

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**APEX INTERNATIONAL, LLC  
AND GREG LINDBERG,**

**Plaintiffs,**

**v.**

**JEFFREY SERBER,**

**Defendant.**

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**CIVIL ACTION NO. 3:19-cv-2242**

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**PLAINTIFFS' VERIFIED ORIGINAL COMPLAINT**

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Plaintiffs Apex International, LLC ("Apex") and Greg Lindberg ("Lindberg") (collectively, "Plaintiffs") file this Verified Original Complaint against Jeffrey Serber ("Serber"). Plaintiffs show the Court as follows:

**OVERVIEW OF DISPUTE**

1. This is a lawsuit for breach of contract, trade secret misappropriation, breach of fiduciary duty, violations of the Texas Theft and Liability Act, and fraud under Texas law.

2. Serber is a former 1099 security contractor of Apex. Apex retained his services in February 2019 as part of its ongoing duties to provide close protection services to Lindberg. Lindberg is a business executive and ultra-high-net-worth individual with business operations throughout the continental United States and abroad. Serber misrepresented his professional and military background to Apex while he was an Apex contractor. Once he was provided access to Plaintiffs' confidential, personal, and proprietary information and trade secrets, he accumulated this information with the intent of using and disclosing it to third parties for his own personal benefit and to Plaintiffs' substantial detriment.

3. Plaintiffs are aware of at least one instance where Serber appears to have disclosed Plaintiffs' confidential, personal and proprietary information and trade secrets—a dossier—to journalists for an international daily newspaper. Plaintiffs believe this disclosure occurred in mid-Spring 2019—around the time when Plaintiffs learned that Serber had been lying about his professional and military background. Plaintiffs believe that Serber made this disclosure to these journalists given their prior reporting on Mr. Lindberg and with the expectation of financial remuneration.

4. Apex relieved Serber of his responsibilities as a security contractor in May 2019. This decision came following a determination that Serber represented a credible insider threat to Plaintiffs' operations and to Lindberg's security. Since that time, Plaintiffs have learned of Serber's wrongful conduct and are dealing with the fallout it has caused. If Serber is not enjoined, Plaintiffs will suffer imminent harm for which there is no adequate remedy at law.

### **THE PARTIES**

5. Plaintiff Apex International, LLC is a North Carolina limited liability company with its principal place of business located at 2222 Sedwick Road, Durham, North Carolina 27713.

6. Plaintiff Greg Lindberg is an individual residing in New York City, New York.

7. Defendant Jeffrey Serber is a California resident. He may be served with process at his last known home address of 997 Donner Avenue, Simi Valley, California 93065, or wherever he may be found.

### **JURISDICTION & VENUE**

8. Subject matter jurisdiction rests on diversity of citizenship under 28 U.S.C. § 1332. The parties are completely diverse. The amount in controversy exceeds the minimal jurisdictional requirements of this Court because Plaintiffs seek money damages, equitable relief,

and legal fees in excess of \$75,000, exclusive of costs.

9. The Court has personal jurisdiction over Serber because he specifically agreed to Texas jurisdiction and venue in the federal or state courts of Dallas County, Texas. *See* Ex. 1, attached.

10. This action arises under Texas law. Specifically, this is an action for breach of contract, trade secret misappropriation, breach of fiduciary duty, violations of the Texas Theft and Liability Act, and fraud.

11. Venue is proper in this district under the mandatory venue provision in the agreement attached as Exhibit 1. *See id.*

#### **FACTUAL BACKGROUND**

12. Lindberg is the founder of the Global Growth family of companies. He started the company that would eventually become Global Growth in 1991 while he was a college undergraduate. He launched Home Care Week, an insurance and compliance newsletter that was targeted to home health agencies, from his dorm room with only \$5,000. By 2000, the company that he had bootstrapped to build with \$5,000 had grown to approximately \$5 million in annual revenue with no outside equity capital. By 2001, the company enjoyed approximately \$1 million in annual profit.

13. Lindberg and the Global Growth team reinvested that cash flow in over 100 acquisitions that have produced a compound annual growth rate of over 35% on equity capital. Currently, Global Growth's portfolio consists of over 100 companies worldwide that employ over 8,000 employees across a diverse range of industries. This portfolio generates over \$1.4 billion in annual revenue around the world.

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of wealth he has attained makes Lindberg and members of his family potential targets for elevated personal risk. Accordingly, Apex was established to provide close protection services for Lindberg and his family.

15. Apex is staffed with close protection professionals who proudly and honorably served in the United States Armed Forces. These professionals have prior experience in the security industry and are retained to provide a multitude of services. These services include physical protection, driving, advance detail, location scouting and reconnaissance, and protective intelligence. Apex is also involved in numerous Lindberg business activities including facilities management, two start-up businesses, physical asset management, documentation management, and IT systems management.

16. Apex's operations are international in scope and include projects in Texas. Apex has kept and maintained confidential information and trade secrets that belonged to it, as well as information that is the subject of this lawsuit and information belonging to Lindberg, in Texas. Apex provided services in Texas for Lindberg at or around the time of the events giving rise to this lawsuit.

17. Regarding the close protection services that Apex provides, protective intelligence is a type of threat assessment which endeavors to identify, assess, and mitigate possible threats to the principal. Apex has developed its own cutting-edge protective intelligence methodologies to ensure its operations exceeded the industry standard. These methodologies include a blended approach to physical security assessment, surveillance and counter-surveillance, and related disciplines to account for a customer's professional and personal lifestyle. As can be expected, these methodologies generate sensitive, confidential, personal, and proprietary information and trade secrets that, in the wrong hands, could be used to disable Apex's operations, weaken

Lindberg's business interests, and expose Lindberg, his family and associates to extortion and personal harm.

18. In early 2019, Apex required additional assistance to grow its operational capabilities. Apex sought to retain the services of security contractors to provide this much-needed, and appreciated, assistance. Serber was one of the individuals who applied and was retained for one of these 1099 positions in February 2019.

19. Serber entered into a confidentiality agreement with Plaintiffs that became effective on February 21, 2019 (the "Agreement"). A copy of the Agreement is attached as Exhibit 1 and incorporated for all purposes.

