.”

3           39.     On April 5, 2017, Defendants Earl and DiGiacomo exchanged a text message  
4 wherein Earl stated in reference to the Board of Trustees: “F\*\*k them all . . . I’m going to bed  
5 and [when] I wake up . . . we’re going to set a new course tomorrow to make sure we set these  
6 motherf\*\*\*\*\*s up. It feels good :-)”

7           40.     In early April 2017, THT received a request from the School District for, among  
8 other items, Trust proprietary and confidential census data. The School District was requesting  
9 the information as part of its ongoing negotiations with the Teachers Union for a new collective  
10 bargaining agreement (CBA). Despite specific instructions not to release the census data because  
11 the School District was not entitled to it and the disclosure would be detrimental to teachers and  
12 the Trust, Defendants released the Trust’s confidential and proprietary census data to the School  
13 District. The disclosure included over 17,000 lines of data on an Excel spreadsheet compiled from  
14 Trust records regarding details related to each and every THT plan participant and their  
15 dependents. This was done despite the fact that Earl and his co-Defendants knew that the School  
16 District would use the confidential and proprietary data to gain leverage in collective bargaining  
17 negotiations with the Teachers Union and that it would result in the School District advocating for  
18 dissolution of the Trust in favor of teachers being insured through the commercial insurance  
19 market.

20           41.     While Earl professed to apologize for the release of the proprietary census data,  
21 behind the scenes, he was gloating about it with his co-Defendants. In text messages discussing  
22 the fall-out from disclosure of the census data, Earl said it was “actually turning into a good deal  
23  
24  
25  
26  
27  
28



1 of fun,” he “couldn’t care less,” he felt “peace,” had “nothing but a big smile” on his face, and that  
2 it was “a very, very GOOD day. (Tee-hee).”

3 42. All Defendants admitted to THT that they participated in the disclosure of the  
4 census data to the School District.

5 43. Defendants intentionally and maliciously disclosed a trade secret belonging to THT  
6 (namely, the census data) with, as stated in their text messages, the express purpose of harming  
7 THT.  
8

9 44. On or about May 2, 2017, Ielpi tipped off Earl that the Board had requested a copy  
10 of Earl’s employment contract to determine if any payouts were required upon termination.  
11

12 45. On May 5, 2017, THT terminated Earl’s employment for breaching confidentiality,  
13 including Earl’s unauthorized disclosure of THT census data.

14 46. On May 8, 2017, Ielipi voluntarily resigned his employment with THT effective  
15 immediately.  
16

17 47. During an investigatory interview with DiGiacomo conducted by members of the  
18 Board on May 8, 2017, DiGiacomo and his counsel were in possession of documents belonging to  
19 THT. During the May 8, 2017, investigatory meeting and at numerous other times, THT’s legal  
20 counsel has objected to the Defendants’ and their legal counsel’s possession of THT documents  
21 and demanded that they be immediately returned to THT.  
22

23 48. To date, Defendants have ignored and/or refused THT’s demands that they return  
24 all of THT’s documents and/or information improperly removed from THT and/or retained by  
25 Defendants.  
26

27 49. Also during the May 8, 2017, meeting, DiGiacomo provided a document prepared  
28 by the Defendants which described privileged attorney-client communications belonging to THT.

1 Defendants without authority to do so, have shared privileged attorney-client communications  
2 belonging to THT with their own personal legal counsel.

3         50.       Effective May 10, 2017, DiGiacomo was placed on paid administrative leave while  
4 THT's Board investigated his improper handling of THT confidential information and property.  
5 On May 22, 2017, the Board terminated DiGiacomo's employment for cause based on his  
6 participation in the improper disclosure of confidential THT census information, the mishandling  
7 of THT confidential documents and the improper disclosure of THT's privileged attorney-client  
8 communications to third parties. Because Earl had failed to terminate DiGiacomo's at-will  
9 employment contract as previously instructed by the Board, THT was forced to make certain  
10 payments to DiGiacomo upon termination, which it otherwise would not have been obligated to  
11 pay.  
12

