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Attorneys for Plaintiffs
OOO Brunswick Rail Management and
Brunswick Rail Group Limited

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

OOO BRUNSWICK RAIL MANAGEMENT,
a Russian limited liability company, and
BRUNSWICK RAIL GROUP LIMITED, a
Bermuda company,

Plaintiffs,

v.

RICHARD SULTANOV and PAUL
OSTLING, individuals,

Defendants.

Case No. **CV 1700017** NC

**COMPLAINT FOR VIOLATION OF
DTSA, CUTSA, BREACH OF
FIDUCIARY DUTY, BREACH OF
WRITTEN CONTRACT, BREACH OF
IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING; UNFAIR
COMPETITION; COMMON LAW
MISAPPROPRIATION AND UNFAIR
COMPETITION**

DEMAND FOR JURY TRIAL

**ADR
E-FILING**

FILED

JAN 9 4 2017

**SUSAN Y. BOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE**

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1 Plaintiffs OOO Brunswick Rail Management (“BRM”) and Brunswick Rail Group
 2 Limited (“BRL”) (collectively “Brunswick” or “Plaintiff”) hereby complain and allege the
 3 following against Paul J. Ostling (“Ostling”) and Richard Sultanov (“Sultanov”) (collectively,
 4 “Defendants”):

5 NATURE OF THE CASE

6 1. This is an action based upon: (1) the Defend Trade Secrets Act, 18 U.S.C. § 1836,
 7 *et seq.*; (2) California’s Uniform Trade Secrets Act (Cal. Civ. Code § 3246, *et seq.*); (3) breach of
 8 fiduciary duty and duty of loyalty; (4) breach of contract as to Sultanov; (5) breach of the implied
 9 covenant of good faith and fair dealing as to Sultanov; (6) unfair competition (under Cal. Bus. &
 10 Prof. Code § 17200, *et seq.*); and (7) common law misappropriation and unfair competition.
 11 Brunswick seeks injunctive relief, damages, and other appropriate relief to stop Defendants’ use,
 12 disclosure, and misappropriation of Brunswick’s confidential and trade secret documents and
 13 information by, among other things, providing it to creditors of Brunswick.

14 THE PARTIES

15 2. BRM is a Russian Limited Liability Company, headquartered in Moscow in the
 16 Russian Federation and a subsidiary of BRL. BRL is a Bermuda company, having its
 17 headquarters in Hamilton, Bermuda.

18 3. Brunswick is informed and believes, and thereupon alleges that Defendant Ostling
 19 is a citizen of the United States, residing at 1196 Smith Ridge Road, New Canaan, Connecticut
 20 06840 and/or at 706 Forest Road, Unit A, Vail, Colorado, 81657. Defendant Ostling also resides
 21 at Trekhpudnyy pereulok 11/13, apartment 9, 123001 Moscow, Russian Federation. Defendant
 22 Ostling owns and uses the email address paul.ostling@pauljostling.com.

23 4. Brunswick is informed and believes, and thereupon alleges that Defendant
 24 Sultanov is a dual citizen of the United States and the Russian Federation, residing at
 25 Ozerkovskaya Naberezhnaya 2, building 1, apartment 135, 115184 Moscow, Russian Federation.
 26 Defendant Sultanov also maintains a residence at 251 Littleness Ave, Monterey, California,
 27 93940. Defendant Sultanov owns and uses the email address richard.sultanov@gmail.com.

5. Third party Rackspace Hosting, Inc. and Rackspace US, Inc. (collectively, “Rackspace”) is a managed cloud computing company that offers Internet hosting services, email accounts, Internet domains, and cloud storage. Rackspace has an agent for service of process at CSC-Lawyers Incorporating Service, 2710 Gateway Oaks Dr., Suite 150N, Sacramento, CA 95833, and has offices at 620 Folsom St #100, San Francisco, CA 94107. As described herein, Defendant Ostling received and sent Brunswick’s confidential and trade secret documents and information using his personal email account at paul.ostling@pauljostling.com that is hosted by and through Rackspace.

6. Third party Google, Inc. (“Google”) is a technology company that offers Internet-related services, including email services through Gmail and cloud storage. Google has an agent for service of process at CSC-Lawyers Incorporating Service, 2710 Gateway Oaks Dr., Suite 150N, Sacramento, CA 95833, and has offices at 1600 Amphitheatre Parkway, Mountain View, California 94043. As described herein, Defendant Sultanov forwarded Brunswick’s confidential and trade secret documents and information to his personal email account richard.sultanov@gmail.com that is hosted by and through Google.

7. Defendants, without authorization, have misappropriated Brunswick’s confidential and trade secret documents and information. Defendants are responsible for the occurrences alleged herein and are the proximate cause of the injuries Brunswick has suffered.

8. Upon information and belief, the actions and omissions alleged herein to have been undertaken by the Defendants were undertaken by each Defendant individually, were actions and omissions that each Defendant authorized, controlled, directed, or had the ability to authorize, control or direct, and/or were actions and omissions each Defendant assisted, participated in, or otherwise encouraged, and are actions for which each Defendant is liable. Each Defendant aided and abetted the actions of the Defendants set forth below, in that Doe Defendant had partial or full knowledge of those actions and omissions, provided assistance and benefited from those actions and omissions, in whole or in part. Each of the Defendants was the agent of each of the remaining Defendant, and in doing the things hereinafter alleged, was acting

1 within the course and scope of such agency and with the permission and consent of other
2 Defendant.

3 JURISDICTION

4 9. This Court has original jurisdiction over this action pursuant to the Defend Trade
5 Secrets Act, 18 U.S.C. § 1836(c) and 28 U.S.C. § 1331. This Court has supplemental jurisdiction
6 over the other claims asserted herein, pursuant to 28 U.S.C. § 1367. There is complete diversity
7 and the amount in controversy exceeds the jurisdictional amount, and thus, this action is also
8 subject to the Court's diversity jurisdiction under 28 U.S.C. § 1332.

