

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF OLMSTED

THIRD JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL/TRADE
SECRETS

Mayo Collaborative Services, LLC d/b/a
Mayo Medical Laboratories and Mayo
Clinic,

Court File No.: _____
Judge: _____

Plaintiffs,

COMPLAINT

v.

**(INJUNCTIVE RELIEF
REQUESTED)**

Franklin R. Cockerill, M.D., Ph.D., John Doe
1, 2, 3 and ABC Entities,

Defendants.

Plaintiffs Mayo Collaborative Services, LLC d/b/a/ Mayo Medical Laboratories and Mayo Clinic, as and for their Complaint against Defendant Franklin R. Cockerill, M.D., Ph.D. and John Doe 1, 2, 3 and ABC Entities, state and allege as follows:

INTRODUCTION

Plaintiffs Mayo Collaborative Services, LLC d/b/a/ Mayo Medical Laboratories (“MML”) and Mayo Clinic (“Mayo”) commence this action to protect their confidential information and trade secrets from being wrongfully used to seriously and irreparably damage their business, and to obtain relief from the wrongful acts and omissions of Defendant Franklin R. Cockerill, M.D. (“Dr. Cockerill”). Dr. Cockerill secretly and deceptively sought and accepted executive employment with one of MML’s primary competitors months ago. Rather than disclosing this material conflict of interest, Dr. Cockerill continued to work as a director and officer of MML and as an employee of Mayo until September 30, 2014, participating in highly-

confidential strategic decisions and planning and related litigation analysis of MML's and Mayo's business.

Until September 30, 2014, Dr. Cockerill had been for more than seven years a senior officer and director of MML, which is one of the largest global reference laboratories. Until September 30, 2014, Dr. Cockerill had also been a long-time employee of Mayo and, for the past seven years, was the Chair of the Mayo Clinic Department of Laboratory Medicine and Pathology ("DLMP"). Every day thousands of medical specimens are flown to Rochester, Minnesota from around the country and world for analysis by Mayo physicians and medical technicians. MML is a major business for Mayo which provides millions of dollars every year for funding of medical research, education and patient care. Dr. Cockerill was instrumental and intimately involved for decades in the development and growth of this for-profit business. For years Dr. Cockerill and his colleagues at MML have been successful at winning over the competition because of MML's and Mayo's cutting-edge and confidential medical research and technology and because of MML's unique collaboration strategy with its client hospitals around the world.

On July 17, 2014, Dr. Cockerill called together several meetings of all of the leaders, physicians, scientists, administrators, and other staff of DLMP and of MML to announce his "retirement" to be effective September 30. Choking back tears, Dr. Cockerill told his long-term colleagues he was retiring to help his aged mother with the family's fertilizer business in Nebraska. He then immediately sent out a department-wide email communication stating:

I want to express my deepest, most heartfelt appreciation of your support and for all of our significant accomplishments. It has been a distinct honor to serve as your Chair and the Chief Executive Officer of Mayo Medical Laboratories.

As for what's next for me, I will be turning my attention to my family's businesses and philanthropic efforts in my home state of Nebraska."

(Exhibit 1.) For the next two and a half months, Dr. Cockerill repeatedly told others at MML, DMLP, and senior Mayo leadership that he was retiring to work for his mother's business.

Unbeknownst to anyone at MML or DMLP, Dr. Cockerill's retirement plans included something entirely different than helping with his mother's business. Instead, as of October 1, 2014, a day after his "retirement" from MML and Mayo began, Dr. Cockerill started working as a Vice President and Chief Laboratory Officer at Quest Diagnostics, Inc. ("Quest"), a fierce competitor of MML's and Mayo's, doing exactly what he had been doing at MML and Mayo.

MML and DMLP have since learned that, in violation of his statutory and fiduciary duties in his role as President, CEO and director of MML, and as a Department Chair of DMLP, Dr. Cockerill had been secretly negotiating a lucrative new job with competitor Quest for more than seven months prior to his "retirement," all the while continuing to participate in highly-confidential strategic planning, test development work, and confidential litigation analysis at MML/Mayo much of which focused on MML/Mayo's competition with Quest. In violation of his fiduciary duties to MML and DMLP, Dr. Cockerill never disclosed the significant conflict of interest that he had when he began seeking employment with Quest in February 2014. Instead, Dr. Cockerill continued to accept compensation from Mayo until his "retirement" on September 30, 2014. All the way up until September 30, 2014, Dr. Cockerill continued to conceal that he had interviewed, become a finalist for and then accepted the position of Vice President and Chief Laboratory Officer at Quest, a position where Dr. Cockerill will necessarily use MML and DMLP's highly-confidential information and trade secrets to advance the competitive interests of Quest. For months before his retirement from MML and Mayo, Dr. Cockerill continued clandestine communications with the most senior officers of Quest including providing business

advice to the President/CEO of Quest. In the two weeks since his surprise move to Quest, Dr. Cockerill was interviewed by over a dozen top officers and managers of Quest regarding a broad range of strategic, intellectual property, legal and other topics set forth on an interview schedule obtained by MML and Mayo. This week the schedule states that Dr. Cockerill may meet with the Quest Board of Directors.