13  
14         51.       On May 15, 2017, Danglapin submitted his voluntary resignation effective May 19,  
15 2017. Because Earl had failed to terminate Danglapin's at-will employment agreement contract  
16 as previously instructed by the Board, THT was forced to make certain payments to Danglapin  
17 upon his resignation which it otherwise would not have been obligated to pay.  
18

19         52.       Following the Defendants' separation from THT, the Trust discovered that, during  
20 Earl's reign as CEO, the Defendants engaged in an array of misconduct, including  
21 misappropriating THT's assets by improperly using the Trust's credits card for personal meals,  
22 alcohol and gifts.  
23

24         53.       On May 22, 2017, THT informed Ielpi and Danglapin, through their counsel, that  
25 THT had learned that Ielpi and Danglapin had participated in the improper disclosure of THT  
26 information including census data and attorney client privileged communications and, had they  
27 not resigned, their employment would have been terminated by the Trust.  
28



1 Moreover, to the extent that the Documents constitute the confidential and proprietary information  
2 or trade secrets of THT, the property's value is in excess of millions of dollars.

3 60. The Documents are wrongfully in the possession and/or control of Defendants and  
4 their attorney, Andre Lagomarsino, whose office address is 3005 Horizon Ridge Parkway, Suite  
5 241, Henderson, Nevada 89052.  
6

7 61. THT is the owner of and is entitled to possession of the Documents, which are  
8 business records and proprietary and confidential information belonging to the Trust.

9 62. The Documents have been wrongfully taken and detained by Defendants and  
10 without the permission of THT which has repeatedly demanded return of same.  
11

12 63. Defendants have taken the Documents from THT to hide or destroy evidence of  
13 their wrongdoing during the course of their employment and under the pretext of asserting a  
14 "whistleblower" claim against THT.  
15

16 64. Defendants have also converted THT's resources in the form of misuse of THT's  
17 credit cards for their personal benefit.

18 65. As a result of Defendants' wrongful conversion of the Documents and the misuse  
19 of THT's credit cards, THT has been damaged in excess of \$10,000.  
20

21 66. THT has been required to utilize the services of attorneys to prosecute this action  
22 for the return of its property and is entitled to an award of reasonable attorneys' fees and costs.

23 **SECOND CLAIM FOR RELIEF**

24 **Civil Conspiracy**

25 **(All Defendants)**

26 67. Plaintiff realleges the above paragraphs as if fully set forth herein.  
27  
28



1           76. Ielpi also had a special relationship of trust and confidence with THT. He was privy  
2 to highly confidential information relating to all aspects of the Trust, including attending many  
3 Board meetings and being responsible for maintaining Trust business records.  
4

5           77. As a result of their special relationship with THT, each defendant owed THT a  
6 fiduciary duty to exercise the utmost loyalty, good faith and honesty in execution of their respective  
7 duties to, and dealings on behalf of, and/or with THT.  
8

9           78. Defendants breached their fiduciary duty by improperly conspiring with one  
10 another to disclose THT's confidential and proprietary census information to the detriment of  
11 THT.  
12

13           79. Defendants further breached their fiduciary duty to THT by misusing THT's assets  
14 for their own benefit in the form of unauthorized use of THT credit cards for personal use.  
15

16           80. Defendants further breached their fiduciary duty by engaging in acts to actively  
17 denigrate and undermine THT and its Board.  
18

19           81. Defendants further breached their fiduciary duty by placing their avowed loyalty to  
20 each other before the best interests of the Trust.  
21

22           82. As a direct and proximate result of Defendants' wrongful conduct, THT has  
23 suffered damages in excess of \$10,000.  
24

25           83. As a further direct and proximate result of Defendants' breach, THT has suffered  
26 special and consequential damages in excess of \$10,000.  
27

28           84. Defendants' actions were intentional, willful and malicious, and THT is entitled to  
punitive and exemplary damages pursuant to N.R.S. 42.005.  
29

          85. THT has been required to utilize the services of attorneys to prosecute this action  
and is entitled to an award of reasonable attorneys' fees and costs.  
30









**EIGHTH CLAIM FOR RELIEF**  
**Violation of the Uniform Trade Secrets Act**  
**(All Defendants)**

1  
2  
3 115. Plaintiff realleges each of the above paragraphs as if fully set forth herein.

