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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Natalie Murray, a married woman; James	)	CV
Piercy, a married man,	)	
	)	COMPLAINT
Plaintiffs,	)	
v.	)	
	)	(JURY TRIAL REQUESTED)
Blue Cottage Consulting, Inc., a Michigan	)	
corporation; FDI Planning Consultants, Inc.	)	
an Arizona corporation,	)	
	)	
Defendants.	)	
	)	

Plaintiffs, Natalie Murray (“Murray”) and James Piercy (“Piercy”) or (“Plaintiffs”), by their attorneys, for their Complaint allege as follows:

NATURE OF THE ACTION

1. This action challenges under Section 1 of the Sherman Antitrust Act (“Sherman Act”) a no-hiring agreement contained in a Consulting Agreement (“Agreement”) between Defendants Blue Cottage Consulting, Inc. (“Blue Cottage”) and

1 its direct competitor FDI Planning Consultants, Inc. (“FDI”) wherein Blue Cottage and
2 FDI agreed not to hire each other’s employees. Without the knowledge or consent of
3 their employees, Blue Cottage and FDI agreed to eliminate competition between them for
4 skilled healthcare consultants by refraining from hiring each other’s current or former
5 employees. This Agreement harmed employees by depriving these employees of better
6 job opportunities at the other company, including higher salaries and benefits. Juliet
7 Rogers, the CEO of Blue Cottage, and Larry Leisberg, Senior Executive Director of FDI,
8 were involved in forming, monitoring and enforcing this anticompetitive Agreement.
9

10 2. Senior executives at Blue Cottage and FDI entered into a written
11 Consulting Agreement in 2012, which restricted their ability to recruit and hire
12 employees of the other company. As alleged herein, the Agreement was enforced at the
13 highest levels of both Blue Cottage and FDI. The Agreement reduced Blue Cottage’s and
14 FDI’s incentives and ability to compete for employees and also restricted employees’
15 mobility. This Agreement thus harmed employees such as Murray and Piercy by
16 depriving them of better job opportunities at the other company as hereinafter alleged.
17

18 3. This Agreement between Blue Cottage and FDI is a naked restraint of trade
19 that is *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1. Plaintiffs seek
20 an Order prohibiting any such Agreement and other relief, including damages, caused by
21 the Agreement.
22

23 **JURISDICTION, VENUE AND PARTIES**

24 4. Blue Cottage and FDI hire specialized Planning Consultants to assist
25 healthcare entities throughout the United States and sell their services throughout the

1 United States. Such activities, including the recruitment and hiring activities at issue in
2 this Complaint, are in the flow of, and substantially affect, interstate commerce. The
3 Court has subject matter jurisdiction under Section 4 of the Sherman Act, 15 U.S.C. § 4,
4 and under 28 U.S.C. §§ 1331 and 1337 to prevent and restrain the Defendants from
5 violating Section 1 of the Sherman Act, 15 U.S.C. § 1.
6

7 5. This Court has supplemental jurisdiction over Plaintiffs' state law claims
8 because said claims are so related to Plaintiffs' federal claim that they form part of the
9 same case or controversy pursuant to 28 U.S.C. § 1367.
10

11 6. Venue is proper in the District of Arizona under Section 12 of the Clayton
12 Act, 15 U.S.C. § 22 and under 28 U.S.C. §§ 1391(b) (2) and (c) because Blue Cottage
13 and FDI transact, or have transacted, business in this District, FDI has its principal place
14 of business here, a substantial part of the events hereinafter described that gave rise to
15 this action occurred in Maricopa County and Defendants have engaged in business in said
16 County.
17

18 7. Plaintiff Natalie Murray is a married woman and a resident of Maricopa
19 County, Arizona. Plaintiff James Piercy is a married man and a resident of Maricopa
20 County, Arizona. As hereinafter alleged, Murray and Piercy are former employees of
21 FDI who were employed by FDI as Planning Consultants.
22

23 8. Defendant Blue Cottage Consultants, Inc. is a Michigan corporation and
24 has done business in Maricopa County, Arizona, including providing consulting services
25 to Phoenix Children's Hospital. Blue Cottage is an independent, healthcare consulting
firm specializing in "visioning, strategy, and operations and facility planning."