MML and Mayo bring this action seeking injunctive relief to prevent the disclosure of MML's and Mayo's confidential information and trade secrets, as well as damages and the disgorgement of all the amounts paid to Dr. Cockerill while he was actively concealing his plans to go to Quest to compete against MML and Mayo.

THE PARTIES

1. Plaintiff Mayo Collaborative Services, LLC doing business as Mayo Medical Laboratories ("MML"), is a Minnesota limited liability company, and has its principal place of business in Rochester, Minnesota. Mayo Clinic is the sole member of MML.

2. Plaintiff Mayo Clinic, a Minnesota nonprofit corporation, has its principal place of business in Rochester, Minnesota.

3. Defendant Franklin R. Cockerill, M.D., Ph.D ("Dr. Cockerill"), a Minnesota resident who resides in Rochester, Minnesota, is a former officer and director of MML, and a former key executive employee of Mayo Clinic.

4. Defendants John Doe 1, 2, 3 and ABC Entities are as yet unnamed joint tortfeasors and/or co-conspirators with Dr. Cockerill. To the extent it is determined that any such individual/entities have breached their duties and/or conspired, aided or abetted Dr. Cockerill, then they will be added as named Defendants to be jointly and severally liable to Plaintiffs.

VENUE

5. Venue in this district is proper because, among other things, the principal offices Mayo Collaborative Services and Mayo Clinic are located in Olmsted County, Minnesota, a substantial part of the events giving rise to this action occurred in Olmsted County, and has or will cause damage in Olmsted County, and because Dr. Cockerill is subject to both general and specific personal jurisdiction in Minnesota's courts.

FACTUAL BACKGROUND

A. Dr. Cockerill's Critical Role in the Business of MML and Mayo.

6. MML has more than 4,600 health care organizations as customers in all 50 states and more than 68 countries. Every day cargo planes deliver more than 30,000 specimens to MML/Mayo Clinic from hospital and medical center customers around the world to be tested. MML/Mayo Clinic offer thousands of medical tests for practically every imaginable medical condition or illness. Its on-line catalog is over 1,000 pages. The company was founded in the 1970s and was originally Mayo Collaborative Services, Inc. until the company was converted to its current corporate form as MML in 2012.

7. Among one of Mayo Clinic's most important departments is the Department of Laboratory Medicine and Pathology ("DLMP"). DLMP supports all the testing for Mayo Clinic as well as delivering, through MML, testing services to customers beyond the physical confines of the Mayo Clinic. In that sense, MML is referred to as the extramural practice arm of DLMP. The income generated from Mayo Clinic's reference laboratory business supports Mayo Clinic's mission of clinical care, medical research and patient education.

8. The clinical laboratory market is highly competitive. MML and DLMP have been successful in competing with the leaders in this market through its well-planned and well-

executed business and operation strategies. Among other things, MML and DLMP maintain an active highly-confidential diagnostic test development program, constantly investing in and working on cutting-edge medicine, new tests, and diagnostic technology which is a significant differentiator for MML/Mayo from its competitors.

9. Mayo spends millions of dollars on research and development and millions more protecting its inventions by obtaining patents and litigating those patents in court. Prior to publication of research results or filing for patent protection on a new invention or discovery, Mayo's cutting edge research constitutes protected trade secrets.

10. Inventions or discoveries that result from Mayo research belong to Mayo. Mayo notifies its employees of Mayo's ownership of inventions and discoveries through its policy on Intellectual Property – Inventions/Know How. (Exhibit 2.)

11. Dr. Cockerill began his employment at Mayo almost thirty years ago. Dr. Cockerill has held many key critical roles at MML and Mayo. Since 2008, Dr. Cockerill served as the President and Chief Executive Officer of MML or its predecessor. He was a director of MML beginning in January 2013. From 2008 until December 2012 Dr. Cockerill was also a director of Mayo Medical Laboratories New England ("MMLNE") which was Mayo's laboratory in Massachusetts. This entity merged into MML in 2012. Dr. Cockerill also held director positions with LOBSS Network Support Services and Laboratory Outreach and Billing Support Services, Mayo's networks which play a significant role in MML's business strategy.

12. In addition to his long-standing leadership role with MML, Dr. Cockerill has been the Department Chair of DLMP since 2006, managing more than 3,200 medical professionals who handle laboratory testing and laboratory testing intellectual property development for Mayo and MML.

B. Dr. Cockerill Developed And Had Access To MML's and Mayo's Confidential Information and Trade Secrets.

13. MML and DLMP have expended significant resources, financial and otherwise, developing strategic business plans for the reference laboratory business. As the CEO of MML and the Chair of DLMP, Dr. Cockerill has intimate first-hand knowledge of MML's and DLMP's most sensitive confidential information concerning short-term and long-term business, marketing, sales, pricing and data management strategies, as well as market assessments and analysis, competitive analysis, test development and launch plans, and related patent protection and litigation analysis.

14. Dr. Cockerill was a key player and closely involved in creating, developing, reviewing, approving, and implementing short-term and long-term strategic business, sales and operation plans for MML and DLMP. Through his multiple roles at MML and DLMP, Dr. Cockerill has developed and acquired the knowledge necessary to reproduce many of MML's and DLMP's business and operational strategies, without reference to any written presentations or documents.

