

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DEPUY SYNTHES SALES, INC.,
MEDICAL DEVICE BUSINESS SERVICES,
INC., DEPUY SPINE, LLC,

Plaintiff,

v.

ORTHOFIX INTERNATIONAL N.V., SCOTT
MACKEY, AND MIRANDA MIDDLETON,

Defendants.

CASE NO.: _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs DePuy Synthes Sales, Inc., Medical Device Business Services, Inc., and DePuy Spine, LLC (collectively, “Plaintiffs” or “DePuy Synthes”) file this Complaint against Defendants Orthofix International N.V. (“Orthofix”), and former DePuy Synthes employees Scott Mackey (“Mackey”), and Miranda Middleton (“Middleton”) (collectively, the “Defendants”), and in support thereof avers as follows:

INTRODUCTION

1. DePuy Synthes and Orthofix are direct competitors in the highly competitive medical device industry. This case arises out of Orthofix’s efforts to gain an unfair competitive advantage by inducing two sets of DePuy Synthes’ employees in Alabama and Texas, including Mackey and Middleton, to breach their fiduciary duties and contractual obligations to DePuy Synthes.

2. In so doing, Defendants have deprived DePuy Synthes of the valuable investments it has made in developing its customer relationships, goodwill, confidential information and the

specialized training it provides its highly-trained sales force, which Orthofix improperly converted, including with assistance from Mackey and Middleton in Texas, for Orthofix's own benefit with minimal expenditure of its own time and effort.

3. The Defendants' unlawful activities have caused and will continue to cause damages to DePuy Synthes. DePuy Synthes files this Complaint to remedy the harms caused by Defendants' unlawful competitive activities through, among other remedies, an award of damages, attorney's fees and costs, and equitable relief.

PARTIES

4. Plaintiff DePuy Synthes Sales, Inc. is a Massachusetts corporation with its principal place of business in Raynham, Massachusetts and was formerly known as DePuy Spine Sales, L.P.

5. Plaintiff Medical Device Business Services, Inc. is an Indiana corporation with its principal place of business in Warsaw, Indiana, and was formerly known as DePuy Orthopaedics, Inc.

6. Plaintiff DePuy Spine, LLC is an Ohio limited liability company with its principal place of business in Raynham, Massachusetts. Synthes USA, LLC is a Delaware limited liability company and is the sole member-manager of Plaintiff DePuy Spine, LLC. The sole member-manager of Synthes USA, LLC is DePuy Products, Inc., an Indiana corporation.

7. The DePuy Synthes family of companies is a group of functionally-integrated companies with shared management and administrative functions. Each of the Plaintiffs herein has a direct and substantial interest with respect to the customer relationships, goodwill, confidential information, and specialized training of the DePuy Synthes' franchise. Each Plaintiff is either specifically named or is a third-party beneficiary in one or more of the agreements underlying Plaintiffs' claims.

8. Defendant Orthofix International N.V. is incorporated in Curaçao with its principal place of business in Lewisville, Texas.

9. Defendant Scott Mackey is an adult citizen of the State of Texas who, upon information and belief, resides at 1388 Old Farm Road, Tyler, Texas 75703.

10. Defendant Miranda Middleton is an adult citizen of the State of Texas who, upon information and belief, resides at 1323 Mission Creek Drive, Longview, Texas 75601.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under 28 U.S.C. § 1322(a) because there is complete diversity of citizenship between the parties. Plaintiffs and Defendants are citizens of different states, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

12. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all three Defendants reside in this judicial district. In addition, venue is proper here because a substantial part of the events giving rise to Plaintiff's claims occurred in this judicial district and a substantial part of the property that is subject to Plaintiff's claims is situated here.