20. As part of the Agreement, Serber acknowledged that disclosure of Plaintiffs' confidential, personal, and proprietary information and trade secrets would adversely affect Plaintiffs. *See* Ex. 1 ¶ 1.2(b). Serber then agreed to hold this information "in the strictest confidence" and "not disclose same to any person[.]" *Id.* ¶ 1.3(a). Serber further agreed to return this information following his discharge. *See id.* ¶ 1.4.

21. Apex assigned Serber to field work that would inform the close protection team's operational decisions. This work took him far afield from his California home. His projects took him around the country, and he was read into projects that were ongoing in Texas and elsewhere. Serber also received access and was privy to confidential, private, and proprietary information and trade secrets that belonged to Plaintiffs in his capacity as a security contractor. This information included extensive and intimate details of Lindberg's: travel schedule; personal relationships and family plans; activities with associates, friends and acquaintances; and professional dealings, among other things. This information also included details of third parties associated with Lindberg that would enable Serber to fulfill his responsibilities in the field. This information was

provided via products that were created and developed by, and unique to, Apex and which could be accessed in the field. These products included templates and intel cards with data fields and terminology that were specific to Apex's operations. Serber retained access to this and other information through his discharge in May 2019.

22. Also prior to his discharge in May 2019, Serber received training, experience, and insight regarding the protective intelligence methodologies that Apex had developed or refined.

23. During his time with Apex, Serber presented himself as an experienced professional with a background in the military and law enforcement. Among other things, he alluded to service in the Afghanistan theater during Operation Enduring Freedom; represented that he had worked as a military contractor in Afghanistan; had served as an 18XRay Communications Specialist; had worked as an intelligence officer for the United States Department of Defense; had been a police officer with the Los Angeles Police Department; had been shot in the line of duty; and had been an "Interrogator" in Afghanistan. These statements were untrue when Serber made them, and Apex's suspicions were aroused when, in response to the Apex Intel Office's request for DD Form 214s, Serber responded, "No DD-214 for me, I wasn't in the military."<sup>1</sup>

24. Serber made this statement in an integrated chat thread that went to members throughout Apex's organization. This statement and other events precipitated an investigation and internal threat assessment of Apex's operations. Apex discharged Serber in May 2019 after the investigation had concluded. It was during this investigation that Apex discovered Serber's casual flouting of Apex protocols and protections, creating the potential for grievous security breaches and compromising Lindberg and ongoing Apex operations.

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<sup>1</sup> The DD Form 214 ("Certificate of Release or Discharge from Active Duty") is a document the United States Department of Defense issues upon a military service member's retirement, separation, or discharge from active duty. Apex was cataloging all military schools, training and certifications—and hence, capabilities—of its team members when it made this request.

25. Upon information and belief, it was around the time of his discharge in May 2019 that Serber provided a dossier of Plaintiffs' confidential, personal, and proprietary information and trade secrets to journalists for an international daily newspaper. It was also around this time that Serber began actively soliciting other Apex contractors and employees for particular confidential, personal, and proprietary information and trade secrets that belonged to Plaintiffs, providing false and conflicting reasons for why he wanted this information.

26. Since then, Plaintiffs and others have been contacted by these journalists with requests to comment on details and information that, upon information and belief, could have only come from Serber and the May 2019 dossier. Plaintiffs believe that Serber continues to seek to acquire and disseminate Plaintiffs' confidential, personal, and proprietary information and trade secrets to further benefit himself and harm Plaintiffs.

### **PLAINTIFFS' CLAIMS**

#### **First Cause of Action – Breach of Contract**

27. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

28. Serber entered into a valid confidentiality agreement with Plaintiffs—the Agreement—in which he agreed to not use or disseminate Plaintiffs' confidential, personal, and proprietary information and trade secrets in exchange for access to Plaintiffs' confidential and proprietary information, trade secrets, and other good and valuable consideration. *See id.* ¶ 1.3.

29. Because he signed the Agreement, Serber became and was privy to Plaintiffs' confidential, personal, and proprietary information and trade secrets including, but not limited to, details of Lindberg's travel schedule, personal relationships and family plans, and financial and business dealings, along with Apex's unique strategies, operational capabilities and

methodologies, and other highly sensitive and confidential information and trade secrets.

30. Serber breached the Agreement when he provided third parties with confidential, personal, and proprietary information and trade secrets, and assisted third parties with their efforts to discover confidential, personal, and proprietary information and trade secrets, before and after his discharge. Serber's efforts here included soliciting and attempting to acquire confidential, personal, and proprietary information and trade secrets from Plaintiffs' employees and contractors under false pretenses.

31. Plaintiffs have incurred or will incur actual damages as a proximate result of Serber's breach, for example by expending significant monetary resources to revamp Apex's protective intelligence methodologies in light of Serber's disclosure of its practices. If Serber is not enjoined from further breaches of the Agreement, including disclosing, publishing or disseminating Plaintiffs' confidential, personal, and proprietary information and trade secrets, then Plaintiffs will suffer damages within the jurisdictional limits of the court.

32. Under the terms of the Agreement, Plaintiffs are entitled to a recovery of their attorney's fees.

33. Serber recognizes that a breach of the Agreement "will cause irreparable injury to [Plaintiffs] for which legal remedies may be inadequate" and for which Plaintiffs "are entitled to seek injunctive relief against" him. Ex. 1 ¶ 3.1. If Serber is not immediately prevented and enjoined from further breaches of the Agreement, Plaintiffs will be immediately and irreparably harmed and will incur actual damages as a result of the breach(es). Serber is or has been in possession of Plaintiffs' confidential, personal, and proprietary information and trade secrets and has clearly demonstrated his willingness to use and disclose same for his own benefit and to Plaintiffs' detriment.



**Second Cause of Action – Trade Secret Misappropriation  
Under the Texas Uniform Trade Secrets Act**

34. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

35. The confidential, personal, and proprietary information and trade secrets that Serber misappropriated belong to Plaintiffs. Plaintiffs keep this confidential, personal, and proprietary information and trade secrets substantially secret.

36. Serber had a contractual relationship with Plaintiffs through which he was exposed to and acquired Plaintiffs' confidential, personal, and proprietary information and trade secrets.

37. Serber provided third parties with confidential, personal, and proprietary information and trade secrets, and assisted third parties with their efforts to discover confidential, personal, and proprietary information and trade secrets, before and after his discharge, in violation of his relationship with Plaintiffs. This would have included internal products and operations materials that Apex developed for use in the field, including templates and intel cards that were unique to Apex, as well as information regarding Lindberg's personal relationships and activities with associates, friends and acquaintances, among other things.