15. In addition, Dr. Cockerill has detailed knowledge of tests that MML and DLMP have developed and abandoned and/or not developed, those that have good profit margins and those that don't.

16. Dr. Cockerill also has confidential and attorney-client privileged information concerning Mayo's legal strategy relating to intellectual property.

17. Dr. Cockerill has confidential information about essentially every strategic decision that MML and DLMP has made for the past seven or more years and about every strategic decision facing MML and DLMP in the immediate future.

18. In addition, MML and DLMP are continuously investing in and developing intellectual property such as new tests and new testing technology for the health care marketplace. As with the business-side of MML's operations, Dr. Cockerill has been intimately involved in the development of this intellectual property. He oversees and guides DLMP's new test development priorities and personally develops tests and related technology through research in Dr. Cockerill's own research lab at DLMP which is funded by Mayo Clinic, MML and other sources.

19. MML's and Mayo's confidential information and trade secrets include information relating to their internal operations such as strategic business and sales plans, test pricing, test development plan, test launches, marketing strategies and analysis, intellectual property analysis and related-litigation strategy, and financial performance.

20. During the last eight months of his tenure at Mayo, Dr. Cockerill participated in countless internal business governance meetings, discussions and communications during which MML's and Mayo's confidential matters and trade secrets were discussed. In addition, he received and reviewed many documents in which these matters were discussed. He never once mentioned during this time that he was considering, had interviewed for and then accepted employment with one of MML's most fierce competitors, Quest. To the contrary, he very publicly and broadly communicated to all of his colleagues and to the public that he was retiring to work for his mother's business in Nebraska.

C. MML's and Mayo's Reasonable Measures to Protect Its Confidential Information and Trade Secrets.

21. MML and Mayo have gone to great lengths to protect its confidential information and trade secrets. MML and Mayo would suffer substantial damage and irreparable harm if such

confidential information and trade secrets were to be disclosed or fall into the hands of MML's and Mayo's competitors such as Quest.

22. All Mayo employees such as Dr. Cockerill are informed that that they are not to disclose or use confidential information.

23. Employees are provided with information relating to MML's and Mayo's business and marketing strategies on a need-to-know basis only.

24. Employees are instructed to have confidentiality agreements in place before distributing confidential information.

25. All Mayo employees such as Dr. Cockerill are required to sign an Intellectual Property Agreement. As part of his Intellectual Property Agreement, he explicitly agreed as follows:

Except as required in my duties for Mayo and thereafter, I will not disclose or use Confidential Information.

(Exhibit 3 (emphasis added). Confidential information is defined as:

[I]nformation not generally known and/or proprietary to Mayo, including, without limitation, information relating to Mayo operations, financial information, from a third party that Mayo agrees to keep confidential, inventions (as defined in the Agreement), and any patient-identifiable information.

(*Id.*)

26. All Mayo employees, including Dr. Cockerill, also receive a copy of Mayo's Business Confidentiality Policy set out separately and in Mayo's Code of Conduct. All employees are responsible for reading, understanding and complying with the contents of the policy.

27. The Business Confidentiality Policy defines "Confidential Business Information" as:

[I]nformation that is not generally disclosed to the public or that would be useful to Mayo Clinic's competition. It is controlled on a need to know basis within the Mayo organization. This includes . . . sensitive business information, which may include financial data, planned new projects, . . . projected earnings.

(Exhibit 4 .)

28. The Business Confidentiality Policy requires that:

All employees must safeguard Mayo's Confidential Business Information and trade secrets. This includes confidential information received from third parties. Any internal use of Mayo proprietary information, which employees have access to, should be limited to a need-to-know basis only. Any disclosure of Mayo proprietary business information to an outside person or company should be done only as authorized and subject to an appropriate non-disclosure agreement. Mayo employees should be vigilant about inadvertently discussing Confidential Business Information in social conversations or in routine business relations.

Unauthorized use or disclosure of Mayo's Confidential Business Information and inappropriate discussion, dissemination, or re-disclosure of this information are violations of Mayo policies and principles and may be cause for disciplinary action, which may include termination from Mayo.

(*Id.*)

29. All employees including Dr. Cockerill are also required to follow Mayo's detailed Code of Conduct. Mayo's Code of Conduct reiterates the Business Confidentiality Policy, directing employees that they "must safeguard Mayo's confidential and proprietary business information and trade secrets. This includes information not generally disclosed to the public or information that is useful to Mayo's competitors." (Exhibit 5 at 9.)

30. All employees including Dr. Cockerill who receive patent validity/infringement analysis and related litigation analysis are informed that such analysis is both confidential and covered by the attorney-client privilege.

D. Dr. Cockerill Was Required To Disclose Any Conflict of Interest Between His Individual Interests and His Duties and Obligations Owed to MML and Mayo.