FACTS SUPPORTING DEPUY SYNTHES' COMPLAINT

A. DePuy Synthes Competes Directly with Orthofix in the Highly Competitive Medical Device Industry

13. DePuy Synthes is a worldwide leader in the highly competitive medical device industry, with a long history of designing, developing, manufacturing, marketing and selling medical implants and instrumentation such as plates, screws, rods and other devices. These devices are used in orthopedic surgeries for internal fixation of broken bones, joint reconstruction and for spinal and facial surgeries. DePuy Synthes' medical devices and instrumentation are used

by surgeons around the world to help achieve optimal outcomes for patients. This case involves medical devices made for the repair and healing of the human spine.

14. The medical device industry is highly competitive, which makes it essential for DePuy Synthes to protect its confidential information, research and development, its customer relationships, the specialized training it provides to its employees and the goodwill that it generates among customers and business partners as a result of these investments.

15. DePuy Synthes' customers include, but are not limited to, hospitals, surgery centers, physicians, and their respective employees and staff who influence or may influence the use or purchase of medical devices, including purchasing departments, materials management, and operating room staff. Customers also include group purchasing organizations ("GPOs") that help to negotiate pricing for their member hospitals and groups of hospitals known as integrated delivery networks ("IDNs") (collectively, the "Customers" and each a "Customer").

16. To foster and develop relationships with new and existing Customers and to market and sell its products, DePuy Synthes, like others in the industry, relies on its network of highly-trained Sales Consultants and Associate Sales Consultants, who work individually and, in some cases in teams, to sell to and provide services to DePuy Synthes' Customers. Sales Consultants provide education and technical support to DePuy Synthes' Customers, enabling them to use DePuy Synthes' products effectively in, among others, hospital and surgery center settings.

17. To do so effectively, Sales Consultants and Associate Sales Consultants work closely with DePuy Synthes Customers, including hospital administration, nurses, surgeons, and staff, investing in and developing long-term relationships that are critical to DePuy Synthes' business.

18. Because of their job responsibilities, Sales Consultants and Associate Sales Consultants have access to confidential information to enable them to better serve DePuy Synthes' Customers' and DePuy Synthes business with its Customers.

19. This information can include, without limitation, sales data (both periodic and year-end), performance rankings, sales (both by pathology and by product line), details of special pricing arrangements or discounts that have been negotiated with Customers, research and development plans, and product rollout information. In addition, they have access to and knowledge about strategy and other sensitive discussions between DePuy Synthes and Customers about the development and rollout of new products and initiatives, changes to and refinements of existing product lines, and the development of custom products for particular Customers.

20. In recognition of the critical role that Sales Consultants and Associate Sales Consultants play in the business, DePuy Synthes invests significant time and resources in providing them with specialized training so that they are familiar with the technical aspects of DePuy Synthes' products. Sales Consultants and Associate Sales Consultants are also trained regarding the medical procedures in which DePuy Synthes' products are used, and provided with techniques and information so that they can, in turn, educate and support operating room personnel and surgeons regarding DePuy Synthes' products. In terms of both time and money, this investment is significant. The competitive advantage of having a highly trained, experienced, professional and competent sales force as the face of DePuy Synthes to its Customers is substantial.

21. Sales Consultants and Associate Sales Consultants are also provided with access to DePuy Synthes' Customers and have responsibility for building and maintaining current relationships with Customers and for establishing or re-establishing relationships with other Customers. DePuy Synthes expects its sales force to cultivate relationships with existing

Customers and to actively pursue new opportunities for growth in their assigned territories and regions.

22. To protect its significant investment, DePuy Synthes requires its sales force employees, including its Sales Consultants and Associate Sales Consultants, to execute agreements that restrict their use of DePuy Synthes' confidential information, research and development, Customer relationships, goodwill, and specialized training as a condition of employment.

23. These agreements are one facet of DePuy Synthes' larger effort to protect its confidential information and the substantial investments in research and development, training, Customer relationships and goodwill. Among other things, DePuy Synthes obtains patent protection when available, works to maintain both electronic and physical barriers to access business information, and requires employees and third parties to maintain the confidentiality of certain business information.