38. Further, Serber's efforts here included soliciting and attempting to acquire confidential, personal, and proprietary information and trade secrets from Plaintiffs' employees and contractors under false pretenses. For instance, shortly after his discharge, Serber contacted an Apex associate and requested a particular intel card. When asked why he wanted it, Serber represented that he had moved to another company, was creating products for that company's internal use, and intended to copy Apex's products to do so.

39. Upon information and belief, Serber will seek to further use, disclose, or disseminate Plaintiffs' confidential, personal, and proprietary information and trade secrets, in

violation of his relationship with Plaintiffs.

40. Serber knew or should have known that he possessed, viewed, used, and disclosed Plaintiffs' confidential, personal, and proprietary information and trade secrets by improper means.

41. Plaintiffs have incurred or will incur actual damages as a proximate result of Serber's misappropriation. If Serber is not enjoined from further misappropriation, then Plaintiffs will suffer damages within the jurisdictional limits of the court. Accordingly, Plaintiffs are entitled to injunctive relief as permitted by Tex. Civ. Prac. & Rem. Code Ann. § 134A.003.

42. Serber's misappropriation was malicious. Therefore, Plaintiffs are entitled to a recovery of exemplary damages pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 134A.004(b).

43. Plaintiffs are further entitled to their reasonable attorney's fees pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 134A.005.

### **Third Cause of Action – Breach of Fiduciary Duty**

44. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

45. Serber had a relationship with Plaintiffs through which he was exposed to and acquired Plaintiffs' confidential, personal, and proprietary information and trade secrets.

46. By providing asset and threat assessment and protection services, Serber held a position of confidence and trust. Accordingly, Serber owed a fiduciary duty to Plaintiffs to protect their confidential, personal, and proprietary information and trade secrets and to not use same for his own personal gain. This fiduciary duty did not terminate after his discharge.

47. Serber breached his fiduciary duty when he provided third parties with confidential, personal, and proprietary information and trade secrets, and assisted third parties with their efforts to discover confidential, personal, and proprietary information and trade secrets, before and after

his discharge. Serber's efforts here included soliciting and attempting to acquire confidential, personal, and proprietary information and trade secrets from Plaintiffs' employees and contractors under false pretenses.

48. Serber's breaches were intentional as he sought to leverage additional, unwarranted benefits for himself and to harm Plaintiffs' respective businesses and reputations.

49. Plaintiffs have incurred or will incur actual damages as a proximate result of Serber's breach. If Serber is not enjoined from further breaches, then Plaintiffs will suffer damages within the jurisdictional limits of the court.

**Fourth Cause of Action – Texas Theft and Liability Act  
Under Tex. Civ. Prac. & Rem. Code Ann. §§ 134.001 *et seq.***

50. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

51. Serber is liable to Plaintiffs for unlawful appropriation of their property as described in Tex. Penal Code Ann. § 31.03. Specifically, Serber has unlawfully appropriated Plaintiffs' highly confidential and privileged information. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 134.001 *et seq.*

52. As a direct result of Serber's theft, Plaintiffs have suffered actual and consequential damages.

53. Plaintiffs are further entitled to disgorgement of Serber's gains and punitive damages because of his misconduct.

54. Plaintiffs are further entitled to their court costs and reasonable and necessary attorney's fees pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 134.005.

**Fifth Cause of Action – Fraud**

55. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all

purposes.

56. Upon entering a relationship with Plaintiffs, Serber made representations about his military background and prior professional service. These representations were false.

57. Serber knew these representations were false when he made them.

58. Serber made these representations to create a misleading and favorable impression of his professional experience, training and background, to induce Plaintiffs to continue to retain his services.

59. Serber's false representations violate state and federal laws that criminalize falsifying military records, including the Texas Stolen Valor Act. *See* Tex. Penal Code Ann. § 32.54.

60. Plaintiffs have paid Serber compensation and incurred or will incur actual damages as a proximate result of Serber's fraud.

61. Plaintiffs are entitled to exemplary damages for Serber's fraud.

#### **EXEMPLARY DAMAGES**

62. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

63. Plaintiffs plead for exemplary damages against Serber because his wrongful acts were done knowingly, intentionally, willfully, with malice and/or gross negligence as made actionable by Tex. Civ. Prac. & Rem. Code Ann. §§ 41.001 *et seq.*, Tex. Civ. Prac. & Rem. Code Ann. § 134A.004(b), and applicable common law. Serber's acts are so willful, malicious, felonious and egregious that any statutory cap on the recovery of exemplary damages should not apply.

#### **ATTORNEY'S FEES**

64. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all

purposes.

65. Plaintiffs have retained the undersigned counsel and are entitled to recover from Serber their reasonable and necessary attorney's fees and costs incurred in pursuit of their claims pursuant to the terms of the Agreement and under Tex. Civ. Prac. & Rem. Code Ann. § 38.001.

**CONDITIONS PRECEDENT**

66. All conditions precedent to Plaintiffs' claims have been satisfied.

**APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

67. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

68. Plaintiffs seek injunctive relief concerning Serber's activities.

69. Plaintiffs seek a temporary restraining order and temporary and permanent injunctive injunction which order Serber to:

- a. Cease, desist and refrain from directly or indirectly seeking to acquire, acquiring, possessing, viewing, using, disclosing, publishing, or disseminating Plaintiffs' confidential, personal, and proprietary information and trade secrets;
- b. Cease, desist and refrain directly or indirectly communicating false, defamatory, or disparaging statements about Plaintiffs, or from directly or indirectly misappropriating Plaintiffs' confidential, personal, and proprietary information and trade secrets for the acts complained of in these pleadings; and
- c. Cease, desist and refrain from directly or indirectly seeking to acquire, acquiring, possessing, viewing, using, disclosing, publishing, or disseminating any confidential, personal, and proprietary information or trade secrets which belong to Plaintiffs.