31. All employees are also required to follow Mayo's Conflict of Interest policy which provides:

A conflict of interest occurs when there is a divergence between an individual's or an institution's private interests and their professional obligations either to a patient or to society such that an independent observer might reasonably question research, clinical practice, education, leadership, investment, or purchasing actions taken by the individual or the institution that may have been influenced by consideration of a financial conflict of interest. A conflict of interest depends on the facts of the situation.

....

Employees must speak with their supervisors regarding potential conflict of interest situations that may detract from Mayo Clinic's goals and objectives, cause job performance to deteriorate, violate the Conflict of Interest Policy or may reflect negatively on the organization.

(Exhibit 6 (emphasis in policy).)

32. Mayo's Code of Conduct also reiterates its Conflict of Interest policy providing:

You must avoid situations in which your personal interests could conflict, or *reasonably appear to conflict*, with the interests of Mayo.

(Exhibit 5 at 8 (emphasis in policy).)

33. The Conflict of Interest policy also provides:

Mayo assets are to be used solely for the benefit of Mayo. You may not use Mayo assets for your personal gain. Assets are more than equipment, inventory, funds, and office supplies. Assets include medical records, concepts, financial data, intellectual property rights, research data, business strategies, and plans about Mayo activities.

(Exhibit 6 at 7.)

E. As a Director, Officer and Employee, Dr. Cockerill Was Required To Be Honest In All Aspects of His Work.

34. Mayo's Code of Conduct's overriding requirement is: "Mayo expects honesty in all aspects of your work: whether in patient care, education or research." (Exhibit 5 at 5.)

35. Dr. Cockerill was well aware of this overriding requirement of honesty during his decades in leadership roles at MML and Mayo.

F. Dr. Cockerill Was Dishonest with MML and Mayo About His Planned “Retirement” And Deceptively Accepted a Job with MML’s and Mayo’s Direct Competitor, Quest.

36. On July 17, 2014, Dr. Cockerill called together a meeting of his MML and DLMP colleagues (physicians, scientists and administrators) to announce that he was retiring from Mayo. He tearfully informed his colleagues that his aged 85-year-old mother needed his help running the family’s fertilizer business in Nebraska so he was retiring to assist her. Like Dr. Cockerill, many others in the room were tearful as well with this news. As one of his MML colleagues told him later: “In the row I was sitting in during your announcement there were a lot of tears being shed.” (Exhibit 7.)

37. Dr. Cockerill also sent out a written announcement to his colleagues at MML and DLMP, again informing them that he was retiring as of September 30, 2014, and stating: “As for what’s next for me, I will be turning my attention to my family’s business and philanthropic efforts in my home state of Nebraska.” (Exhibit 1.)

38. Unbeknownst to anyone at MML or DLMP, Dr. Cockerill began pursuing employment with Quest, one of MML’s primary competitors, in February 2014. The position he sought was to be a Quest Vice President and Quest’s Chief Laboratory Officer. The initial inquiry to Dr. Cockerill from Quest included a job description for this position which essentially described the same high-level position that Dr. Cockerill held at MML. The job description alone should have immediately put Dr. Cockerill on notice that he had a conflict of interest when simultaneously pursuing this executive-level position with Quest while continuing to serve in his leadership roles at MML and Mayo.

39. On March 18 and 19, 2014, Dr. Cockerill participated in a series of phone interviews with Quest, seeking the Vice President and Chief Laboratory Officer position.

40. By mid-April 2014 Dr. Cockerill was the leading candidate for this high-level executive position with Quest.

41. Under the guise of helping his aged mother with a business problem in New Jersey, on May 7, 2014, Dr. Cockerill personally interviewed for the position at Quest's corporate offices in New Jersey.

42. On very short notice, Dr. Cockerill returned to Quest's New Jersey's offices again for interviews on June 16 and 17, 2014, missing an important business meeting at Mayo.

43. Contrary to Dr. Cockerill's fiduciary duties owing to MML and Mayo, Dr. Cockerill secretly accepted payment from Quest for these trips to New Jersey to interview for a job with a competitor.

44. By the end of June 2014 and without disclosing any of his future plans, Dr. Cockerill had accepted a high-level executive officer position with Quest undertaking the same responsibilities he had at MML and Mayo to lead business and operation growth strategies.

45. Dr. Cockerill then waited until July 17, 2014 to announce his "retirement" as of September 30, 2014. Dr. Cockerill then took full advantage of MML's and Mayo's retirement process for long-term employees, which would not have been available to him if MML and Mayo had known that Dr. Cockerill had already committed to work for a competitor.

46. After announcing his "retirement" on July 17, 2014, Dr. Cockerill, rather than disclosing his true intentions to go to work for a competitor, wrongfully continued to participate in the highly-confidential operations of MML and Mayo.

47. Dr. Cockerill continued his subterfuge at every step of the “retirement” process at MML and Mayo.

48. On July 30, 2014, Dr. Cockerill participated in an exit interview with Mayo’s Personnel Committee, informing the Chair of the Personnel Committee that the reason he was leaving was “Retirement” and that he “plans to work in the business established by his parents in Omaha, NE.” Of course, this was not true.