9 VENUE

10 10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as a substantial part
11 of the events or omissions giving rise to the claims pled herein occurred in the Northern District
12 of California and a substantial part of the property that is the subject of the claims is situated in
13 the Northern District of California. Specifically, the misappropriated confidential and trade secret
14 information and documents were sent to an email accounts provided by Google and Rackspace,
15 with a presence in the Northern District of California, and, on information and belief, still reside
16 on Google's and Rackspace's servers. Venue is also proper because the Court has personal
17 jurisdiction over at least one defendant that resides in the district.

18 INTRADISTRICT ASSIGNMENT

19 11. This is an action for trade secret misappropriation, breach of contract, breach of
20 implied covenant of good faith and fair dealing, unfair competition, breach of fiduciary duty and
21 loyalty and misappropriation, where a substantial part of the events or omissions which give rise
22 to the claims have taken place in Santa Clara County and where a substantial part of the property
23 that is the subject of the action is situated in Santa Clara County. Thus, pursuant to Civil L.R. 3-
24 2(c) and (e), this action should be assigned to the San Jose Division.

25 BRUNSWICK'S BUSINESS

26 12. Brunswick Rail is a private railcar lessor providing freight railcars to large
27 corporate clients in Russia. Established in 2004, Brunswick Rail currently owns a fleet of over
28

1 25,000 railcars (as of September 30, 2016), which represents approximately 2% of the total
 2 Russian railcar fleet.

3 13. In January 2016, Brunswick announced a voluntary restructuring of its debt
 4 (hereinafter, the “Brunswick Restructuring”). As part of this restructuring, Brunswick is in
 5 ongoing discussions and negotiations with its creditors. A successful restructuring is key to
 6 maintaining Brunswick’s solvency and its competitive advantage in the industry.

7 14. In May 2016, Brunswick commenced a confidential arbitration proceeding
 8 (hereinafter, the “Brunswick Arbitration”) against its former CEO Alex Genin (“Genin”), who
 9 served in the role prior to Ostling and another earlier CEO. Due to the timing of the arbitration
 10 proceeding, its relationship to the restructuring, and the highly-sensitive nature of its subject
 11 matter, it is critical to Brunswick and to its restructuring efforts that the arbitration remain
 12 confidential.

13 **BRUNSWICK’S TRADE SECRETS AND CONFIDENTIAL INFORMATION**

14 15. Brunswick takes extraordinary steps in protecting its confidential and trade secret
 15 documents and information. Brunswick limits access to sensitive confidential information and
 16 trade secrets. Brunswick employees are able to gain access to Brunswick confidential
 17 information only through password-protected programs and entry points. Brunswick secures
 18 access to its facilities and other employs other security measures that limit and control access to
 19 its confidential information and trade secrets. Brunswick takes security measures, including
 20 locking its doors and activating an alarm system after business hours and having security guards.
 21 During business hours, members of the public are not allowed in the facility unless they have an
 22 appointment or otherwise escorted by a Brunswick employee. Employees are expected to treat
 23 sensitive documents—including material related to the Brunswick restructuring, its arbitration
 24 against former CEO Genin, documents and information regarding internal employment matters,
 25 and confidential information regarding customers—as per internal policies and agreements.
 26 Employees can only access Brunswick computers and peripheral devices with the proper user ID
 27 and passwords. For example, Section 4.7 of Brunswick’s information security policy states that:

1 The Company introduced Access Monitoring and Control System
2 to office premises. Special equipment that includes Proximity card
3 readers, cards and SW that provides for the maintenance of the
4 employee database and their access to offices is used to control
5 doors to offices.

6 A CCTV system is organised in the Moscow office that provides
7 for storage of recorded video information on a hard drive. The main
8 purpose of the system is to facilitate the investigation in the event
9 of an emergency situation in the office. The owner of the video
10 information is the General Director.

11 16. Brunswick enforces the protection of its confidential and trade secret documents
12 and information, through confidentiality provisions in employment agreements, and detailed and
13 strict internal policies on confidentiality, information security and IT use.

14 17. For example, Brunswick's information security policy creates a framework for
15 preventing information security vulnerabilities, managing user accounts and passwords, and
16 protecting confidential corporate information within the company's information systems. At
17 section 4, the policy makes clear that: "Information - is a critically important asset to the
18 Company, which must be protected from unauthorised access, intentional or deliberate deletion or
19 amendment." At section 4.5.1, the policy prohibits establishing any unauthorized "external
20 connections" to Brunswick systems or information, and provides that "[i]the event of non-
21 compliance with this rule, the user will be fully responsible for the consequences of his actions."
22 Section 4.5.3 provides, among other things, that "[t]he use of email boxes not belonging to the
23 Company for the transfer of corporate information is prohibited," that "access to the Internet
24 network and collaborative tools provided for CIS users may be used only in accordance with the
25 Company's business objectives," and that "[i]f confidential or proprietary information of the
26 company must be sent using collaborative tools (e-mail, electronic conference, etc.), it must be
27 encrypted so that it can be read only by the person it was targeted for. Such information is
28 encrypted using the software and algorithms approved by the company."

18. Brunswick continuously updates and maintains the digital and physical security
and confidentiality of its information. For example, at section 4.8 of the information security
policy, Brunswick provides that "[t]he following technical measures are used to control risks:

1 monitoring, system logs analysis, regular inspections, analysis on the side of the management and
2 independent internal audits of information security.” and “[a]ctivities for the optimisation of risk
3 includes a regular reassessment of risks and, accordingly, reassessment of policies, risk
4 management, adjustment and updates of information security mechanisms.”