70. Plaintiffs are likely to succeed on the merits of this case because, among other reasons, Serber has already disclosed highly sensitive and confidential, personal, and proprietary information and trade secrets belonging to Plaintiffs to third parties and, if he is not enjoined, will

continue to disclose the information and trade secrets to others. It is also highly likely that Serber will renew his efforts to procure other highly sensitive and confidential, personal, and proprietary information and trade secrets belonging to Plaintiffs in order to further make good on efforts to harm them. Serber has no legitimate defense for his possession and use of Plaintiffs' confidential, personal, and proprietary information and trade secrets or his efforts to harm Plaintiffs.

71. If Serber is not immediately restrained, his actions will result in immediate and irreparable harm to Plaintiffs' respective businesses and their reputations. Plaintiffs have and will continue to be injured by Serber's conduct.

72. Issuing a temporary restraining order and temporary and permanent injunction which prevent Serber from continuing to access, possess and use Plaintiffs' confidential, personal, and proprietary information and trade secrets and from performing the other illegal activity described in these pleadings is necessary to prevent immediate, substantial, and irreparable injury to Plaintiffs. Issuing these orders and injunctions also minimize the risk of any further compromise of Plaintiffs' confidential, personal, and proprietary information and trade secrets.

73. Serber recognizes that a breach of the Agreement "will cause irreparable injury to [Plaintiffs] for which legal remedies may be inadequate" and for which Plaintiffs "are entitled to seek injunctive relief against" him. Ex. 1 ¶ 3.1.

74. To preserve Plaintiffs' confidential, personal, and proprietary information and trade secrets, Serber should be temporarily restrained and enjoined, during the pendency of this action, and then permanently enjoined from continuing the wrongful conduct described in these pleadings.

75. Plaintiffs are willing and able to post bond.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask that Serber be cited to appear and answer herein and that they have the following relief against Serber:

a. Temporary, preliminary, and permanent injunctive relief against Serber from directly or indirectly seeking to acquire, acquiring, possessing, viewing, using, disclosing, publishing, or disseminating Plaintiffs' confidential, personal, and proprietary information and trade secrets;

b. Temporary, preliminary, and permanent injunctive relief against Serber and his affiliates, agents, representatives, servants, employees, attorneys, and all other persons in active concert or privity or participation with Serber from directly or indirectly communicating false, defamatory, or disparaging statements about Plaintiffs, or from directly or indirectly misappropriating Plaintiffs' confidential, personal, and proprietary information and trade secrets for the acts complained of in these pleadings;

c. Temporary, preliminary, and permanent injunctive relief against Serber and his affiliates, agents, representatives, servants, employees, attorneys, and all other persons in active concert or privity or participation with Serber from directly or indirectly seeking to acquire, acquiring, possessing, viewing, using, disclosing, publishing, or disseminating any confidential, personal, and proprietary information or trade secrets which belong to Plaintiffs;

d. All actual, economic, consequential, and exemplary damages;

e. Attorney's fees, costs, and pre- and post-judgment interest, as allowed by law; and

f. Such other and further relief to which Plaintiffs are entitled.

Dated: September 18, 2019

Respectfully submitted,

**CONDON TOBIN SLADEK THORNTON PLLC**

/s/Aaron Z. Tobin

Aaron Z. Tobin

Texas Bar No. 24028045

atobin@ctstlaw.com

Michael J. Merrick

Texas Bar No. 24041474

mmerrick@ctstlaw.com

8080 Park Lane, Ste. 700

Dallas, Texas 75231

Telephone: 214.691.6300

Facsimile: 214.691.6311

*Attorneys for Plaintiffs*



**DECLARATION OF ROBERT B. GADDY**

I, Robert B. Gaddy, declare as follows:

1. My name is Robert B. Gaddy. I am over 18 years of age, of sound mind and am otherwise legally competent to make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. I am Security Lead for Apex International, LLC ("Apex"), which is a company that provides close protection services for Greg Lindberg and his family. Part of my duties for Apex include overseeing the close protection services that Apex provides and the employees and contractors that Apex retains to provide these services.

3. Jeffrey Serber ("Serber") was retained by Apex to provide contract services. Serber entered into a confidentiality agreement with Apex and Mr. Lindberg that became effective on February 21, 2019 (the "Agreement"). A true and correct copy of the Agreement is attached as Exhibit 1 and incorporated for all purposes.

4. Serber received access and was privy to confidential, private, and proprietary information and trade secrets that belonged to Mr. Lindberg and Apex. This information included extensive and intimate details of Mr. Lindberg's personal and professional activities that would enable Serber to fulfill his responsibilities as part of the Apex close protection team. Serber retained access to this and other information until his discharge in May 2019.

5. In my capacity as Security Lead for Apex, I have personal knowledge of all factual allegations set forth in the foregoing *Plaintiffs' Verified Original Complaint* and would competently testify to each of them as being true and correct if called on to testify.

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

Executed on September 10, 2019.



Robert B. Gaddy

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insight regarding the protective intelligence methodologies that Apex had developed or refined.

23. During his time with Apex, Serber presented himself as an experienced professional with a background in the military and law enforcement. Among other things, he alluded to service in the Afghanistan theater during Operation Enduring Freedom; represented that he had worked as a Blackwater military contractor in Afghanistan; had served as an 18XRay Communications Specialist; had worked as an intelligence officer for the United States Department of Defense; had been a police officer with the Los Angeles Police Department; had been shot in the line of duty; and had been an “Interrogator” in Afghanistan. These statements were untrue when Serber made them, and Apex’s suspicions were aroused when, in response to the Apex Intel Office’s request for DD Form 214s, Serber responded, “No DD-214 for me, I wasn’t in the military.”<sup>1</sup>

24. Serber made this statement in an integrated chat thread that went to members throughout Apex’s organization. This statement and other events precipitated an investigation and internal threat assessment of Apex’s operations. Apex discharged Serber in May 2019 after the investigation had concluded. It was during this investigation that Apex discovered Serber’s casual flouting of Apex protocols and protections, creating the potential for grievous security breaches and compromising Lindberg and ongoing Apex operations. For instance, while handling an asset accountability assignment, Serber broke with protocol and caused the surveilled subject to become aware of his presence.

25. Upon information and belief, it was around the time of his discharge in May 2019 that Serber provided a dossier of Plaintiffs’ confidential, personal, and proprietary information and trade secrets to journalists for an international daily newspaper. It was also around this time that

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<sup>1</sup> The DD Form 214 (“Certificate of Release or Discharge from Active Duty”) is a document the United States Department of Defense issues upon a military service member’s retirement, separation, or discharge from active duty. Apex was cataloging all military schools, training and certifications—and hence, capabilities—of its team members when it made this request.