24. Orthofix has acknowledged in public filings that it competes in a highly competitive industry and that, in 2016 and 2017, hiring key employees was a critical aspect of its growth strategy, noting that "competition for experienced employees in the medical device industry can be intense." Orthofix has recognized that DePuy Synthes is a principal competitor in several product lines, including spinal medical devices and instrumentation.

B. The Obligations of DePuy Synthes' Sales Consultants in Alabama

25. Thomas Wells and Michael Sewell were Sales Consultants for DePuy Synthes who shared responsibility for the area in and around Dothan, Alabama.

26. Mr. Wells commenced employment as a Sales Consultant for DePuy Synthes in the Dothan, Alabama territory on or about April 2, 2012. In consideration of his employment with DePuy Synthes, Mr. Wells executed a Sales Consultant Confidentiality, Non-Solicitation and Non-Competition Agreement attached hereto as Exhibit A (the "Wells Agreement").

27. In the Wells Agreement, Mr. Wells acknowledged his understanding that

from the outset of my employment with [DePuy] Synthes, I will have access to and will be required to maintain, develop and initiate customer relationships and goodwill that are valuable to [DePuy] Synthes and which it has a legitimate interest in protecting . . .

(Ex. A at 2.)

28. Further, Mr. Wells expressly agreed that he would not compete with DePuy Synthes either during his employment or for a period of 12-months afterwards:

I agree that, during my employment and for a period of twelve (12) months after my employment with [DePuy] Synthes terminates for any reason, voluntary or involuntary, I will not solicit, contact, or provide services to (or attempt to do any of the foregoing), directly or indirectly, for the purpose or effect of competing or interfering with any part of [DePuy] Synthes' Business: (1) any Customer of [DePuy] Synthes within my assigned territory; (2) any Customer of [DePuy] Synthes that I contacted, solicited, received commissions on sales, to whom I provided coverage, or in any way supported or dealt with at any time during the last two years of my employment; (3) any prospective Customer of [DePuy] Synthes that I contacted, for whom I had coverage responsibility, or who received or requested a proposal or offer from me on behalf of [DePuy] Synthes at any time during the last two years of my employment; or (4) any existing or prospective Customer of [DePuy] Synthes for which I had any direct or indirect responsibility at any time during the last two years of my employment.a contract at that time and acknowledged that he understood the investment DePuy Synthes was making in him and that he would have access to information, including customer related information that was confidential.

(*Id.* at 3.)

29. In addition, Mr. Wells agreed not to compete in his same territory for 12-months after his employment with DePuy Synthes terminated. (*Id.* at 4.)

30. Michael Sewell became a Sales Consultant in the Dothan, Alabama territory on or about December 8, 2012. In consideration of his employment with DePuy Synthes, Mr. Sewell executed an Employee Secrecy, Intellectual Property, Non-Competition and Non-Solicitation Agreement attached hereto as Exhibit B on December 8, 2012 (the "Sewell Agreement").

31. In the Sewell Agreement, Mr. Sewell acknowledged that he understood that DePuy Synthes considered customer information to be confidential:

Confidential Information means. . . [the] names or significance of a COMPANY'S customers or clients or their employees or representatives, preferences, needs or requirements, purchasing histories, or any other customer or client-specific information

(Ex. B at Sect. B.)

32. Mr. Sewell also agreed that he would not use or disclose this information to anyone without DePuy Synthes' consent:

Except as required by your duties for your EMPLOYER, you will not use, disclose, disseminate, lecture upon or publish any CONFIDENTIAL INFORMATION, either during your employment with your EMPLOYER or thereafter, unless you first obtain the prior written consent of any COMPANY to which the CONFIDENTIAL INFORMATION relates.

(*Id.* at Sect. C(5).)