5 19. Brunswick derives value from the secret nature of its confidential and trade secret
6 documents and information. It does not freely share its confidential material or trade secrets with
7 any entity or person outside of Brunswick. Brunswick requires all of its employees and
8 consultants to sign employment agreements that include confidentiality, non-disclosure, and non-
9 use provisions that acknowledge its employees and consultants will receive confidential and
10 proprietary documents and information during their employment that belongs to Brunswick. As
11 discussed (*infra*), Defendants entered into such agreements.

12 20. Brunswick’s confidentiality provisions define its proprietary and confidential
13 material broadly and prohibit, among other things, its employees and consultants from disclosing
14 Brunswick confidential and proprietary material from anyone outside of Brunswick without its
15 consent or otherwise misappropriating Brunswick’s confidential and proprietary material. These
16 agreements signed by Brunswick’s employees establish a contractual duty to Brunswick not to
17 disclose, use, or retain Brunswick’s confidential or proprietary information without Brunswick’s
18 authorization. Brunswick’s trade secrets and confidential documents and information, subject to
19 its confidentiality restrictions and protections, include: board materials, minutes of board
20 meetings, legal counsels’ opinions, confidential letters from counsel for certain of the creditors
21 and Plaintiff’s responses, internal decision-making and strategy concerning the restructuring and
22 negotiations, internal decision-making and strategy concerning the arbitration with Brunswick’s
23 former CEO Genin, Credit Committee materials, Compensation Committee materials, valuation
24 reports by consultants, internal emails regarding ongoing negotiations with clients and internal
25 employment matters.

DEFENDANTS' DUTIES TO BRUNSWICK

21. Brunswick hired Sultanov in July 2014 as Director of Strategic Marketing, Development & Communications. He also became assistant to the General Director and to the CEO in November 2015.

22. As Director of Strategic Marketing, Development & Communications, Sultanov had access to Brunswick confidential and trade secret documents and information, including management materials prepared for Brunswick's Board of Directors ("Board"), attorney-client communications and attorney work product from Brunswick's outside counsel, material regarding negotiations of customer contracts, and information relating to the Brunswick Restructuring and the Brunswick Arbitration.

23. Accordingly, as a condition of Sultanov's employment with Brunswick, he agreed not to disclose Brunswick's confidential or trade secret documents and information without Brunswick's prior consent. Under Article 7, "Confidentiality" of his Employment Agreement, Sultanov agreed not to disclose Brunswick's confidential or trade secret documents and information without Brunswick's consent. Pursuant to Article 7.1 of his Employment Agreement, Sultanov agreed that:

[d]uring the term of this Contract and after its termination, [he] agrees not to disclose to third parties or use without the consent of the Employer, a confidential information or information containing commercial secrets, the access of which was obtained by [Sultanov] during the period of work for the Employer.

24. Sultanov also acknowledged in his Employment Agreement the broad definition of Brunswick confidential and trade secret information. Under Article 7.2 of Sultanov's Employment Agreement, he acknowledge that Brunswick confidential and trade secret information included:

all specifications, drawings, formulas, archive files, all correspondence, all handbooks or manuals, all reports, documents and protocols, all data classified as business secret, work performance instructions provided orally or in writing, relating to the activities of the Employer or used methods, procedures, know how or equipment....

25. Moreover, under Article 7.3 of his Employment Agreement, Sultanov agreed not to take any notes, copies, photographs, or summaries of Brunswick's confidential or trade secret documents and information. Sultanov further agreed that all confidential and trade secret documents and information "must remain the exclusive property of [Brunswick] and must be returned ... upon first request."

26. Also critical to Sultanov's employment was his compliance with Brunswick's code of conduct. Under Article 4 of his Employment Agreement, Sultanov agreed to comply "with the requirements of the internal code of conduct..." to act with a "[r]esponsible attitude for the property of the Employer," and to "cherish credibility and the reputation of the Employer."

27. Pursuant to the terms of his employment, Sultanov was also bound by the terms of Brunswick's internal confidentiality policy, internal IT use policy, and internal information security policy. These policies prohibited sending confidential, internal information to parties email addresses outside of Brunswick. In particular, section 4.5.3 of the information security policy provides that "the use of email boxes not belonging to the Company for the transfer of corporate information is prohibited."

28. Brunswick suspended Sultanov on December 12, 2016 following its investigation that revealed Sultanov's misappropriation of Brunswick's trade secrets and confidential information and his breach of his employment agreement.

29. Brunswick hired Ostling in September 2015 as interim chief executive officer ("CEO"). Prior to that, since June 2012, Ostling was Chairman of the Board. Under the confidentiality provisions of his employment agreement, Ostling agreed to:

not except as authorized or required by your duties hereunder use for your own benefit and gain or reveal to any person, firm, company or other organization whatsoever, any trade secrets or Confidential Information belonging to the Employer or to any other member of the Group or relating to the affairs or dealings of the Group which may come to your knowledge during your employment. You shall treat the same with complete secrecy.

30. As CEO, Ostling owed Brunswick a fiduciary duty of care and loyalty, obligating him to "use [his] best endeavours [sic] to promote the interest" of Brunswick. Pursuant to the

1 terms of his employment, Ostling also was bound by the terms of Brunswick's IT policy that
 2 prohibited sending confidential, internal information to parties email addresses outside of
 3 Brunswick. Ostling remained as CEO of BRM/BRL until November 13, 2016 when BRM/BRL's
 4 Board of Director accepted his resignation. Ostling is currently involved in a different company
 5 as an investor, and Sultanov is working at that same company and assisting Ostling in managing
 6 his investment in the new company.

7 **DEFENDANTS' MISCONDUCT**

8 31. Unbeknownst to Brunswick, from at least mid-November 2016 through December
 9 2016, Ostling and Sultanov misappropriated Brunswick's confidential and trade secret
 10 documents.