1 quality of its healthcare consulting services, as planning consultants who succeed with
2 one company are likely to succeed with a different healthcare consulting company.

3 12. For these reasons and others, soliciting and hiring a rival's current and
4 former employees are key competitive tools companies use to recruit employees,
5 particularly employees with specialized skills and abilities.
6

7 13. The practice of solicitation increases transparency in the labor market and
8 facilitates the flow of information between buyers (employers) and sellers (employees) of
9 skilled labor services. This benefits employee compensation in a variety of ways. First,
10 solicitation informs current employees about the compensation practices of rival
11 companies. This information provides the current employee with leverage to negotiate
12 for better compensation with their current employer. When an employee receives an
13 offer from a rival that exceeds his or her current compensation, they may accept it and
14 move to the better paying employer, or use the offer to negotiate increased compensation
15 from their current employer. In either case, solicitation facilitates competition among
16 employers, and this competition allows employees to realize their true value on the
17 employment market.
18
19

20 14. Second, the benefits of solicitation accrue even to employees who do not
21 themselves receive offers. An employee who receives information about potential
22 compensation from a rival firm will likely share this information with colleagues. These
23 employees may use the information themselves to negotiate pay increases or move to the
24 rival employer.
25

1 15. Third, in a competitive market, employees benefit from the simple
2 possibility they may be hired by a rival company. When a company knows that a rival
3 may recruit its employees, the company will preemptively increase the compensation of
4 its employees to reduce the risk that a rival will be able to poach its employees by
5 offering better pay.
6

7 16. In a properly functioning and lawfully competitive labor market, Blue
8 Cottage and FDI would further compete by soliciting and hiring skilled personnel
9 formerly employed by the other company. This practice promotes efficiency in the
10 market. It benefits the hiring company, who saves training costs and reduces risk by
11 investing in experienced personnel with proven skills. It ensures that open positions will
12 be filled by the best-qualified personnel, and allows former employees to obtain jobs that
13 utilize and adequately compensate their unique skills.
14

15 B. The Unlawful Agreement Between Blue Cottage and FDI.

16 17. In late March-early April 2012, Blue Cottage and FDI entered into a
17 Consulting Agreement under which FDI agreed to serve as a Subconsultant to Blue
18 Cottage for a fee not to exceed \$244,610. See Exhibit A attached.
19

20 18. Paragraph 6(d) of the Consulting Agreement provides as follows:

21 BLUE COTTAGE CONSULTING and Subconsultant agree that neither
22 will hire, as a direct employee, consultant, or independent contractor, any
23 employee of the other, or any entity composed of or including any such
24 employee, for a period of two years from the date of termination of this
25 Agreement, or two years from the last date of work performed or expense
incurred by BLUE COTTAGE CONSULTING, on behalf of BLUE

1 COTTAGE CONSULTING, or two years from the date of resignation or
2 termination of the employee from BLUE COTTAGE CONSULTING or
Subconsultant, whichever is latest.

3 Exhibit A, page 3.

4
5 19. Under competitive and lawful conditions, Blue Cottage and FDI would use
6 solicitation and competitive hiring as two of their most important tools for recruiting and
7 retaining skilled labor. The use of solicitation and competitive hiring among Defendants
8 commonly increases total compensation and improves mobility of Defendants'
9 employees.

10
11 20. Blue Cottage's no-hiring Agreement with FDI eliminated this competition.
12 The Agreement harmed and continues to harm employees by reducing pay, benefits and
13 employment opportunities they might otherwise have earned if competition had not been
14 eliminated.