33. Further, Mr. Sewell expressly agreed that he would not compete with DePuy Synthes either during his employment or for a period of 18-months afterwards:

To avoid disadvantaging your EMPLOYER or any other COMPANY through your use of relationships you gained, maintained, or enhanced through your employment with any COMPANY, you will not, during your employment with any COMPANY or for eighteen (18) months after your last date of employment within the COMPANIES, directly or indirectly, solicit any business from, sell to, or render any service to any accounts, customers or clients with which you have had contact during the last twelve (12) months of your employment within the COMPANIES in connection with the sale of any product or service that resembles or competes with one that is being (or is being prepared to be) sold, developed or acquired by any COMPANY for which you worked during the last twelve (12) months of your employment.

(*Id.* at Sect. C(6).)

34. Mr. Sewell and Mr. Wells worked together and were responsible for, among other accounts, a hospital in Dothan, Alabama called Southeast Alabama Medical Center (“SEAMC”), which was a long-time and substantial DePuy Synthes Customer, worth millions of dollars in revenue annually.

C. Orthofix’s Recruitment and Hiring of Messrs. Wells and Sewell

35. On March 24, 2017, within hours of each other, Mr. Wells and Mr. Sewell each informed their Regional Manager that they were resigning their respective employment with DePuy Synthes.

36. Mr. Wells and Mr. Sewell’s last day at DePuy Synthes was Friday, April 7, 2017. During the routine inventory checkout at SEAMC, a large number of Orthofix medical devices and instrumentation was observed within the account, and had been processed and sterilized. In other words, Orthofix equipment had been brought in and was ready to be used in surgery. This was a strange development that had not been previously reported.

37. DePuy Synthes’ equipment was scheduled to be used in multiple surgeries during the next week. However, with the exception of one case on Monday, April 10, 2017, all of the other cases were cancelled. Despite its best efforts, DePuy Synthes has not done any further business at SEAMC.

38. It is difficult, if not impossible, to convert business within a large account like SEAMC overnight without customer relationships, goodwill, specialized training, and confidential information to do so, which Orthofix lacked about DePuy Synthes’ business within this account.

39. As a general matter, within this industry, new medical devices and instrumentation must be approved by a hospital before they are used. Pricing needs to be agreed upon, training to hospital staff provided, and equipment made available in the amount, type, and volume necessary to ensure seamless patient care.

40. Moreover, the spinal medical devices and equipment at issue are expensive to manufacture, and therefore the capital costs of investing to supply the needs of an account the size of SEAMC is substantial, and would have required groundwork and pre-planning to ensure a transition of this magnitude.

41. Upon information and belief, Orthofix was able to convert an account worth millions of dollars practically overnight by using the investments DePuy Synthes made its customers relationships, goodwill, specialized training, and confidential information through Messrs. Wells and Sewell, inducing them to leverage these investments to Orthofix's benefit.

E. The Obligations of DePuy Synthes Representatives in Texas

42. Several months later in November and December 2017, Orthofix targeted two DePuy Synthes' employees, Sales Consultant Scott Mackey and Associate Sales Consultant, Miranda Middleton, both of whom are defendants in this action. Mackey and Middleton shared responsibility for several DePuy Synthes' Customers located in Longview, Texas, including Longview Regional Medical Center.

43. Mackey was a long-tenured Sales Consultant within DePuy Synthes' spine sales force, who was hired in and around April 30, 2002. In consideration of his employment with DePuy Synthes, Mackey executed a Sales Consultant Confidentiality, Non-Solicitation and Non-Competition Agreement attached hereto as Exhibit C (the "Mackey Agreement").

44. In the Mackey Agreement, Mackey acknowledged his understanding that customer relationships are considered confidential by DePuy Synthes:

During my employment with Synthes Spine, I will have access to and will be required to maintain, develop and initiate customer relationships that are valuable to Synthes Spine and which it has a legitimate interest in protecting

(Ex. C at 1.)

45. Further, Mackey expressly agreed that he would not compete with DePuy Synthes either during his employment or for a period of 12-months afterwards:

I am employed by Synthes Spine in sales, account management or maintenance, or customer service or support, with an assigned territory, and I agree I will not, for a period of one year after my employment terminates for any reason, work for (as an employee, consultant, contractor, agent or representative) any competitor of Synthes Spine in the territory or territories that I am now, or have been responsible for at any time during the last year of my employment with Synthes Spine.