49. In early August 2014 Dr. Cockerill reviewed and approved a Mayo press release announcing his retirement, knowing that the information about his retirement in the press release was false. Attached as Exhibit 8 is Mayo’s press release that Dr. Cockerill approved. Again, Dr. Cockerill knew weeks before that he was not intending to retire. Instead he was planning to go to work for a competitor.

50. From July 17, 2014 until shortly before September 25, 2014 (Dr. Cockerill’s last day actually at work at MML/Mayo), Dr. Cockerill stuck with his deceptive and misleading story that he was retiring from MML and Mayo. *See, e.g.*, Exhibit 9 (On July 17, 2014 Dr. Cockerill told two other colleagues in an email: “I am sorry to leave but will have the chance to focus on my mom’s business.”)

51. As late as September 25, 2014, Dr. Cockerill again informed the MML and Mayo that he would be retiring to help his mom in Nebraska. (Exhibit 10.)

52. Still not telling the truth that he had signed on to work for Quest months before, about a week before Dr. Cockerill left MML and Mayo, Dr. Cockerill occasionally told some friends and colleagues that his retirement announcement had prompted “industry” to recruit him and that an announcement about that would be made on October 1, 2014. Dr. Cockerill refused to say more.

53. Dr. Cockerill used his remaining months at MML and Mayo to implicitly solicit at least one long-term key Mayo employee to consider retiring early from Mayo to “consult” within the lab industry. He did not specifically mention Quest during his farewell meeting with this regulatory and compliance administrator on September 24, 2014, but he did tell her that an announcement would be coming out on October 1, 2014 about his plans after retirement, deceptively telling her that an opportunity had just come up for him the week before. He declined to give her any specifics except that he did not want to go to a start-up or industry, which, of course was not true.

54. On September 30, 2014, Dr. Cockerill informed the Chief Executive Officer of Mayo, Dr. John Noseworthy, that he would be starting the next day (October 1, 2014) to work for Quest, as its Chief Laboratory Officer. Dr. Noseworthy immediately responded that Quest is a major competitor of MML/Mayo and questioned how Dr. Cockerill thought he could work for such a direct competitor.

G. Dr. Cockerill Will Serve Essentially the Same Roles At Quest that He Had at MML and Mayo and Will Inevitably Disclose MML and Mayo’s Trade Secrets and Confidential Information to Quest, Irreparably Harming MML and Mayo.

55. To the surprise of everyone at MML and DLMP, Quest issued its press release the next day, on October 1, 2014 announcing that Dr. Cockerill had joined the company as Vice President and Chief Laboratory Officer, and would be overseeing “quality, regulatory, technology, standardization and medical operations across Quest’s network of laboratories and will play a major role in advancing Quest’s medical affairs, academic and government strategies and collaborations.” (Exhibit 11.)

56. Quest’s internal discussions of Dr. Cockerill’s job responsibilities as Chief Laboratory Officer are even more specific. In an earlier draft of Quest’s press release, Quest describes that Dr. Cockerill will also play a critical role “in shaping and executing the

company's science and innovation, reimbursement and payer relations, and population health and outcomes research strategies."

57. Essentially, Dr. Cockerill will be doing at Quest exactly what he did at MML and Mayo. The public announcements of Dr. Cockerill's new Quest position say as much. Quest's press release states: "At Mayo Medical Laboratories and Mayo Clinic, [Dr. Cockerill] led strategies that spurred remarkable accomplishments in diagnostic innovation, service and quality, generating benefits for patients as well as business growth." (Exhibit 11.) Dr. Cockerill intends to do the same at Quest.

58. For Quest Diagnostics, Dr. Cockerill will oversee diagnostic information services quality, regulatory, technology, standardization and medical operations and will play a major role in advancing its medical affairs, academic and government strategies and collaborations. He is also expected to play a critical role in shaping and executing the company's science and innovation, reimbursement and payer relations, and population health and outcomes research strategies. Quest sent the schedule for Dr. Cockerill's initial days and weeks at his new position and a "New Leader Onboarding Plan" to Dr. Cockerill's Mayo email account. Attached to the New Leader Onboarding Plan was a description of Dr. Cockerill's new position, which provides great detail concerning his new responsibilities. (Exhibit 12.)

59. The "Basic Purpose" of the job is described as follows:

The Chief Laboratory Officer (CLO) provides leadership, direction and planning for a wide variety of clinical laboratory and pathology and related activities throughout the organization. This executive serves as the liaison and resource to management on matters pertaining to clinical laboratory and pathology and medical/professional staff activities. The CLO is committed to the mission of quality, safety, service and improvement of patient experiences and outcomes. He or she is a leader in promoting physician performance in these areas, both for Anatomic and Clinical Pathology.

(*Id.*) This is essentially what Dr. Cockerill did for MML and Mayo.

60. The detail of the job description shows that Dr. Cockerill will serve many of the same functions in his new position that he served at Mayo. For example, Dr. Cockerill will be responsible for “all initiatives and concerns involving patient safety, quality, medical risk management and patient services;” will provide “direction and active participation in determining medical utility of the Company’s test offerings and other diagnostic services and the appropriate utilization of resources;” will support “new test development being planned by medical professionals and S&I Staff;” and will work with top executives at Quest “to identify key market drivers and develop plans and strategies to address trends and future business development efforts.” (*Id.*) All of these are roles that Dr. Cockerill was actively involved in at Mayo. Dr. Cockerill will not be able to separate the strategic plans that he helped Mayo develop, including the anticipation of future trends and targets in the test industry, from what he will be asked to do in his new position.