15
16 21. The Agreement also misallocated labor between Blue Cottage and FDI,
17 companies that succeed based in no small measure on the talent of their healthcare
18 consultants. In a properly functioning labor market, employers compete to attract the
19 most valuable talent for their needs. Competition among employers for skilled
20 employees may benefit employee's salaries and benefits and facilitates employee
21 mobility. The non-hiring Agreement between Blue Cottage and FDI distorted this
22 competitive process and precluded Murray and Piercy from being employed by Blue
23 Cottage with higher salary and benefits as hereinafter described.
24
25

1 C. Plaintiff's Employment with FDI and Hiring by Blue Cottage.

2 22. Murray began her employment with FDI in February 2014 as a Planning
3 Consultant at a salary of \$70,000. Piercy began his employment with FDI in July 2011 as
4 a Planning Consultant at a salary of \$34,000.

5
6 23. As a result of leadership issues surrounding FDI's Senior Executive
7 Director, Larry Leisberg and his threats to fire employees at FDI, four employees of FDI,
8 Natalie Murray, James Piercy, Donna Denning (Director, Transition Planning) and Janet
9 Dalton (Executive Director/Founder), met during the week of May 18, 2015 and
10 discussed leaving FDI as a team. Neither Murray nor Piercy had signed post-termination
11 covenants not to compete. As a result of that discussion, Janet Dalton, the co-Founder of
12 FDI with 30 years experience in the healthcare consulting industry, reached out to Juliet
13 Rogers, CEO of Blue Cottage, to inquire if there was an interest in acquiring the team
14 from FDI, including herself, Murray, Piercy and Denning. Rogers immediately
15 expressed interest.
16

17
18 24. On June 15, 2015, Denning and Dalton met with Rogers and Julia Fetzner
19 (Blue Cottage's Chief Operating Officer) in Dallas, Texas to discuss team employment
20 opportunities for them, Murray and Piercy. At that time, Rogers stated she really wanted
21 "to make this happen."

22 25. On July 16, 2015, a colleague of Murray and Piercy complained about the
23 behavior and leadership of Larry Leisberg to Kitchell's Human Resources Department.
24 Both Murray and Piercy were interviewed by the Human Resources Department and
25

1 confirmed and supported the allegations about Mr. Leisberg's behavior and comments he
2 had made about various FDI supervisors.

3 26. On July 20, 2015, Murray and Piercy met with Juliet Rogers and Julia
4 Fetzner in Dallas, Texas to discuss an employment opportunity with Blue Cottage. The
5 parties mutually agreed they were both very excited about the FDI team joining Blue
6 Cottage. Subsequently, on July 24, 2015, Dalton and Denning visited the Blue Cottage
7 office in Ann Arbor, Michigan to meet with two other leadership team members of Blue
8 Cottage.
9

10 27. On or about August 3, 2015, Rogers submitted employment offers to
11 Murray, Piercy, Dalton and Denning. On August 11, 2015, the four FDI employees
12 submitted counteroffers to Blue Cottage to the original employment offers made on
13 August 3, 2015.
14

15 28. On August 12, 2015, Blue Cottage submitted revised employment offers to
16 the FDI employees, which were accepted via email. A copy of the written and signed
17 employment offers made by Blue Cottage to Murray and Piercy are attached as Exhibit
18 B. The offers resulted in Murray's salary increasing from \$70,000 to \$95,000 and
19 Piercy's salary increasing from \$58,000 to \$82,500.
20

21 29. On August 16, 2015, Dalton submitted a group resignation letter to FDI,
22 with the last day of employment to be August 26, 2015. On August 18, 2015, Murray
23 and Piercy were informed by Blue Cottage that insurance coverage for them would begin
24 on September 1, 2015 to avoid any gap in coverage. On August 20, 2015, Murray and
25

1 Piercy were notified by Blue Cottage they would be joining a Blue Cottage retreat and
2 begin work with the Blue Cottage team on September 15, 2015.

3 30. Murray and Piercy's last day of employment with FDI was August 26,
4 2015.