11 32. Ostling resigned on November 13, 2016. Shortly before resigning, Ostling asked
 12 Brunswick to give Sultanov a special \$10,000 bonus. Brunswick later discovered that Ostling
 13 had been approving Sultanov for an inordinate amount of overtime that accumulated to nearly 40
 14 percent additional pay during 2016. Given Brunswick's financial condition and the timing of
 15 Ostling's bonus request in relation to his departure, this was all unusual.

16 33. In mid-November 2016, Sultanov began exhibiting behavior that was unusually
 17 secretive. Sultanov often would leave the floor where he works, move one floor up, and take and
 18 make numerous calls. This behavior was out of the ordinary. At that time, Sultanov also came to
 19 work on the weekends repeatedly, at a time when he had no reason to be there. At this time,
 20 Sultanov began asking numerous and detailed questions regarding the restructuring and
 21 negotiations with bondholders, even though he was not working on such matters and they were
 22 entirely outside of the job scope.

23 34. During this same period of time—and particularly during the last few weeks in
 24 December 2016, Brunswick began receiving multiple letters from its creditors with which it was
 25 negotiating. These letters appeared to be coordinated. In view of the foregoing developments, on
 26 December 9, 2016, Brunswick exercised its rights consistent with internal IT policy, to which
 27 Sultanov had agreed, and accessed his Brunswick email account to investigate.
 28

1 35. Upon reviewing Sultanov's work email account, Brunswick discovered that since
2 November 12, 2016, Sultanov had sent a substantial number of trade secret and confidential
3 documents to his personal Gmail account. There was a dramatic increase in the amount of
4 material Sultanov was sending from Brunswick email account (rsultanov@brunswickrail.com) to
5 his personal Gmail email account (richard.sultanov@gmail.com). These emails contain trade
6 secret and confidential documents relating to the Brunswick Restructuring and Brunswick
7 Arbitration, as well as commercial information. A number of the documents are specifically
8 marked "strictly confidential." This information includes:

- 9 (a) Internal decision-making and strategy concerning the restructuring and
10 negotiations, forwarded to Sultanov's private email account on December 9,
11 2016, emails relating interactions with creditors "Lavender Tankers" and
12 "Sumitomo," and internal information and communications relating to the
13 restructuring.
- 14 (b) Board materials, board minutes and presentations of advisors for the board,
15 forwarded to Sultanov's private email account on December 6, 2016, including
16 particularly very recent materials from the end of November and beginning of
17 December. Internal drafts of communications with creditors were also sent.
- 18 (c) Legal counsels' opinions and confidential letters from counsel for certain of
19 the creditors and Plaintiff's responses, forwarded to Sultanov's private email
20 account on December 7, 2016.
- 21 (d) Internal information concerning the arbitration with Brunswick's former CEO
22 Genin, forwarded to Sultanov's private email account on December 7, 2016.
- 23 (e) Credit Committee materials, forwarded to Sultanov's private email account on
24 December 6 and 10, 2016 in emails containing information about decision
25 making, strategy and the contents of December meetings and minutes.
- 26 (f) Compensation Committee materials, forwarded to Sultanov's private email
27 account on December 5-6, 2016.
- 28

1 (g) Valuation reports by E&Y, forwarded to Sultanov's private email account on
2 December 6, 2016.
3 (hereinafter, the "Brunswick Confidential Information").

4 36. Brunswick did not authorize Sultanov to send these materials to his personal
5 Gmail account. His actions were unauthorized and inconsistent with his obligations under his
6 employment agreement and his duties to the company. By sending these materials to his personal
7 Gmail account, Sultanov violated the Brunswick internal IT policy. The materials that Sultanov
8 forwarded to his personal account were beyond the scope of his duties. There was no legitimate
9 purpose for Sultanov to send the materials to his personal Gmail account.

10 37. Brunswick's investigation also revealed Sultanov's deliberate attempts to conceal
11 his unauthorized transmission of Brunswick's confidential and trade secret information to his
12 personal Gmail account. On December 10, 2016, Sultanov deleted many of the emails he had
13 forwarded to his personal Gmail account. He also emptied his "trash" folder of his Brunswick
14 email account. Brunswick, however, was able to recover these deleted emails. The investigation
15 revealed that Sultanov deleted numerous emails he forwarded to his personal Gmail account.
16 Those deleted emails include emails that forwarded Brunswick Confidential Information.

17 38. Brunswick also reviewed Sultanov's phone records. Given the ongoing, sensitive
18 negotiations with its creditors, Brunswick had instructed Sultanov not to communicate to
19 creditors or to anyone outside of the company who may relate to the ongoing negotiations without
20 prior approval from his supervisors. Sultanov disobeyed these instructions. Phone records from
21 Sultanov's work telephone reveal that from November 12, 2016 through December 12, 2016,
22 Sultanov had phone multiple conversations with (a) Ostling, after his resignation from Brunswick
23 and with (b) Denis Mosolov ("Mosolov"), a representative of one of the creditors in a position
24 adverse to Brunswick. Separately, during this same period, on December 6, 2016, Brunswick
25 received a letter from a different creditor, and on December 7, 2016, received a letter from
26 counsel for a group of creditors. The receipt of these letters all appeared coordinated.

27 39. On December 12, 2016, Brunswick interviewed Sultanov, during which he
28 admitted that he had sent, to his personal Gmail account, confidential information that did not

1 pertain to his duties. Sultanov could not provide a clear explanation for his actions. Sultanov
2 denied that conversations with Mosolov, the creditor's representative, despite the phone records
3 showing that they spoke twice on December 6, 2016. When asked to explain the purpose of the
4 calls and to provide the specifics of the information that he had sent to his private account,
5 Sultanov refused to continue the discussion and left the interview. Brunswick asked Sultanov to
6 return for a follow up interview and further discussion; he refused to do so and did not return to
7 the office. Brunswick also asked Sultanov to return his Brunswick mobile phone and laptop; he
8 refused to do so.