Serber began actively soliciting other Apex contractors and employees for particular confidential, personal, and proprietary information and trade secrets that belonged to Plaintiffs, providing false and conflicting reasons for why he wanted this information.

26. Since then, Plaintiffs and others have been contacted by these journalists with requests to comment on details and information that, upon information and belief, could have only come from the May 2019 dossier. Plaintiffs believe that Serber continues to seek to acquire and disseminate Plaintiffs' confidential, personal, and proprietary information and trade secrets to further benefit himself and harm Plaintiffs.

### **PLAINTIFFS' CLAIMS**

#### **First Cause of Action – Breach of Contract**

27. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

28. Serber entered into a valid confidentiality agreement with Plaintiffs—the Agreement—in which he agreed to not use or disseminate Plaintiffs' confidential, personal, and proprietary information and trade secrets in exchange for access to Plaintiffs' confidential and proprietary information, trade secrets, and other good and valuable consideration. *See id.* ¶ 1.3.

29. Because he signed the Agreement, Serber became and was privy to Plaintiffs' confidential, personal, and proprietary information and trade secrets including, but not limited to, details of Lindberg's travel schedule, personal relationships and family plans, and financial and business dealings, along with Apex's unique strategies, operational capabilities and methodologies, and other highly sensitive and confidential information and trade secrets.

30. Serber breached the Agreement when he provided third parties with confidential, personal, and proprietary information and trade secrets, and assisted third parties with their efforts

to discover confidential, personal, and proprietary information and trade secrets, before and after his discharge. Serber's efforts here included soliciting and attempting to acquire confidential, personal, and proprietary information and trade secrets from Plaintiffs' employees and contractors under false pretenses.

31. Plaintiffs have incurred or will incur actual damages as a proximate result of Serber's breach, for example by expending significant monetary resources to revamp Apex's protective intelligence methodologies in light of Serber's disclosure of its practices. If Serber is not enjoined from further breaches of the Agreement, including disclosing, publishing or disseminating Plaintiffs' confidential, personal, and proprietary information and trade secrets, then Plaintiffs will suffer damages within the jurisdictional limits of the court.

32. Under the terms of the Agreement, Plaintiffs are entitled to a recovery of their attorney's fees.

33. If Serber is not immediately prevented and enjoined from further breaches of the Agreement, Plaintiffs will be immediately and irreparably harmed and will incur actual damages as a result of the breach(es). Serber is or has been in possession of Plaintiffs' confidential, personal, and proprietary information and trade secrets and has clearly demonstrated his willingness to use and disclose same for his own benefit and to Plaintiffs' detriment.

**Second Cause of Action – Trade Secret Misappropriation  
Under the Texas Uniform Trade Secrets Act**

34. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

35. The confidential, personal, and proprietary information and trade secrets that Serber misappropriated belong to Plaintiffs. Plaintiffs keep this confidential, personal, and proprietary information and trade secrets substantially secret.

36. Serber had a contractual relationship with Plaintiffs through which he was exposed to and acquired Plaintiffs' confidential, personal, and proprietary information and trade secrets.

37. Serber provided third parties with confidential, personal, and proprietary information and trade secrets, and assisted third parties with their efforts to discover confidential, personal, and proprietary information and trade secrets, before and after his discharge, in violation of his relationship with Plaintiffs. Serber's efforts here included soliciting and attempting to acquire confidential, personal, and proprietary information and trade secrets from Plaintiffs' employees and contractors under false pretenses.

38. Upon information and belief, Serber will seek to further use, disclose, or disseminate Plaintiffs' confidential, personal, and proprietary information and trade secrets, in violation of his relationship with Plaintiffs.

39. Serber knew or should have known that he possessed, viewed, used, and disclosed Plaintiffs' confidential, personal, and proprietary information and trade secrets by improper means.

40. Plaintiffs have incurred or will incur actual damages as a proximate result of Serber's misappropriation. If Serber is not enjoined from further misappropriation, then Plaintiffs will suffer damages within the jurisdictional limits of the court. Accordingly, Plaintiffs are entitled to injunctive relief as permitted by Tex. Civ. Prac. & Rem. Code Ann. § 134A.003.

41. Serber's misappropriation was malicious. Therefore, Plaintiffs are entitled to a recovery of exemplary damages pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 134A.004(b).

42. Plaintiffs are further entitled to their reasonable attorney's fees pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 134A.005.

### **Third Cause of Action – Breach of Fiduciary Duty**

43. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all



purposes.

44. Serber had a relationship with Plaintiffs through which he was exposed to and acquired Plaintiffs' confidential, personal, and proprietary information and trade secrets.

45. By providing asset and threat assessment and protection services, Serber held a position of confidence and trust. Accordingly, Serber owed a fiduciary duty to Plaintiffs to protect their confidential, personal, and proprietary information and trade secrets and to not use same for his own personal gain. This fiduciary duty did not terminate after his discharge.

46. Serber breached his fiduciary duty when he provided third parties with confidential, personal, and proprietary information and trade secrets, and assisted third parties with their efforts to discover confidential, personal, and proprietary information and trade secrets, before and after his discharge. Serber's efforts here included soliciting and attempting to acquire confidential, personal, and proprietary information and trade secrets from Plaintiffs' employees and contractors under false pretenses.

47. Serber's breaches were intentional as he sought to leverage additional, unwarranted benefits for himself and to harm Plaintiffs' respective businesses and reputations.

48. Plaintiffs have incurred or will incur actual damages as a proximate result of Serber's breach. If Serber is not enjoined from further breaches, then Plaintiffs will suffer damages within the jurisdictional limits of the court.

**Fourth Cause of Action – Texas Theft and Liability Act  
Under Tex. Civ. Prac. & Rem. Code Ann. §§ 134.001 *et seq.***

49. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

50. Serber is liable to Plaintiffs for unlawful appropriation of their property as described in Tex. Penal Code Ann. § 31.03. Specifically, Serber has unlawfully appropriated Plaintiffs'

highly confidential and privileged information. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 134.001 *et seq.*

51. As a direct result of Serber's theft, Plaintiffs have suffered actual and consequential damages.

52. Plaintiffs are further entitled to disgorgement of Serber's gains and punitive damages because of his misconduct.

53. Plaintiffs are further entitled to their court costs and reasonable and necessary attorney's fees pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 134.005.