5
6 31. On August 27, 2015, Blue Cottage submitted a proposal to Houston
7 Methodist for Transition Consulting Services for the Houston Methodist North Tower.
8 Within its written proposal, Blue Cottage included the resumes of Dalton and Murray
9 including a breakdown of the fees by team member, including Dalton and Murray, phase
10 by phase for the duration of the project schedules. The proposal included a timeline for
11 the project with an expected completion date in April, 2018.

12
13 32. On September 2, 2015, Rogers notified Murray, Piercy, Dalton and
14 Denning that FDI was challenging their future employment with Blue Cottage. Rogers
15 informed them the attorneys "were working on resolving the issues but in the meantime,
16 we have taken your names off of the Blue Cottage website. In addition, for the time
17 being, please delete any references, if any, to Blue Cottage in your LinkedIn profile
18 unless the reference refers to your work with Blue Cottage as a subconsultant with FDI."
19 See Exhibit C, September 3, 2015 email from Rogers to Murray, Piercy, Denning and
20 Dalton.
21

22 33. On September 20, 2015, Rogers wrote to Murray and Piercy as follows:

23 "Update: I spoke with Kitchell leadership on Friday. They will be sending
24 me a draft agreement by Wednesday with proposed terms. I have no idea
25 what to expect. However, this does mean that we should have a pretty clear
indication of whether or not resolution is possible by Wednesday. Thank
you for your patience. I understand how stressful this is."

1
2 34. On September 23, 2015, Murray and Piercy were notified the “offer of
3 employment with Blue Cottage is rescinded effective immediately.” The email further
4 noted that Blue Cottage was “sorry this did not work out and wish you the best in your
5 future endeavors.” See Exhibit D, September 23, 2015 emails from Rogers to Piercy and
6 Murray.

7
8 **COUNT ONE**

9 **(Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 – Blue Cottage and FDI)**

10 35. Murray and Piercy reallege and incorporate herein by reference each of the
11 allegations contained in the preceding paragraphs of this Complaint.

12 36. Blue Cottage and FDI are direct competitors for employees, including
13 specialized healthcare planning consultants, covered by the Agreement at issue here.
14 Blue Cottage and FDI entered into a naked no-hire Agreement, thereby reducing their
15 ability and incentive to compete for employees. This Agreement suppressed competition
16 between Blue Cottage and FDI, thereby limiting Murray and Piercy’s ability to secure
17 better compensation, benefits, and working conditions.

18
19 37. Blue Cottage and FDI’s Agreement is *per se* unlawful under Section 1 of
20 the Sherman Act, 15 U.S.C. § 1. No elaborate industry analysis is required to
21 demonstrate the anticompetitive character of this Agreement.

22
23 38. The no-hire Agreement between Blue Cottage and FDI is also an
24 unreasonable restraint of trade under Section 1 of the Sherman Act, 15 U.S.C. § 1, under
25 an abbreviated or “quick look” rule of reason analysis. The principal tendency of the

1 Agreement between Blue Cottage and FDI is to restrain competition, as the nature of the
2 restraint is obvious and the Agreement has no pro-competitive justification. Even an
3 observer with a rudimentary understanding of economics could therefore conclude the
4 Agreement would have an anticompetitive effect on employees and harm the competitive
5 process.
6

7 39. As a direct and proximate result of Defendants' engaging in an
8 unreasonable restraint of trade by adhering to the terms of the Agreement, Plaintiffs have
9 suffered and will continue to suffer injury and monetary damages including but not
10 limited to loss of income and the value of job benefits.
11

12 **COUNT TWO**

13 **(Violation of the Arizona Antitrust Act – Blue Cottage and FDI)**

14 40. Murray and Piercy reallege and incorporate herein by reference each of the
15 allegations contained in the preceding paragraphs of this Complaint.

16 41. The Constitution of the State of Arizona, art. 14, §15 and A.R.S. §44-1401,
17 *et seq.* prohibits contracts, combinations, or conspiracies between two or more persons in
18 restraint of, or to monopolize, trade or commerce, any part of which is within the State of
19 Arizona.
20

21 42. Blue Cottage and FDI are direct competitors for employees, including
22 specialized healthcare consultants, covered by the Agreement at issue here. Blue Cottage
23 and FDI entered into a naked no-hire Agreement, thereby reducing their ability and
24 incentive to compete for employees. This Agreement suppressed competition between
25

1 Blue Cottage and FDI, thereby limiting Murray and Piercy's ability to secure better
2 compensation, benefits, and working conditions.