9 40. Given the results of Brunswick's internal investigation and Sultanov's violations
10 of his employment agreement and the Brunswick IT policy, Brunswick suspended Sultanov's
11 employment effective December 15, 2016. Brunswick has denied Sultanov access to the office,
12 services through his Brunswick-issued mobile phone and laptop in his possession, and his
13 Brunswick email account. Brunswick has also instructed Sultanov not to communicate with other
14 Brunswick employees without management's approval. Moreover, Brunswick has repeatedly
15 requested that Sultanov return his Brunswick-issued mobile phone and laptop, as he is required to
16 do under his employment agreement, but he refuses to do so.

17 41. Sultanov's suspension did not dissuade him from continuing activities contrary to
18 Brunswick's interests and designed to impede Brunswick's investigation. On December 16,
19 2016, Sultanov made a communication to Brunswick's outside counsel in the United Kingdom,
20 through Ostling, in which he threatened to complain to regulatory authorities unless Brunswick
21 dropped its investigation of Sultanov's conduct.

22 42. Notwithstanding his resignation as CEO in mid-November, Ostling continued to
23 ask his former personal assistant at Brunswick to continue to carry out tasks for him, and received
24 from her confidential internal information regarding Sultanov's investigation and suspension. In
25 particular, on December 13, 2016, Ostling received from his former personal assistant at the
26 company, to his personal email account (paul.ostling@pauljostling.com), three emails containing
27 the internal notice regarding Sultanov's suspension and internal details regarding that suspension.
28 On December 14, 2016, Ostling forwarded each of these confidential emails to Dennis Mosolov,

1 the representative of one of the creditors with which Plaintiffs are negotiating, and to Sultanov.
2 Ostling copied both of these individuals on the same forwarded emails. Since Sultanov's
3 suspension, Ostling also called Aaron Ruben, another representative of the same creditor
4 represented by Mosolov, and Dominic Dolenc, one of Plaintiffs' former restructuring consultants.
5 Ostling's call to Aaron Ruben was on behalf of Sultanov.

6 43. Since his suspension, Sultanov is working at Ostling's new company and assisting
7 Ostling with his investment in that company. Sultanov has been assisting Ostling with work at
8 that same company while employed by Plaintiffs. In particular, Sultanov's company email
9 account continues to receive meeting request with respect to that particular company.

10 44. The information that Sultanov sent to his personal email account contains a wide
11 variety of confidential information that would be of interest to numerous parties, including the
12 creditors involved in the Brunswick Restructuring, Brunswick's former CEO Genin adverse to the
13 company in the Brunswick Arbitration, and commercial information that would be of interest to
14 competitors. Given the nature of the information that Sultanov sent to his personal account, there
15 is a serious risk that such information is planned to be shared with creditors, former CEO Genin
16 in the arbitration, competitors or others. Depending on the creditors reactions to receiving certain
17 of the trade secrets and confidential information and precisely what information has been shared
18 with which creditors, including internal strategy and information about the restructuring and the
19 arbitration, such information may inject disruption into the negotiations and potentially risk the
20 success of that effort. Thus, Sultanov's actions create a severe potential risk of disadvantaging
21 Brunswick by frustrating its ability to negotiate a fair and reasonable restructuring with its
22 creditors, by disclosing its internal strategies. There is a risk that creditors who were to obtain
23 this information from Sultanov might use it to gain an unfair advantage during the Brunswick
24 Restructuring. Such disclosure might also create a risk of advantaging some creditors over
25 others, and unfairly advantaging parties associated or affiliated with such creditors. There is also
26 a potential risk that these actions by Sultanov might be inconsistent with the requirements of
27 securities regulations and laws in the jurisdictions in which the company's securities are trading,
28 depending on the timing of the disclosure of the information at issue, as it may be considered to

1 include price-sensitive information. Further, given that confidential customer and strategy
2 information was included in the conduct, there is a risk of unfair competition as well, if
3 competitors were to receive this data. There is also a serious potential risk of interference with
4 the Brunswick Arbitration. For example, there is no reason that Sultanov should have forwarded
5 such information to himself. If he were to share that information with Brunswick's former CEO
6 Genin or his counsel, who are adverse in the arbitration, this could be extremely damaging to
7 Brunswick.

8 45. This harm and risk of harm to Brunswick results directly from Sultanov's
9 misconduct. The restructuring is critical and essential to the existence of the business and the
10 confidential arbitration is very important to the business as well. Sultanov's interference or
11 potentially providing trade secret and confidential information to certain creditors risks to impair
12 the ability to complete the restructuring and thus creates risk to Brunswick's existence, which
13 could not be repaired. The sharing of this information also creates potential unfairness in the
14 restructuring, both for Brunswick and other creditors. And, as discussed, Sultanov's potential
15 disclosure of information to an adversary in the arbitration is also the type of injury that could not
16 be repaired. Finally, if sensitive commercial information regarding customers and internal affairs
17 were passed to competitors, it could enable them to unfairly compete against Brunswick. This too
18 creates a serious risk of harm.

19 46. Similarly, the information that Ostling received at his personal email account from
20 his former personal assistant is sensitive internal employment information and was, in fact,
21 forwarded by Ostling to a creditor who is a contractual counterparty in the restructuring. Given
22 the sensitivity of the existing restructuring negotiations, the fact that Ostling has received and
23 forwarded confidential internal employment information to creditors indicates risks regarding the
24 restructuring process and relations similar to those described above.