61. The Quest schedule of meetings indicates that on the very first day at Quest, Dr. Cockerill had meetings to discuss “corporate strategy and plans,” Quest’s 2015 plan including mergers and acquisitions and strategic targets, and “recent test launches and clinical activities.” (*Id.*) Each of these areas directly overlapped with Dr. Cockerill’s responsibilities at Mayo.

62. Additionally, Dr. Cockerill was scheduled to have separate meeting with both Quest’s general counsel and its deputy general counsel and chief legal officer. (*Id.*) Given Dr. Cockerill’s close involvement in both licensing strategy and intellectual property strategy at Mayo, his meetings with Quest’s chief attorneys presents a strong likelihood of disclosure of Mayo’s confidential and privileged legal advice and intellectual property strategy.

63. It will be impossible for Dr. Cockerill to do his job at Quest without using or disclosing MML's and Mayo's confidential information and trade secrets. Dr. Cockerill's use or disclosure of MML's and Mayo's confidential information and trade secrets to a competitor such as Quest would irreparably harm MML and Mayo. The disclosure of this confidential information and trade secrets would permit Quest, in particular, to compete unfairly with MML and Mayo.

64. Dr. Cockerill led and/or participated in regular business governance meetings at MML and DLMP during which very confidential key business strategies and plans were discussed. Specifically, in his last months at Mayo, Dr. Cockerill attended several DLMP Executive Committee meetings and Business Governance Meetings. Rather than disclose his intentions to go into competition with MML and Mayo, Dr. Cockerill remained silent about his conflict of interest and participated in these meetings.

65. Dr. Cockerill has detailed knowledge, in particular, about MML's strategies for developing and marketing MML's international business. MML is totally at risk of Dr. Cockerill disclosing MML's international strategies to Quest. Based upon Dr. Cockerill's emails during the past several months, it is apparent that Dr. Cockerill has no qualms about disclosing this critical confidential information to Quest.

66. Further, among other things, Dr. Cockerill has worked on and participated in MML's submission of requests for proposal ("RFPs") or presentations to potential customers, and Quest was and is competing for this same business. In particular, Dr. Cockerill took part in large RFPs where MML competed with Quest, while at the same time Dr. Cockerill was seeking employment with Quest in a key competitive position. Dr. Cockerill will be readily able to disclose strategy on these recent RFPs to Quest.

67. MML has also been involved in joint venture discussions and negotiations with other companies – ventures that would be competitive to Quest, and these discussions are covered by non-disclosure agreements. Dr. Cockerill was privy to all of these discussions and he will be readily able to disclose them to Quest, giving Quest a competitive advantage it would otherwise not have.

68. To date, MML and Mayo are aware that Dr. Cockerill took at least seven Mayo-owned computer USB removable drives or “memory sticks,” as they are commonly called, with him when he left MML and Mayo. Each USB drive can hold thousands of pages of downloaded text and other formats such as PowerPoint presentations or spreadsheets. Upon information and belief, four of the USB drives taken by Dr. Cockerill were used to download information from Dr. Cockerill’s computer in the days before Dr. Cockerill started working for Quest.

69. MML and Mayo face irreparable harm in the form of the disclosure of confidential information and trade secrets by the former President and CEO of MML and Chair of DMLP to one of its principal competitors, Quest.

70. Mayo is currently involved in long-term development projects that are directly competitive with Quest. Dr. Cockerill has been deeply involved in all aspects of these projects and is uniquely positioned to disclose the status of Mayo’s research as well as key breakthroughs to Quest. Equally important, Dr. Cockerill will have the ability to disclose what Mayo has tried that did not work. This information will necessarily give Quest a significant business advantage in its direct competition with Mayo.

71. Dr. Cockerill has also had access to Mayo’s strategic development plans, including its plans for long-term growth, targets for potential acquisitions, and primary focuses for the next one to four years. This information, would give Quest a blue print for how to beat

Mayo in the marketplace over the next one to four years. Dr. Cockerill will be able to disclose this information to Quest, and give Quest a considerable business advantage.

72. Mayo will suffer irreparable harm if information about its sales plans, test pricing, test development plan, test launches, marketing strategies and analysis, and financial performance, and business development efforts are disclosed to its primary competitor. Permitting Quest to have access to this information would give Quest a major competitive advantage in the marketplace and cause substantial harm to Mayo's business.

H. Dr. Cockerill Began Advising Quest and Competing with Mayo before He Left.

73. As detailed above, MML and DLMP have a constant flow of projects involving the development of intellectual property. This includes new tests, advancements on existing tests, and new testing technology.

74. On information and belief, Dr. Cockerill began to disclose all of MML's and DMLP's strategy and test development plans in the months leading up to his departure on September 30, 2014.