#### **Fifth Cause of Action – Fraud**

54. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

55. Upon entering a relationship with Plaintiffs, Serber made representations about his military background and prior professional service. These representations were false.

56. Serber knew these representations were false when he made them.

57. Serber made these representations to create a misleading and favorable impression of his professional experience, training and background, to induce Plaintiffs to continue to retain his services.

58. Serber's false representations violate state and federal laws that criminalize falsifying military records, including the Texas Stolen Valor Act. *See* Tex. Penal Code Ann. § 32.54.

59. Plaintiffs have paid Serber compensation and incurred or will incur actual damages as a proximate result of Serber's fraud.

60. Plaintiffs are entitled to exemplary damages for Serber's fraud.

**EXEMPLARY DAMAGES**

61. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

62. Plaintiffs plead for exemplary damages against Serber because his wrongful acts were done knowingly, intentionally, willfully, with malice and/or gross negligence as made actionable by Tex. Civ. Prac. & Rem. Code Ann. §§ 41.001 *et seq.*, Tex. Civ. Prac. & Rem. Code Ann. § 134A.004(b), and applicable common law. Serber's acts are so willful, malicious, felonious and egregious that any statutory cap on the recovery of exemplary damages should not apply.

**ATTORNEY'S FEES**

63. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

64. Plaintiffs have retained the undersigned counsel and are entitled to recover from Serber their reasonable and necessary attorney's fees and costs incurred in pursuit of their claims pursuant to the terms of the Agreement and under Tex. Civ. Prac. & Rem. Code Ann. § 38.001.

**CONDITIONS PRECEDENT**

65. All conditions precedent to Plaintiffs' claims have been satisfied.

**APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

66. Plaintiffs incorporate each allegation contained in the preceding paragraphs for all purposes.

67. Plaintiffs seek injunctive relief concerning Serber's activities.

68. Plaintiffs seek a temporary restraining order and temporary and permanent injunctive injunction which order Serber to:



- a. Cease, desist and refrain from directly or indirectly seeking to acquire, acquiring, possessing, viewing, using, disclosing, publishing, or disseminating Plaintiffs' confidential, personal, and proprietary information and trade secrets;
- b. Cease, desist and refrain directly or indirectly communicating false, defamatory, or disparaging statements about Plaintiffs, or from directly or indirectly misappropriating Plaintiffs' confidential, personal, and proprietary information and trade secrets for the acts complained of in these pleadings; and
- c. Cease, desist and refrain from directly or indirectly seeking to acquire, acquiring, possessing, viewing, using, disclosing, publishing, or disseminating any confidential, personal, and proprietary information or trade secrets which belong to Plaintiffs.

69. Plaintiffs are likely to succeed on the merits of this case because, among other reasons, Serber has already disclosed highly sensitive and confidential, personal, and proprietary information and trade secrets belonging to Plaintiffs to third parties and, if he is not enjoined, will continue to disclose the information and trade secrets to others. It is also highly likely that Serber will renew his efforts to procure other highly sensitive and confidential, personal, and proprietary information and trade secrets belonging to Plaintiffs in order to further make good on efforts to harm them. Serber has no legitimate defense for his possession and use of Plaintiffs' confidential, personal, and proprietary information and trade secrets or his efforts to harm Plaintiffs.

70. If Serber is not immediately restrained, his actions will result in immediate and irreparable harm to Plaintiffs' respective businesses and their reputations. Plaintiffs have and will continue to be injured by Serber's conduct.

71. Issuing a temporary restraining order and temporary and permanent injunction which prevent Serber from continuing to access, possess and use Plaintiffs' confidential, personal, and proprietary information and trade secrets and from performing the other illegal activity described in these pleadings is necessary to prevent immediate, substantial, and irreparable injury

to Plaintiffs. Issuing these orders and injunctions also minimize the risk of any further compromise of Plaintiffs' confidential, personal, and proprietary information and trade secrets.

72. Serber recognizes that a breach of the Agreement "will cause irreparable injury to [Plaintiffs] for which legal remedies may be inadequate" and for which Plaintiffs "are entitled to seek injunctive relief against" him. Ex. 1 ¶ 3.1.

73. To preserve Plaintiffs' confidential, personal, and proprietary information and trade secrets, Serber should be temporarily restrained and enjoined, during the pendency of this action, and then permanently enjoined from continuing the wrongful conduct described in these pleadings.

74. Plaintiffs are willing and able to post bond.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask that Serber be cited to appear and answer herein and that they have the following relief against Serber:

a. Temporary, preliminary, and permanent injunctive relief against Serber from directly or indirectly seeking to acquire, acquiring, possessing, viewing, using, disclosing, publishing, or disseminating Plaintiffs' confidential, personal, and proprietary information and trade secrets;

b. Temporary, preliminary, and permanent injunctive relief against Serber and his affiliates, agents, representatives, servants, employees, attorneys, and all other persons in active concert or privity or participation with Serber from directly or indirectly communicating false, defamatory, or disparaging statements about Plaintiffs, or from directly or indirectly misappropriating Plaintiffs' confidential, personal, and proprietary information and trade secrets for the acts complained of in these pleadings;



c. Temporary, preliminary, and permanent injunctive relief against Serber and his affiliates, agents, representatives, servants, employees, attorneys, and all other persons in active concert or privity or participation with Serber from directly or indirectly seeking to acquire, acquiring, possessing, viewing, using, disclosing, publishing, or disseminating any confidential, personal, and proprietary information or trade secrets which belong to Plaintiffs;

d. All actual, economic, consequential, and exemplary damages;

e. Attorney's fees, costs, and pre- and post-judgment interest, as allowed by law; and

f. Such other and further relief to which Plaintiffs are entitled.

Dated: September 10, 2019

Respectfully submitted,

**CONDON TOBIN SLADEK THORNTON PLLC**

/s/Aaron Z. Tobin

Aaron Z. Tobin

Texas Bar No. 24028045

atobin@ctstlaw.com

Michael J. Merrick

Texas Bar No. 24041474

mmerrick@ctstlaw.com

8080 Park Lane, Ste. 700

Dallas, Texas 75231

Telephone: 214.691.6300

Facsimile: 214.691.6311

*Attorneys for Plaintiffs*

## **CONFIDENTIALITY AGREEMENT**

Greg Lindberg, Apex International, LLC and JEFFREY SERBER make and enter into this Confidentiality Agreement ("Agreement") as of FEBRUARY 21, 2019 (the "Effective Date").