25 47. Given Sultanov's and Ostling's attitude and complete disregard for their
26 obligations to Brunswick, given Sultanov's efforts to destroy the evidence of his
27 misappropriation, given Ostling's willingness to obtain information improperly from his prior
28 personal assistant, and given both of their continued possession and access to trade secreted

1 information, there is a substantial likelihood that Ostling and Sultanov will continue to
 2 misappropriate Brunswick's trade secrets, to the detriment of Brunswick's interests and in
 3 furtherance of their own interests. For the same reasons, there is also a substantial risk that
 4 Sultanov will continue his efforts to destroy evidence of illicit activity or evade the true facts
 5 from coming to light, if he finds out about the relief Brunswick requests. Similarly, given
 6 Ostling's exhibition of evasive behavior, by interacting with his former personal assistant and
 7 obtaining confidential information from her, there is a risk that he too would not take necessary
 8 steps to preserve evidence.

9 48. Upon information and belief, Defendants have or will provide a benefit to third
 10 parties or have profited from their misappropriation of Brunswick's confidential and trade secret
 11 documents and information by disclosing those documents and information to other parties.

12 **CLAIMS FOR RELIEF**

13 **FIRST CLAIM FOR RELIEF**

14 Trade Secret Misappropriation Under the Defend Trade Secrets Act

15 (18 U.S.C. § 1836 *et seq.*)

16 49. Brunswick realleges and incorporates by reference each and every allegation set
 17 forth in paragraphs 1 through 48 above.

18 50. Brunswick owns and possesses certain confidential and trade secret documents and
 19 information as alleged above that relates to the Brunswick Restructuring and Brunswick
 20 Arbitration.

21 51. Brunswick's confidential and trade secret documents and information relates to
 22 products and services used, sold, shipped and ordered in, or intended to be used, sold, shipped
 23 and/or ordered in, interstate or foreign commerce.

24 52. Brunswick has taken reasonable steps to protect the secrecy of its confidential and
 25 trade secret documents and information, including the secrecy of the Brunswick Confidential
 26 Information Defendants have misappropriated.

27 53. Defendants have misappropriated the Brunswick Confidential Information in the
 28 improper and unlawful manner as alleged herein.

54. Defendants have failed to return to Brunswick the Brunswick Confidential Information and have attempted to conceal their theft of such information. On information and belief, if Defendants are not enjoined, they will continue to misappropriate, disclose, and use for their benefit and to Brunswick's detriment the Brunswick Confidential Information.

55. Because Brunswick's remedy at law is inadequate, Brunswick seeks—in addition to damages—a temporary, preliminary, and permanent injunctive relief to and to protect its confidential and trade secret documents and information as well as Brunswick's legitimate business interest. Critical to the Brunswick competitive advantage is the confidentiality of its negotiations with its creditors. Brunswick will continue to suffer irreparable harm absent injunctive relief.

56. Brunswick has a substantial likelihood of success on the merits because of Defendants' blatant, willful, and malicious misappropriation of trade secrets through the unlawful methods alleged herein.

57. Defendants' misappropriation of Brunswick's confidential information and trade secrets has caused and will continue to cause Brunswick substantial injury, including, but not limited to actual damages, lost profits, harm to its reputation, and the diminution in value of its trade secrets. Defendants have been unjustly enriched by their misappropriation of Defendants' confidential information and trade secrets.

58. Defendants' misappropriation of the Brunswick Confidential Information was intentional, knowing, willful, malicious, fraudulent, and oppressive. Brunswick is entitled to an award of exemplary damages and reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF

Trade Secret Misappropriation Under California's Uniform Trade Secret Act

(Cal. Civ. Code § 3426 *et seq.*)

59. Brunswick realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 58 above.

60. Brunswick owns and possesses certain confidential and trade secret documents and information as alleged above that relates to the Brunswick Restructuring and Brunswick

1 Arbitration. These are trade secrets within the meaning of California Civil Code Sections 3426
2 through 3426.11.

3 61. Brunswick has taken reasonable steps to protect the secrecy of its confidential and
4 trade secret documents and information, including the secrecy of the Brunswick Confidential
5 Information Defendants have misappropriated by, among other things, limiting access to
6 confidential and trade secret documents and information, requiring employees—including the
7 Defendants—to sign confidentiality agreements, implementing policies that require
8 confidentiality, and limiting access to its computers and requiring passwords.

9 62. Defendants have misappropriated the Brunswick Confidential Information in the
10 improper and unlawful manner as alleged herein.

11 63. Defendants have failed to return to Brunswick the Brunswick Confidential
12 Information and have attempted to conceal their theft of such information. On information and
13 belief, if Defendants are not enjoined, they will continue to misappropriate, disclose, and use for
14 their benefit and to Brunswick's detriment the Brunswick Confidential Information.

15 64. Because Brunswick's remedy at law is inadequate, Brunswick seeks—in addition
16 to damages—a temporary, preliminary, and permanent injunctive relief to and to protect its
17 confidential and trade secret documents and information as well as Brunswick's legitimate
18 business interest. Critical to the Brunswick competitive advantage is the confidentiality of its
19 negotiations with its creditors. Brunswick will continue to suffer irreparable harm absent
20 injunctive relief.

21 65. Brunswick has a substantial likelihood of success on the merits because of
22 Defendants' blatant, willful, and malicious misappropriation of trade secrets through the unlawful
23 methods alleged herein.

24 66. Defendants' misappropriation of Brunswick's confidential information and trade
25 secrets has caused and will continue to cause Brunswick substantial injury, including, but not
26 limited to actual damages, lost profits, harm to its reputation, and the diminution in value of its
27 trade secrets. Defendants have been unjustly enriched by their misappropriation of Defendants'
28 confidential information and trade secrets.