(*Id.* at 3.)

46. DePuy Synthes hired Middleton as an Associate Sales Consultant to work with Mackey and others in the territory in and around Longview, Texas in or around August 26, 2015. In consideration of her employment with DePuy Synthes, Middleton executed an Employee Secrecy, Intellectual Property and Non-Solicitation Agreement attached hereto as Exhibit D on August 26, 2015 (the “Middleton Agreement”).

47. In the Middleton Agreement, Middleton acknowledged her understanding that customer relationships are considered confidential information by DePuy Synthes:

Confidential information means. . . names or significance of the COMPANY's customers or clients or their employees or representatives, preferences, needs or requirements, purchasing histories, likes, dislikes, habits or other customer or client-specific information

(Ex. D at 1-2.)

48. Middleton also agreed that she would not do anything with confidential information, including customer related confidential information, that was not for the benefit of her employer, DePuy Synthes:

CONFIDENTIAL INFORMATION is of great value to the COMPANY, that the COMPANY has legitimate business interests in protecting its CONFIDENTIAL INFORMATION, and that the disclosure to anyone not authorized to receive such information, including a competitor, will cause immediate irreparable injury to the COMPANY. Except as required by your duties for your EMPLOYER, you will not use, disclose, disseminate, lecture upon or publish any CONFIDENTIAL INFORMATION, either during your employment with your EMPLOYER or thereafter, unless you first obtain the prior written consent of your EMPLOYER or any COMPANY to which the CONFIDENTIAL INFORMATION relates.

(*Id.* at Section C(5).)

F. Orthofix's Recruitment and Hiring of Mr. Mackey and Ms. Middleton

49. In or around November 2017 – the month before their abrupt and simultaneous resignations on December 14, 2017 – Mackey and Middleton accompanied key DePuy Synthes' surgeon customers to visit Orthofix's headquarters in Lewisville, Texas.

50. Upon information and belief, the purpose of the visit was to introduce these surgeons to Orthofix and to prepare to transition DePuy Synthes' business with these surgeons to Orthofix upon Mackey's and Middleton's resignations.

51. On December 15, 2017, Mackey and Middleton simultaneously informed DePuy Synthes that they were both resigning. Upon information and belief, Mackey and Middleton encouraged and aided each other in deciding to leave DePuy Synthes and join Orthofix and assisted each other in executing a simultaneous resignation from DePuy Synthes.

52. DePuy Synthes learned shortly after their resignations, but while they were still employed with DePuy Synthes, that Mackey and Middleton started to make arrangements to have Orthofix equipment available at their accounts while they were still employed with DePuy Synthes.

53. Immediately after their last day of employment with DePuy Synthes, one of the key surgeon customers who accompanied them to a meeting at Orthofix immediately began utilizing Orthofix's products, despite having been a long-time DePuy Synthes Customer.

54. In addition, in early 2018, following his resignation from DePuy Synthes, Mackey placed a phone call to a one of his former DePuy Synthes' accounts and instructed hospital personnel to stop purchasing a particular DePuy Synthes product. Mackey further informed hospital staff that they should instead begin to purchase a competitive product from Orthofix.

55. In addition, Middleton continued to utilize DePuy Synthes' instrumentation in her accounts, despite the fact that she now works for Orthofix. Middleton has supported Orthofix business within her former accounts using instrumentation that belongs to DePuy Synthes.

G. Orthofix's Role in the Recruitment and Hiring of DePuy Synthes Employees

56. At all relevant times, Orthofix knew that the DePuy Synthes employees it was recruiting were employed by DePuy Synthes and that they were each bound by their respective Agreements with DePuy Synthes.

57. Upon information and belief, Orthofix also seeks to protect its investments in its customers and employees by requiring employees and distributors to sign similar agreements that contain similar post-employment obligations, which are common in the industry.