### **RECITALS**

#### **WHEREAS:**

A. Greg Lindberg ("Lindberg") is an individual who resides at 3406 Stagecoach Road, Durham, North Carolina 27713;

B. Lindberg owns and operates various business entities, including Apex International, LLC;

C. Apex International, LLC ("Apex International") is a North Carolina limited liability corporation with a registered office of 2626 Glenwood Avenue, Suite 550, Raleigh, North Carolina 27608;

D. Apex International's business includes providing security and risk planning and mitigation services for Lindberg in his personal, professional and business activities;

E. JEFFREY SERBER ("Employee") is an individual who currently resides at 997 DONNER AVE, SIMI VALLEY, CA 93065;

F. Apex International desires to employ and retain the services of Employee as an employee to provide these services;

G. Employee desires to be an employee of Apex International to provide these services;

H. Lindberg and Apex International have built goodwill, reputation and tangible and intangible value by obtaining, developing, using and protecting Confidential Information to which Employee may be exposed;

I. Lindberg and Apex International desire to maintain the confidentiality of Confidential Information;

J. As a material inducement for Apex International to employ Employee, Lindberg and Apex International require Employee to agree to hold Confidential Information in confidence and not use or disclose it to any person, except in the performance of Employee's duties; and

K. In consideration for access to and use of Confidential Information, and to protect Lindberg and Apex International's goodwill, reputation and tangible and intangible value, and as a material inducement for employment, Employee agrees to the provisions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the provisions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE 1 CONFIDENTIAL INFORMATION

1.1 Confidential Information. "Confidential Information" means all records and information of a personal, private, confidential or proprietary nature regarding the affairs and business of Lindberg, the business entities that Lindberg owns or operates, Apex International, and their affiliates, whether in tangible, electronic, digital, magnetic or other form. Examples of Confidential Information include: records and information regarding personal relationships; health and medical records and information; personal financial account records and information; business, economic and financial records and information, including banking and credit card records and financial statements, budgets and projections; trade secrets; personal and private telephone calls and conversations; social security numbers and other personal identification records and information; household alarm and security system codes and combinations; records and information regarding security systems, surveillance and cameras; personal, business and financial usernames and passwords; patents, product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas; past, current and planned research and development records, including market studies and business plans; contracts and agreements; computer software programs, including object code, machine code, and source code; databases, including structures and architecture; records and information about past, current or planned litigation; technology related to internal operations or external business; records and information identified in Section 1.3(d) below; and all other records and information of a sensitive nature which are not publicly available or meant to be disclosed to the public. Confidential Information does not include any records or information that Employee shows are publicly known and generally available to the public other than as a result of a violation of law, rule or regulation, violation or breach of any agreement, or violation or breach of any duty owed by any person.

1.2 Acknowledgment by Employee. Employee acknowledges that:

(a) During employment (s)he will be afforded access to Confidential Information that Lindberg and Apex International have devoted substantial time, effort and resources to obtain, develop, use and protect;

(b) Disclosure of Confidential Information would adversely affect the goodwill, reputation and tangible and intangible value of Lindberg and Apex International;

(c) Lindberg and Apex International would not disclose Confidential Information to Employee, nor employ or continue to employ Employee, without the agreements and covenants set forth in this Agreement; and

(d) The provisions of this Agreement are reasonably necessary to prevent the improper use and disclosure of Confidential Information.



1.3 Maintaining Confidential Information. During the term set forth in this Agreement, Employee agrees and covenants as follows:

(a) Employee will hold Confidential Information in the strictest confidence and will not disclose same to any person, except with the specific prior written consent of the other parties to this Agreement, or as may be required by court order, law, or government agency or party with whom Lindberg or Apex International deals in the ordinary course of Lindberg or Apex International's business, or otherwise as the provisions of this Agreement expressly permit;

(b) Confidential Information is entitled to and will be afforded all of the protections and benefits provided under applicable law, and Employee waives any requirement that Lindberg and Apex International submit proof of the economic value of any trade secret or post a bond or other security;

(c) Employee will not remove Confidential Information from Lindberg or Apex International's premises, nor will Employee record, duplicate, copy, reproduce, transmit or deliver such Confidential Information, except where same is necessary in the performance of Employee's duties hereunder.

(d) Employee recognizes that Lindberg and Apex International have received and will receive records and information of a personal, private, confidential or proprietary nature regarding the affairs and business of third parties who reasonably expect that Lindberg and Apex International will maintain the confidentiality of same. Such records and information also constitute Confidential Information that Employee agrees to hold in the strictest confidence in accordance with the provisions of this Agreement.

1.4 Returning Confidential Information. Employee shall return all Confidential Information and recordings, duplications, copies and reproductions of same, regardless of whether same is in tangible, electronic, digital, magnetic or other form, within three (3) business days after the termination of Employee's employment with Apex International. Employee shall not retain any original or recording, duplication, copy or reproduction of Confidential Information following the termination of Employee's employment with Apex International.

1.5 Actions Seeking Confidential Information. In the event a disclosure of Confidential Information is sought by legal process, Employee shall promptly give notice to Lindberg and the President of Apex International. Lindberg or Apex International may bring an action to enforce his/its rights or the rights of an affected third party following notice of such action. Employee shall cooperate with Lindberg and Apex International, as Lindberg or Apex International may direct, to obtain any and all protections that may be afforded to Confidential Information prior to the disclosure of same (if disclosure is ultimately required).

1.6 Disputes or Controversies. Employee recognizes that preservation of the secrecy of Confidential Information may be jeopardized if a dispute or controversy regarding or arising from this Agreement is submitted for an adjudication. All pleadings, documents, testimony and records regarding such adjudication shall be maintained in secrecy and will be available for inspection by Lindberg, Apex International, Employee, and their respective counsel and experts who agree, in

advance and in writing, to receive and maintain same in secrecy, except as may be limited by them in writing.