75. At the same time that Dr. Cockerill was participating in important governance meetings at MML and Mayo, he was advising and directing the CEO of Quest on issues of concern to Quest. Attached as Exhibit 13 is an email exchange between Dr. Cockerill and the CEO of Quest on August 12 and 13, 2014, in which Dr. Cockerill is working for Quest on a clandestine basis while he continued as an officer, director and employee of MML/Mayo.

76. In addition, Dr. Cockerill was coordinating his participation with the American Clinical Laboratories Association ("ACLA), an industry trade organization, with Quest while he was still employed at Mayo.

77. By secretly advising Quest and coordinating his activities with trade organizations with Quest while still employed at Mayo, Dr. Cockerill began to compete directly with his employer in violation of Minnesota law.

78. On information and belief, before leaving MML and Mayo, Dr. Cockerill had already informed Quest about important ongoing projects developing intellectual property at MML and Mayo. If the Court does not intervene, there is significant risk to MML and Mayo that Dr. Cockerill will make further damaging disclosures to Quest about MML's and Mayo's development of intellectual property.

79. In sum, in the months leading up to his September 30, 2014 "retirement," Dr. Cockerill engaged in a variety of activities in violation of his fiduciary duties owing to MML and its member Mayo Clinic, and his duty of loyalty owing to Mayo, and he otherwise designed to mislead MML and Mayo about his intentions to compete with MML and Mayo. If Dr. Cockerill had disclosed the serious conflict of interest he had, MML and Mayo would have immediately removed him from his many positions of trust and removed his access to Mayo confidential information and trade secrets. Because of Dr. Cockerill's deception, MML and Mayo were unable to do so and are now faced with the significant risk to its business caused by Dr. Cockerill joining Quest, one of MML's primary competitors. MML's and Mayo's intellectual property and strategic plans will be seriously compromised, and Quest will benefit from improper access to MML's and Mayo's confidential information and trade secrets. Absent appropriate injunctive relief MML and Mayo will be irreparably harmed.

COUNT ONE
BREACH OF FIDUCIARY DUTY
AS DIRECTOR AND OFFICER

80. Plaintiffs restate and incorporate by reference all preceding allegations as though fully set forth herein.

81. As a director of MML, Dr. Cockerill had fiduciary duties to act in good faith, to refrain from self-dealing and to avoid conflicts of interest pursuant to Minn. Stat. § 322B.663 and the common law.

82. As an officer of MML, Dr. Cockerill had fiduciary duties to act in good faith, with honesty in fact, to refrain from self-dealing, to avoid conflicts of interest, and to act in the best interests of MML and its member Mayo Clinic, pursuant to Minn. Stat. § 322B.69 and the common law.

83. By his above-described actions and omissions, Dr. Cockerill breached his fiduciary duties owing to MML and its member, Mayo Clinic.

84. Dr. Cockerill breached his fiduciary duties by, among other things, failing to disclose a significant conflict of interest, failing to act in the best interests of MML, and on information and belief, misappropriating MML's confidential and trade secret client information and using MML's confidential and trade secret information to compete with MML.

85. Dr. Cockerill received significant payments from Mayo while in breach of his fiduciary duty that are subject to disgorgement.

86. As a direct and proximate result of Dr. Cockerill's breaches of fiduciary duty, MML is entitled to appropriate temporary and permanent injunctive relief; direct, incidental and consequential damages believed to be in excess of \$50,000, the exact amount to be determined at

trial; disgorgement of payments Dr. Cockerill received from Mayo Clinic; and other equitable relief under Minn. Stat. § 322B.38 and under the common law.

COUNT TWO
BREACH OF DUTY OF LOYALTY AS EMPLOYEE

87. Plaintiffs restate and incorporate by reference all preceding allegations as though fully set forth herein.

88. As a Mayo Clinic employee, Dr. Cockerill owed Mayo Clinic fiduciary duties of loyalty and due care.

89. As described in greater detail above, during the time he was a Mayo Clinic employee, on information and belief, Dr. Cockerill misappropriated Mayo Clinic's confidential, proprietary and trade secret information. On information and belief, Dr. Cockerill disclosed confidential, proprietary, and trade secret information to Quest intending to use that information to obtain employment with Quest in order both to receive substantial compensation from Quest and to compete with MML and Mayo Clinic.

90. On information and belief, Dr. Cockerill began competing with Mayo Clinic while he was still an employee by providing services and advice to Quest.

91. While still employed at Mayo, Dr. Cockerill began communicating with Quest. Dr. Cockerill told Quest executives about his participation in activities with the American Clinical Laboratories Association ("ACLA") and discussed strategy for handling the FDA. (Exhibit 13.) Additionally, Dr. Cockerill informed Quest's President and CEO that he wanted to discuss some of the "sideline activities [he had] been involved in." (*See id.*)

92. Through these and other actions described in greater detail above, Dr. Cockerill has breached his duty of loyalty owed to Mayo Clinic.

93. Dr. Cockerill received significant payments from Mayo while in breach of his duty of loyalty that are subject to disgorgement.

94. As a direct and proximate result of Dr. Cockerill's breaches of fiduciary duty, Mayo Clinic is entitled to: appropriate temporary and permanent injunctive relief; direct, incidental and consequential damages believed to be in excess of \$50,000, the exact amount to be determined at trial; disgorgement of payments Dr. Cockerill received from Mayo Clinic and other equitable relief under the common law.