67. Defendants' misappropriation of the Brunswick Confidential Information was intentional, knowing, willful, malicious, fraudulent, and oppressive, all within the meaning of California Civil Code, Section 3294. Defendants misappropriated Brunswick's confidential and trade secret information intentionally and knowingly and with a deliberate intent to benefit themselves and to injure Brunswick. Brunswick is entitled to its damages, in an amount to be determined at trial, as well as injunctive relief, and an award of punitive damages and/or treble damages and attorney's fees pursuant to California Civil Code, Sections 3426.3(c) and 3426.4.

THIRD CLAIM FOR RELIEF

Breach of Fiduciary Duty and Duty of Loyalty

68. Brunswick realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 67 above.

69. As employees of Brunswick, Defendants owed Brunswick a duty of loyalty and was obligated to act with the utmost good faith, and in the best interest of Brunswick.

70. Brunswick was entitled to place its trust and confidence in Defendants and entitled to expect Defendants to act with the utmost good faith toward it in carrying out the employment and the business of Brunswick.

71. Brunswick relied on Defendants' loyalty and integrity and their faithful performance of their responsibilities.

72. Defendants took advantage of Brunswick's faith in them—thereby breaching their fiduciary duties—by failing to perform their duties to Brunswick, by acting in conflict of interest, by engaging in activities for their own benefit and to the detriment of the company, and by providing secret information and interacting with for Brunswick's creditors with which Brunswick was and is negotiating as part of the Brunswick Restructuring.

73. Defendants knowingly and willing breached their duty of loyalty to Brunswick by misappropriating Brunswick's confidential and trade secret documents and information, and engaging in acts that undermine Brunswick's negotiation position with its creditors or otherwise jeopardize that process, and which expose Brunswick's trade secrets to risk from multiple sources.

1 74. Defendants acted in a manner inconsistent with their agency and trust by
2 misappropriating Brunswick's confidential and trade secret documents and information to the
3 injury of Brunswick and for their own benefit and the benefit of certain third parties, and by
4 acting against Brunswick's interests while and after employed by Brunswick.

5 75. As a direct and proximate cause of Defendants' disloyalty to Brunswick and
6 breach of their duties, Brunswick has been and is being harmed, and faces severe risk of
7 irreparable harm.

8 76. Brunswick is entitled to its damages, in an amount to be determined at trial, as well
9 as disgorgement from Defendants, and the forfeiture and return of all monies and compensation
10 paid to them during their period of disloyalty, the exact amount to be determined at trial.
11 Brunswick is further entitled to injunctive relief against Defendants and all those acting in concert
12 or participation with them, remedying their past improper conduct, and preventing such conduct
13 in the future.

14 77. Defendants are still in possession of Brunswick's confidential and trade secret
15 information, are able to access it, and are able to use this information to benefit certain Brunswick
16 creditors in the Brunswick Restructuring, and to benefit other parties. Defendants have shared
17 this confidential information with others who may use, or are using this information to
18 Brunswick's detriment.

19 78. As a direct and proximate results of Defendants' disloyalty, Brunswick has been
20 irreparably injured and has suffered damages in an amount to be determined at trial. Because its
21 remedy at law is inadequate, Brunswick seeks, in addition to damages, preliminary and
22 permanent injunctive relief, enjoining Defendants, and all those acting in concert or participate
23 with them, from further improper conduct, from further misappropriation and use of Brunswick's
24 confidential and trade secret documents and information, seizure and return of the trade secrets
25 and confidential information, and physical media, and all copies thereof.

FOURTH CLAIM FOR RELIEF

Breach of Written Contract (Sultanov)

79. Brunswick realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 78 above.

80. Pursuant to Sultanov's Employment Agreement, Sultanov was obligated to, *inter alia*: (a) to hold in strict confident and not to disclose Brunswick's confidential and trade secret documents and information outside of Brunswick without Brunswick's approval; (b) comply with the Brunswick's internal code of conduct; (c) act responsibly for Brunswick's property; (d) return all Brunswick property and all confidential and trade secret documents and information to Brunswick upon first request; and (e) not to transfer Brunswick's confidential and trade secret documents and information to email that did not belong to Brunswick.

81. Sultanov also breached his contractual obligations by transferring Brunswick's confidential and trade secret documents and information, including the Brunswick Confidential Information, from his Brunswick email account to his personal Gmail account without Brunswick's approval. Sultanov breached his contractual obligations by communicating with creditors of Brunswick without authorization.

82. Moreover, Sultanov breached his contractual obligations by failing to return his Brunswick mobile phone and laptop and the Brunswick confidential and trade secret documents and information, after Brunswick requested that he do so. Further, Sultanov breached his contractual obligations by failing to follow Brunswick's internal code of conduct. Critically, his misappropriation of Brunswick's confidential and trade secret documents and information, his failure to comply with explicit instructions, and his interference with an internal investigation are inconsistent with Brunswick's internal code of conduct.

83. As a direct and proximate result of Sultanov's breaches, Brunswick has suffered extensive damage, the exact amount to be determined at trial.

84. Brunswick will continue to be directly and proximately damaged and irreparably harmed, if Sultanov is not enjoined from further violation of his contractual obligations and if he is not directed to comply therewith, and prohibited from using and disclosing Brunswick's

1 confidential and trade secret documents and information. Brunswick has not adequate remedy at
 2 law as money damages alone will not fully compensate Brunswick, and injunctive relief is
 3 warranted to prevent further irreparable harm to Brunswick.

4 85. Brunswick accordingly seeks damages and preliminary and permanent injunctive
 5 relief.

6 **FIFTH CLAIM FOR RELIEF**

7 **Breach of Implied Covenant of Good Faith And Fair Dealing (Sultanov)**

8 86. Brunswick realleges and incorporates by reference each and every allegation set
 9 forth in paragraphs 1 through 85 above.

10 87. Sultanov's Employment Agreement contained an implied covenant of good faith
 11 and fair dealing. This implied covenant obligated Sultanov to refrain from doing any act that
 12 would deprive Brunswick from the benefits of the agreement or that would impede Brunswick
 13 from performing any or all of the conditions of the agreement that it agreed to perform.