1.7 No License. Employee acknowledges and agrees that Confidential Information is the exclusive property of Lindberg and Apex International. Nothing in this Agreement is intended to grant any rights or license to Employee under any patent, mask work right, copyright, trade secret, or other intellectual property right of Lindberg or Apex International, nor shall this Agreement grant Employee any rights or license in or to Confidential Information except as this Agreement expressly sets forth.

## ARTICLE 2 TERM

2.1 Term. Employee will hold Confidential Information in the strictest confidence permanently and without any time limitation. Employee agrees that this term is reasonable given the highly unique nature of some of the Confidential Information to which (s)he may be exposed (e.g., personal medical records and health information, household alarm and security system codes and combinations, personal financial account information, etc.). However, in the unlikely event that a court of competent jurisdiction determines that this term is unenforceable, the parties shall request that the court reform this term so that it does become enforceable to the greatest extent permitted by law.

## ARTICLE 3 REMEDIES

3.1 Remedies. A breach or threatened violation of this Agreement will cause irreparable injury to Lindberg and Apex International for which legal remedies may be inadequate. Accordingly, Employee agrees that Lindberg and Apex International are entitled to seek injunctive relief against Employee (in addition to all legal or other equitable remedies that may be available).

## ARTICLE 4 SECURITIES LAW

4.1 Financial and Business Information. Employee recognizes that (s)he may be exposed to financial and business information of a confidential and highly sensitive nature. Employee acknowledges that the securities laws of the United States of America prohibit any person who has material non-public information about a company or its securities from purchasing or selling securities, such as stocks and bonds, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell securities. Employee agrees to refrain from trading any stocks, bonds, options or derivatives relating to Apex International or any of the business entities that Lindberg owns or operates while Employee has access to Confidential Information. Employee also agrees to refrain from communicating material non-public information about Lindberg and Apex International, or any of the known business entities in which Lindberg or Apex International are involved, in violation of applicable securities law. Communication of such non-public information is a strict violation of securities law.



## ARTICLE 5 MISCELLANEOUS

5.1 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter herein. This Agreement supersedes any and all prior oral or written agreements or understandings between the parties regarding the subject matter of this Agreement.

5.2 Severability. Each provision in this Agreement is severable from every other provision. Accordingly, any determination that any provision in this Agreement is unenforceable or violates any law, rule or regulation does not affect the validity of the other provisions in this Agreement, and such provisions shall remain in full force and effect to the greatest extent permitted by law. Further, in the unlikely event that a court of competent jurisdiction determines that any provision in this Agreement is overly broad or unenforceable, the parties shall request that the court reform the affected provision so that it does become enforceable to the greatest extent permitted by law.

5.3 Waiver. In the event Lindberg or Apex International waives Employee's breach of any provision in this Agreement, it shall not operate as a waiver of any subsequent breach by Employee. Similarly, Lindberg or Apex International's failure to take action against Employee or other persons for similar breaches does not create or operate as a waiver of a breach.

5.4 Notice. Any notice that this Agreement requires or permits to be given shall be deemed sufficiently given where delivered in person or sent via email, facsimile, overnight delivery, or registered or certified postage prepaid, and addressed as follows:

If to Employee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

If to Lindberg:

Greg Lindberg  
3406 Stagecoach Road  
Durham, North Carolina 27713  
Facsimile: \_\_\_\_\_  
Email: gel@eliequity.com

If to Apex International:

Apex International, LLC  
Attn: President  
2626 Glenwood Avenue, Suite 550  
Raleigh, North Carolina 27608  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

5.5 Headings. The paragraph and subparagraph headings in this Agreement are for reference purposes only. These headings do not affect the construction or interpretation of this Agreement.

5.6 Counterparts. The parties may execute this Agreement in one or more counterparts, each of which is deemed an original, but all of which taken together constitute one and the same Agreement.

5.7 Amendments. Any alteration or amendment of this Agreement is not effective unless it is made in a writing signed by the parties.

5.8 Assignment. Apex International, without Employee's consent, may assign its rights under this Agreement to any parent, subsidiary or affiliate, or any person, firm, corporation or business entity which directly or indirectly acquires all or a material portion of the stock, assets or line of business of Apex International. Otherwise, Lindberg, Apex International and Employee may not assign or otherwise transfer this Agreement without the prior written consent of the other parties.

5.9 Jurisdiction and Venue. Confidential information is kept in the State of Texas, County of Dallas. This jurisdiction and venue are materially related to this Agreement. Accordingly, the parties submit to the exclusive jurisdiction of any state or federal court seated in Dallas County, Texas, over any suit, action or proceeding regarding or arising out of this Agreement. The parties waive any objection to venue or that any claim has been brought in an inconvenient forum. A final judgment in such suit, action or proceeding shall be conclusive and binding upon the parties and enforceable in any other court of proper jurisdiction.

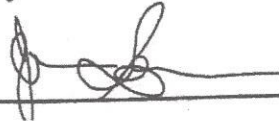
5.10 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Texas, which govern this Agreement without reference to conflict of laws principles.

5.11 Survival. The rights and obligations of the parties shall survive the termination or expiration of this Agreement to the extent necessary for the intended preservation of such rights and obligations.

[The remainder of this page intentionally left blank; signature page follows.]

ACCEPTED AND AGREED TO BY:

Employee

  
\_\_\_\_\_

Name (print): JEFFREY SERBER

and

Greg Lindberg

  
\_\_\_\_\_

Greg Lindberg

and

Apex International, LLC

  
\_\_\_\_\_

Name (print): Robert B. Gadd

Title: Signatory



## CIVIL COVER SHEET

Case 3:19-cv-02242-K Document 1-3 Filed 09/18/19 Page 1 of 2 PageID 41

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Apex International, LLC and Greg Lindberg

(b) County of Residence of First Listed Plaintiff Durham

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Aaron Z. Tobin, Condon Tobin Sladek Thornton, PLLC, 8080 Park Lane, Suite 700, Dallas, Texas 75231

**DEFENDANTS**

Jeffrey Serber

County of Residence of First Listed Defendant Ventura

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                                   |   | PTF                                   | DEF                        |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (Specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:

Breach of confidentiality agreement, trade secret misappropriation, and other violations of Texas statutes and common law

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

150,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/18/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/Aaron Z. Tobin

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. [Click here for: Nature of Suit Code Descriptions.](#)
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

**Date and Attorney Signature.** Date and sign the civil cover sheet.