58. Orthofix was aware when it was meeting with surgeons along with Mackey and Middleton that both Mackey and Middleton were, at the time, employed by DePuy Synthes and that they owed DePuy Synthes a duty of loyalty and fair dealing.

59. Orthofix is further aware that by, among other things, assisting Orthofix in preparing for upcoming surgeries prior to leaving DePuy Synthes, by taking surgeons to meet with Orthofix while still employed by DePuy Synthes, and by seeking to persuade DePuy Synthes'

Customers to move their business to Orthofix while still interacting with them on behalf of DePuy Synthes, Messrs. Wells, Sewell and Mackey and Middleton all breached their fiduciary duties.

60. As a result of its conduct as described above, Orthofix has been able capitalize off of the valuable investments DePuy Synthes has made in its customer relationships, goodwill, specialized training and confidential information.

61. Orthofix's interference with DePuy Synthes employees' contractual and common law obligations has caused DePuy Synthes harm in the form of both monetary and non-monetary damages.

COUNT I
(Breach of Contract Against Mackey and Middleton)

62. DePuy Synthes incorporates and re-states the averments set forth in the preceding paragraphs of this Complaint as though set forth herein and at length.

63. The Mackey and Middleton Agreements are both valid, enforceable agreements and are both supported by adequate consideration.

64. Both Mackey and Middleton breached their agreements with DePuy Synthes when, among other things, they assisted and encouraged each other in simultaneously leaving DePuy Synthes to join Orthofix in obvious violation of their separate contractual obligations not to solicit DePuy Synthes employees.

65. Macky and Middleton further breached their agreements when they met with surgeons at Orthofix's headquarters while still employed by DePuy Synthes and when they otherwise encouraged DePuy Synthes' customers to use Orthofix products. As a result of this conduct, which violated their contractual obligations to DePuy Synthes, by the time that both Mackey and Middleton left DePuy Synthes they had already successfully converted a substantial

portion of DePuy Synthes' business in their assigned territory which has caused substantial and irreparable harm to DePuy Synthes' business.

66. Mackey's activities have violated the non-competition, the Customer non-solicitation, and employee non-solicitation obligations in his agreement with DePuy Synthes and have caused substantial and irreparable harm to DePuy Synthes' business.

67. Middleton's activities have violated the non-solicitation of employees and the confidentiality obligations in her agreement with DePuy Synthes and have caused substantial and irreparable harm to DePuy Synthes' business.

COUNT II

(Breach of Fiduciary Duties Against Mackey and Middleton)

68. DePuy Synthes incorporates and re-states the averments set forth in the preceding paragraphs of this Complaint as though set forth herein and at length.

69. The Mackey and Middleton Agreements are both valid, enforceable agreements and are both supported by adequate consideration. Moreover, throughout the course of their employment both Mackey and Middleton had an obligation to act for the benefit of DePuy Synthes.

70. As alleged herein, after being recruited by Orthofix but while still employed by DePuy Synthes, Mackey and Middleton worked to convert DePuy Synthes customers and business to Orthofix. Mackey and Middleton did this by, among other things, arranging meetings with Orthofix for two surgeons who were customers of DePuy Synthes and for whose accounts Mackey and Middleton had responsibility as DePuy Synthes employees.

71. As a result of the above-described breaches of fiduciary duties, among others, DePuy Synthes is suffering immediate and irreparable harm in the form of lost profits, lost customers, lost customer relationships, and other injuries.

COUNT III
(Tortious Interference with Contract Against Orthofix)

72. DePuy Synthes incorporates and re-states the averments set forth in the preceding paragraphs of this Complaint as though set forth herein and at length.

73. The Wells Agreement, the Sewell Agreement, the Mackey Agreement, and Middleton Agreement are all valid, enforceable agreements and are each supported by adequate consideration.