4  
5 116. Defendants misappropriated THT's trade secret through their unauthorized and  
6 improper disclosure of THT's detailed confidential and proprietary census data relating to all of  
7 its plan participants and their dependents to the School District.

8 117. On April 5, 2017, Defendants Earl and DiGiacomo exchanged a text message  
9 wherein Earl states in reference to the Board of Trustees: "F\*\*k them all . . . I'm going to bed  
10 and [when] I wake up . . . we're going to set a new course tomorrow to make sure we set these  
11 mother f\*\*\*\*\*s up. It feels good :-)"

12  
13 118. Shortly thereafter, Defendants released to the School District THT's confidential  
14 and proprietary compilation of over 17,000 lines of Trust census data related to each and every  
15 plan participant and their dependents.

16  
17 119. Defendants intentionally, improperly and without authorization provided the  
18 census data to the School District.

19 120. As a result of Defendants' improper disclosure of the census data, the School  
20 District was able to use the census data to obtain bids from commercial insurers for health  
21 insurance coverage and now seeks the dissolution of the Trust. The improper disclosure has placed  
22 the quality of teacher health care in serious jeopardy and threatens the Trust's very existence.

23  
24 121. THT further seeks recovery of damages in excess of \$10,000 as a result of  
25 Defendants' wrongful acts.

26  
27 122. Defendants' actions were intentional, willful and malicious, and THT is entitled to  
28 exemplary damages and attorneys' fees pursuant to N.R.S. 600A.050 and N.R.S. 600A.060.

**NINTH CLAIM FOR RELIEF**  
**Unfair Trade Practices, N.R.S. 603.040**  
**(All Defendants)**

1  
2  
3       123. Plaintiff realleges each of the above paragraphs as if fully set forth herein.

4  
5       124. Defendants engaged in unfair trade practices by misuse of THT's computer data  
6 when they improperly downloaded an Excel spreadsheet containing over 17,000 lines of Trust data  
7 and disclosed the same to the School District.

8       125. Defendants improperly disclosed THT's computer data to the School District with  
9 knowledge the School District would use THT's confidential and proprietary data to damage THT  
10 and to gain leverage in collective bargaining negotiations with the Teachers Union to the detriment  
11 of THT.

12  
13       126. In fact, the School District has used THT's data to advocate for dissolution of the  
14 Trust in favor of teachers being insured through the commercial insurance market.

15  
16       127. Defendants disclosed THT's confidential and proprietary information without  
17 THT's consent.

18       128. THT seeks injunctive relief in the form of the return of any data still in the control  
19 and/or possession of Defendants, their agents and/or anyone else acting in concert with them, and  
20 an order restraining the further use or disclosure of THT's computer data as the Court deems just  
21 and reasonable.

22  
23       129. THT further seeks recovery of any damages suffered as a result of Defendants'  
24 wrongful acts, including all costs and attorney fees incurred in this matter pursuant to N.R.S.  
25 603.080.

26       ///

27  
28       ///

1 WHEREFORE, THT prays for the following relief:

2 A. Injunctive Relief requiring Defendants, their agents and/or anyone else acting in concert  
3 with them:

4 1. To return all originals and any copies of THT's documents, intellectual  
5 property and/or personal property in their possession and/or control; and

6 2. To refrain from further use or disclosure of THT's computer data,  
7 documents, or any other THT property in their possession or control;

8 B. For general damages in an amount in excess of \$10,000;

9 C. For special damages in an amount in excess of \$10,000;

10 D. For consequential damages including, without limitation, lost revenue in an amount in  
11 excess of \$10,000;

12 E. For punitive damages in an amount in excess of \$10,000;

13 F. For prejudgment and post judgment interest as allowed by law;

14 G. For costs of suit;

15 H. For reasonable attorney's fees; and

16 I. For such other relief, as to the Court, seems just.

17 HARTWELL THALACKER, LTD

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