3 43. Blue Cottage and FDI's Agreement is per se unlawful under art. 14, § 15 of
4 the Constitution of the State of Arizona and A.R.S. § 44-1401, *et seq.* No elaborate
5 industry analysis is required to demonstrate the anticompetitive character of this
6 Agreement.
7

8 44. The no-hire Agreement between Blue Cottage and FDI is also an
9 unreasonable restraint of trade under art. 14, § 15 of the Constitution of the State of
10 Arizona and A.R.S. § 44-1401 *et seq.*, under an abbreviated or "quick look" rule of
11 reason analysis. The principal tendency of the Agreement between Blue Cottage and FDI
12 is to restrain competition, as the nature of the restraint is obvious and the Agreement has
13 no pro-competitive justification. Even an observer with a rudimentary understanding of
14 economics could therefore conclude the Agreement would have an anticompetitive effect
15 on employees and harm the competitive process.
16

17 45. Plaintiffs have suffered and will continue to suffer injury and monetary
18 damages as a direct and proximate result of the unlawful restraints created by Blue
19 Cottage's Agreement with FDI.
20

21 **COUNT THREE**

22 **(Violation of Arizona Blacklisting Statute A.R.S. § 23-1361 - FDI)**

23 46. Murray and Piercy reallege and incorporate herein by reference each of the
24 allegations contained in the preceding paragraphs of this Complaint.
25

1 47. Defendant Blue Cottage is in violation of Arizona's Blacklisting Statute,
2 A.R.S. § 23-1361, by and through its refusal to hire Murray and Piercy, which is
3 unlawful.

4 48. Based upon Blue Cottage's unlawful practices, Murray and Piercy were
5 deprived of full-time positions with Blue Cottage, along with increased salary and
6 benefits as compared to that which they earned at FDI.

7 49. Defendant Blue Cottage's conduct was done with an evil mind and/or
8 reckless disregard of Murray and Piercy's rights such that an award of punitive and
9 exemplary damages is appropriate.

10 50. This matter arises out of an express or implied contract and Murray and
11 Piercy are entitled to an award of reasonable attorneys' fees pursuant to A.R.S. §12-
12 341.01, or as otherwise authorized under Arizona law.

13
14
15 **COUNT FOUR**

16 **(Promissory Estoppel – Blue Cottage)**

17 51. Murray and Piercy reallege and incorporate herein by reference each of the
18 allegations contained in the preceding paragraphs of this Complaint.

19 52. On or about August 12, 2015, Defendant Blue Cottage represented to
20 Murray and Piercy they would be paid annual salaries of \$95,000 and \$82,500 respectively
21 in order to induce them to leave their positions with FDI.

22 53. Defendant Blue Cottage's representations were reasonably expected to
23 induce Murray and Piercy to leave their positions with FDI.

24 54. Defendant Blue Cottage's representations constituted promises which
25 induced Murray and Piercy to leave their positions with FDI.

1 55. Murray and Piercy relied on Defendant Blue Cottage's representations to
2 their detriment.

3 56. Defendant Blue Cottage's promises must be enforced to avoid injustice.

4 57. As a direct and proximate result of Defendants' conduct, Plaintiffs have
5 suffered and will continue to suffer injury and monetary damages including but not
6 limited to loss of income and the value of job benefits.

7 58. This cause of action arises out of contract, express or implied and Murray and
8 Piercy are entitled are entitled to an award of reasonable attorneys' fees pursuant to
9 A.R.S. §12-341.01, or as otherwise authorized under Arizona law.

10 **COUNT FIVE**

11 **(Negligence – Blue Cottage)**

12 59. Murray and Piercy reallege and incorporate herein by reference each of the
13 allegations contained in the preceding paragraphs of this Complaint.