14 88. Sultanov's misconduct as described herein breached the implied covenant of good
 15 faith and fair dealing. Sultanov failed to protect the secrecy of Brunswick's confidential and
 16 trade secret documents and information or to otherwise adequately perform his duties for
 17 Brunswick. Instead, Sultanov misappropriated Brunswick's confidential and trade secret
 18 documents and information as described herein.

19 89. As a proximate result of these breaches and of the other improper conduct alleged
 20 above, Brunswick has been irreparably injured and has suffered damages in an amount to be
 21 determined at trial. Because its remedy at law is inadequate, Brunswick also seeks, in addition to
 22 its damages, preliminary and permanent injunctive relief.

23 **SIXTH CLAIM FOR RELIEF**

24 **Unfair Competition Cal. Bus. & Prof. Code §§ 17200, *et seq.***

25 90. Brunswick realleges and incorporates by reference each and every allegation set
 26 forth in paragraphs 1 through 89 above.

27 91. By obtaining Brunswick's confidential and proprietary material without its
 28 authorization or consent and disclosing the material and information outside of Brunswick,

including to Brunswick creditors, and creating a risk of disclosure to Brunswick's competitors, Defendants have competed unfairly. Through their actions, Defendants have compromised the confidentiality of Brunswick's trade secrets, undermined Brunswick's competitive advantage in the market place, and has caused Brunswick to incur costs and damage. Among other things, Defendants have given Brunswick's creditors an unfair advantage in negotiations during the Brunswick Restructuring and created a risk of providing further benefits to creditors, adverse parties in an arbitration and competitors, and to the detriment of Brunswick. Defendants, moreover, have simultaneously compromised Brunswick's opportunity to benefit from its ingenuity and efforts as embodied in its confidential and trade secret documents and information.

92. These acts and practices, as described herein, constitute unfair competition in violation of California Business and Professions Code, Sections 17200 *et seq.*, as follows:

93. As a direct and proximate result of Defendants' unfair competition in violation of Business and Professions Code, Sections 17200 *et seq.*, Brunswick is informed and believes, and thereon alleges, that Defendants have been unjustly enriched in an amount not yet ascertained.

(a) Defendants' violations of Civil Code Sections 3426 *et seq.*, as alleged herein, constitute unlawful business acts or practices, within the meaning of Business and Professions Code Sections 17200 *et seq.*; and

(b) Defendants' acts in violation of their employment agreements and the implied covenant of good faith and fair dealing inherent therein, as alleged herein, are part of a concerted effort by Defendants to significantly threaten Brunswick's competitive advantage, specifically as to the Brunswick Restructuring.

Defendants' conduct constitute unfair business acts or practices within the meaning of Business and Professions Code, Sections 17200 *et seq.*

94. As a direct and proximate result of Defendants' unfair competition in violation of Business and Professions Code, Sections 17200 *et seq.*, Brunswick has suffered and will continue to suffer great and irreparable harm. Defendants threaten to commit further violations of Business and Professions Code, Sections 17200 *et seq.* and, unless restrained and enjoined, will do so, all to Brunswick's irreparable damage. Brunswick's remedy at law is not by itself

adequate to compensate Brunswick for the harm Defendants have inflicted and threatened. Accordingly, Brunswick seeks preliminary and permanent injunctive relief pursuant to, *inter alia*, Business and Professions Code, Section 17203.

SEVENTH CLAIM FOR RELIEF

Common Law Misappropriation and Unfair Competition

95. Brunswick realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 94 above.

96. Brunswick has expended considerable time and money developing the confidential and proprietary material that Defendant obtained – including but not limited to, information regarding Brunswick products and systems, presentations outlining Brunswick's current systems and plans for future products, and other intellectual property, as well as internal valuable strategies regarding the operations of the business and credit facilities, all of which is the company's valuable intellectual property.

97. Defendant has taken Brunswick's confidential and proprietary material without authorization and has disclosed and/or used the Brunswick confidential and proprietary material and information without authorization or permission from Brunswick.

98. As a consequence of Defendant's unauthorized disclosure and use of Brunswick's confidential and proprietary material, Brunswick has been harmed. Brunswick is informed and believes, and on that basis alleges, that Defendant's conduct constitutes common law misappropriation and unfair competition and were carried out willfully, fraudulently, maliciously and with the wanton disregard of Brunswick's rights, thereby entitling Brunswick to compensatory and punitive damages to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Brunswick prays for judgment in its favor and against Defendants, inclusive as follows:

A. Awarding damages as described in each of the above claims, in favor of Brunswick and against Defendants in amounts to be determined at trial, and further directing forfeiture and disgorgement of all amounts paid by Brunswick to Defendants during the period of

1 disloyalty;

2 B. Granting a temporary and permanent injunction against Defendants, enjoining
3 them from violating their legal and contractual duties to Brunswick, from misappropriating or
4 from using Brunswick's confidential and trade secret documents and information, including the
5 Brunswick Confidential Information, and directing Defendants to return all of Brunswick's
6 property;

7 C. Awarding punitive damages in favor of Brunswick and against Defendants in the
8 an amount to be determined at trial;

9 D. Awarding Brunswick pre-judgment and post-judgment interest, its attorneys' fees,
10 and costs and other expenses incurred in this action;


11 E. Granting Brunswick such other and further relief as this Court deems just and
12 proper.

13 **JURY DEMAND**

14 Brunswick demands a jury trial for all issues so triable.

15 Dated: January 3, 2017

ORRICK, HERRINGTON & SUTCLIFFE LLP

17 
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19 Attorneys for Plaintiffs
20 OOO Brunswick Rail Management and
21 Brunswick Rail Group Limited
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