74. At all relevant times, Orthofix was aware that each of DePuy Synthes' former employees, Messrs. Wells, Sewell and Mackey and Ms. Middleton, were employed by and had contracts containing certain restrictions with DePuy Synthes including confidentiality and non-disclosure provisions, non-compete provisions, and customer and employee non-solicitation provisions,

75. As set forth herein, Orthofix has wrongfully, intentionally, maliciously, unlawfully and without privilege or justification induced Messrs. Wells, Sewell and Mackey and Ms. Middleton to breach their respective obligations to DePuy Synthes.

76. DePuy Synthes has suffered and continues to suffer immediate, continuing, and irreparable harm as a direct and proximate result of Orthofix's willful, malicious, and tortious acts, including but not limited to, in the form of lost employees, lost business, and lost confidential and proprietary business information.

COUNT IV
(Aiding and Abetting Breach of Fiduciary Duty Against Orthofix)

77. DePuy Synthes incorporates and re-states the averments set forth in the preceding paragraphs of this Complaint as though set forth herein and at length.

78. The Wells Agreement, the Sewell Agreement, the Mackey Agreement and the Middleton Agreement are all valid, enforceable agreements and are each supported by adequate

consideration. Moreover, throughout the course of their employment with DePuy Synthes, Messrs. Well, Sewell, Mackey and Ms. Middleton, had an obligation to act for the benefit of DePuy Synthes.

79. As alleged herein, Orthofix recruited all four of these individuals and sought to have them act for the benefit of Orthofix while they were still employed by DePuy Synthes.

80. Mr. Mackey and Ms. Middleton breached their fiduciary duties when they took two of DePuy Synthes' Customers to Orthofix's headquarters to meet with Orthofix personnel while they were still employed by DePuy Synthes, and worked to begin converting DePuy Synthes' business to Orthofix while they were still employed with DePuy Synthes.

81. Upon information and belief, Mr. Wells and Mr. Sewell breached their fiduciary duties when they worked to divert business from DePuy Synthes to Orthofix and to prepare for DePuy Synthes' Customers to utilize Orthofix products while still employed by DePuy Synthes.

82. As a result of the above-described breaches of fiduciary duties, among others, DePuy Synthes is suffering immediate and irreparable harm in the form of lost profits, lost customers, lost customer relationships, and other injuries.

COUNT V
(Unfair Competition Against Orthofix)

83. DePuy Synthes incorporates and re-states the averments set forth in the preceding paragraphs of this Complaint as though set forth herein and at length.

84. DePuy Synthes alleges, upon information and belief, that Orthofix caused DePuy Synthes employees to violate the terms of their employment with DePuy Synthes and, upon information and belief, induced them to misuse confidential information they acquired during their employment at DePuy Synthes, including information about DePuy Synthes' Customers.

85. Orthofix's actions have resulted in the improper conversion of significant amounts of business from DePuy Synthes to Orthofix, and interfered with DePuy Synthes' ability to conduct its business in multiple territories including Dothan, Alabama and Longview, Texas.

86. Upon information and belief, Orthofix has experienced significant growth in at least two regions as a result of its improper and tortious activities.

87. As a result of Orthofix's improper and tortious activities, DePuy Synthes is suffering immediate and irreparable harm in the form of lost profits, lost customers, lost customer relationships, and other injuries.

WHEREFORE, DePuy Synthes demands judgment in its favor and against the Defendant, and respectfully requests the following relief:

- a. Actual damages that DePuy Synthes is entitled to recover, including compensatory damages;
- b. Incidental and consequential damages as permitted by law;
- c. An equitable accounting, disgorgement, forfeiture, and delivery to DePuy Synthes of all assets, income, profits, pecuniary benefits, and all illicitly obtained gains or profits resulting from Orthofix's actions with respect to Messrs. Wells, Sewell and Mackey and Ms. Middleton;
- d. DePuy Synthes' attorney's fees and costs;
- e. Interest; and,
- f. All such other relief as this Court deems appropriate.

Respectfully submitted,

/s/ Clyde Siebman

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