14 60. Defendant Blue Cottage had a duty to know the content of the 2012
15 Consulting Agreement with FDI before making an offer of employment to Murray and
16 Piercy, knowing that it was foreseeable if it made an offer of employment which included
17 higher compensation, Murray and Piercy might resign from FDI.

18 61. Defendant Blue Cottage's failure to know the content of the 2012 Consulting
19 Agreement with FDI before making an offer of employment to Murray and Piercy was
20 negligent.

21 62. As a direct and proximate result of Defendant Blue Cottage's negligence,
22 Defendant Blue Cottage made an offer of employment to Murray and Piercy upon which
23 they relied and resigned their employment with FDI.

24 63. As a direct and proximate result of Defendant Blue Cottage's negligence, it
25 later rescinded its offer of employment, leaving Murray and Piercy unemployed.

64. As a direct and proximate result of Defendant Blue Cottage's negligence, Murray and Piercy have suffered economic damages, mental and emotional distress, pain and suffering and anxiety, in amounts to be proven at trial.

COUNT SIX

(Tortious Interference With Contract/Business Expectancy - FDI)

65. Murray and Piercy reallege and incorporate herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

66. A valid employment relationship and/or business expectancy existed between Murray, Piercy and Defendant Blue Cottage.

67. Murray and Piercy each had a valid expectation of employment with Defendant Blue Cottage based upon the employment offer made to them on August 12, 2015.

68. Defendant FDI learned Murray and Piercy had an expectation of employment with Defendant Blue Cottage.

69. Defendant FDI, acting for its own business motives and relying upon an unlawful no-hire provision in the Agreement, intentionally interfered with this employment relationship/business expectancy between Defendant Blue Cottage and Murray and Piercy by inducing Blue Cottage to terminate the employment relationship/business expectancy.

70. As a result of the acts taken by Defendant FDI, Murray and Piercy's employment relationship/business expectancy was terminated.

71. The actions of Defendant FDI were driven by improper motives.

1 72. As a direct and proximate result, Murray and Piercy have suffered damages
2 in an amount to be proven at trial.

3 73. As a direct and proximate result, Murray and Piercy have suffered mental
4 and emotional distress, pain and suffering, and anxiety.

5 74. Defendant FDI's conduct was done with an evil mind and/or reckless
6 disregard of Murray and Piercy's rights such that an award of punitive and exemplary
7 damages is appropriate.

8 75. This matter arises out of an express or implied contract and Murray and
9 Piercy are entitled to an award of reasonable attorneys' fees pursuant to A.R.S. §12-
10 341.01, or as otherwise authorized under Arizona law.

11 WHEREFORE, Murray and Piercy demand judgment against Defendants Blue
12 Cottage and FDI, and each of them, as follows:

13 1. Declaring that Defendants' no-hiring Agreement is an illegal restraint of
14 trade in violation of the Sherman Act, 15 U.S.C. §1, art. 14, §15 of the Constitution of the
15 State of Arizona and §44-1401 *et seq.*;

16 2. Awarding Murray and Piercy treble damages, plus prejudgment interest,
17 costs and reasonable attorneys' fees, pursuant to 15 U.S.C. §1 art. 14, §15 of the
18 Constitution of the State of Arizona and §44-1401 *et seq.*;

19 3. For all general and special damages in an amount to be proven at trial;

20 4. For punitive and exemplary damages in an amount to be proven at trial;

21 5. For reasonable costs and attorneys' fees pursuant to A.R.S. §12-341.01 or
22 as otherwise authorized under Arizona law;
23
24
25

1 6. For such other relief the Court deems just and proper.

2
3 **DEMAND FOR JURY TRIAL**

4 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby
5 demand a jury trial.
6

7 DATED this 16th day of October, 2015.

8 SCHLEIER LAW OFFICES, P.C.

9 s/ Tod F. Schleier

10 Tod F. Schleier

11 Attorneys for Plaintiffs
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