COUNT THREE
BREACH OF CONTRACT

95. Plaintiffs restate and incorporate by reference all preceding allegations as though fully set forth herein.

96. Dr. Cockerill entered into an Intellectual Property Agreement with Mayo whereby he agreed that he would not use Mayo's Confidential Information except as required by his duties for Mayo.

97. Confidential Information is defined in the Intellectual Property Agreement as Confidential Information is defined as "information not generally known and/or proprietary to Mayo, including, without limitation, information relating to Mayo operations, financial information, from a third party that Mayo agrees to keep confidential, inventions (as defined below), and any patient identifiable information."

98. On information and belief, Dr. Cockerill has breached the Intellectual Property Agreement by taking Mayo's Confidential Information for his own personal use and for use in his new position with Quest.

99. On information and belief, Dr. Cockerill has breached the Intellectual Property Agreement by Disclosing Mayo's Confidential Information to Quest.

100. As a direct and proximate result of Dr. Cockerill's breaches of contract, Mayo Clinic is entitled to: appropriate temporary and permanent injunctive relief; direct, incidental and consequential damages believed to be in excess of \$50,000, the exact amount to be determined at trial; and other equitable relief under the common law.

COUNT FOUR
MISAPPROPRIATION OF TRADE SECRETS
MINN. STAT. § 325C

101. Plaintiffs restate and incorporate by reference all preceding allegations as though fully set forth herein.

102. During the course of his tenure as a director and officer of MML and a department chair and employee of Mayo Clinic, Dr. Cockerill had access to information confidential and proprietary to MML and Mayo Clinic.

103. Upon information and belief, Dr. Cockerill took proprietary and confidential MML and Mayo information with him when he "retired" on September 30, 2014, and Dr. Cockerill currently has such information and intends to use it in furtherance of his new executive role with Quest.

104. This proprietary and confidential information described in greater detail above is not generally known or readily ascertainable by proper means by other persons, including other reference laboratories, who can obtain economic value from its disclosure or use.

105. This proprietary and confidential information described in greater detail above derives an independent economic value from not being generally known to, or not being ascertainable by proper means by, among others who could obtain economic value from its disclosure or use.

106. MML and Mayo has made and continues to make efforts that are reasonable under the circumstances to maintain the secrecy of proprietary and confidential information as described herein, including limiting access to this information and keeping all of this information in secure locations either electronically or in hard copy.

107. By his above-described actions, Dr. Cockerill misappropriated MML's and Mayo Clinic's trade secrets in violation of the Minnesota Trade Secrets Statute.

108. As a result of Dr. Cockerill's actions, pursuant to Minn. Stat. § 325C.02(a), MML and Mayo Clinic are entitled to appropriate temporary and permanent injunctive relief; direct, incidental and consequential damages believed to be in excess of \$50,000, the exact amount to be determined at trial; other equitable relief under the common law, and exemplary damages pursuant to Minn. Stat. § 325C.03.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against defendant Franklin R. Cockerill, M.D., Ph.D., as follows:

- a. Awarding Plaintiffs damages and/or restitution in an amount believed to be in excess of \$50,000, the exact amount to be proven at trial;
- b. Enjoining Defendant, preliminarily until hearing, and thereafter indefinitely, from directly or indirectly, alone or in concert with others, from using or disclosing Plaintiffs' confidential information and trade secrets;
- c. Directing Defendant to immediately return to Plaintiffs any and all of Plaintiffs' confidential, proprietary or trade secret information;
- d. Enjoining Dr. Cockerill from competing directly with Mayo and MML by working for Quest, from having any contact with Quest or soliciting Mayo or MML employees to join Quest;

- e. Awarding Plaintiffs exemplary damages pursuant to Minnesota Statute § 325C.03;
- f. Disgorging payments Defendant received while breaching his duty of loyalty to Mayo;
- g. Awarding Plaintiffs its costs, disbursements and attorneys' fees incurred in this action as appropriate and pursuant to Minnesota statutory and common law;
- h. Awarding prejudgment and post-judgment interest as allowed by law;
- i. Awarding Plaintiffs such other and further relief as the Court may deem just and equitable.

Dated: October 14, 2014

ANTHONY OSTLUND BAER &
LOUWAGHE P.A.

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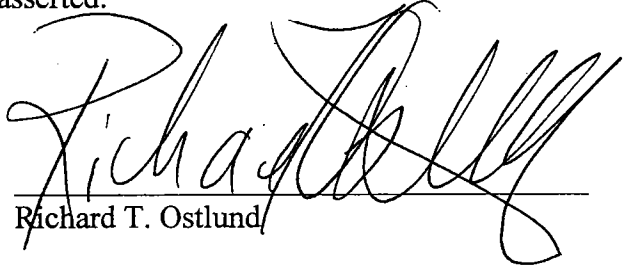
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ATTORNEYS FOR PLAINTIFFS

ACKNOWLEDGEMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the parties against whom the allegations in the Summons and Complaint are asserted.


Richard T. Ostlund