

**IN THE CIRCUIT COURT OF      COUNTY, MISSISSIPPI**

**PLAINTIFF**

**VS.**

**NO.**

**DEFENDANT**

**ANSWER AND COUNTERCLAIM**

Defendant      , answers as follows the complaint of plaintiffs      :

**FIRST DEFENSE**

The complaint fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

Pursuant to Miss. R. Civ. P. 12(b), defendant moves for a more definite and certain statement of the putative claims against him/her.

**THIRD DEFENSE**

Plaintiff has apparently attempted to plead fraud, but has failed to do with requisite particularity.

**FOURTH DEFENSE**

The complaint is barred by the applicable statute or statutes of limitations.

**FIFTH DEFENSE**

The plaintiff has failed to comply with the procedural belief concerning complaint.

1. Defendant      the remaining allegations in paragraph 1 of the Complaint.
2. Defendant admits the allegations of paragraph 2 of the Complaint.
3. Defendant denies the allegations of paragraph 3 of the Complaint.
4. Defendant denies the allegations of paragraph 4 of the Complaint.
5. Defendant denies the allegations of paragraph 5 of the Complaint.
6. Defendant denies the allegations of paragraph 6 of the Complaint.

Denies denies the allegations of the unnumbered paragraph of the Complaint and denies that plaintiffs are entitled to any relief whatsoever from defendant.

Having fully answered, defendant prays that the complaint be dismissed and that all costs be granted and that he be awarded attorneys' fees incurred by him/her in this action.

### COUNTERCLAIM

Pursuant to Miss. R. Civ. P.13, Defendant/counter-plaintiff \_\_\_\_\_, states the following counterclaim against plaintiffs/counter-defendants \_\_\_\_\_ for damages for tortious breach of contract, breach of fiduciary duty, unfair competition, trespass, conversion, commercial disparagement, defamation, fraud, misrepresentation and civil conspiracy.

1. Plaintiffs/counter-defendants, \_\_\_\_\_ and \_\_\_\_\_, are adult resident citizens of \_\_\_\_\_ County, Mississippi, and, as plaintiffs in this action represented by counsel, are subject to service of process by service upon their defendant/counter-plaintiff \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_\_"). Between \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_, father/mother, was an employee of \_\_\_\_\_. \_\_\_\_\_ at all relevant times has been the spouse of \_\_\_\_\_. Each instance of conduct hereinafter attributed to \_\_\_\_\_ was carried out by him/her as an agent or employee of \_\_\_\_\_ and \_\_\_\_\_, and in the capacity of agent or employee in the course and scope of his/her agency or employment with \_\_\_\_\_ and \_\_\_\_\_. \_\_\_\_\_ and \_\_\_\_\_ are partners for joint ventures in the business known as \_\_\_\_\_. Each instance of conduct hereinafter attributed to either \_\_\_\_\_ or \_\_\_\_\_ is also the act of the other and was carried out in furtherance of their joint venture or partnership.

2.

3.

4. While employed by \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ owed fiduciary duties to \_\_\_\_\_ to act with the utmost good faith and loyalty and to act in the interest of, not contrary to the interest, of Adams. As fiduciaries, \_\_\_\_\_ and \_\_\_\_\_ were obligated to maintain inviolate the confidences and secrets of business and to refrain from converting to their own use tangible and intangible property of \_\_\_\_\_, including but not limited to good will, customer lists, pricing sheets, proprietary computer-encoded information, software, digital pagers, and business forms. This obligation survived the termination of \_\_\_\_\_ and \_\_\_\_\_ employment by \_\_\_\_\_ and required them to refrain at any time from converting to their own use confidential and proprietary business information and other property of \_\_\_\_\_ to which they had no access or right of access apart from their employment relationship with \_\_\_\_\_. \_\_\_\_\_ (conditioned consent known or unknown to \_\_\_\_\_ at the time), and \_\_\_\_\_ thereupon became trespassers upon the premises owned by \_\_\_\_\_ and known as \_\_\_\_\_. An identical condition attached to the continued possession and use by \_\_\_\_\_ of \_\_\_\_\_ digital pager, described more fully below.

5. While still employed by \_\_\_\_\_, \_\_\_\_\_ pilfered from \_\_\_\_\_ computer on the premises of customer names and addresses which then surreptitiously passed along to \_\_\_\_\_ and \_\_\_\_\_ together with inventory and pricing information, suppliers and pricing information, computer software, business forms, and other confidential proprietary information of \_\_\_\_\_. \_\_\_\_\_ pilfered this information and passed it along to \_\_\_\_\_ and \_\_\_\_\_ pursuant to a civil conspiracy to accomplish the unlawful objective of competing unfairly with \_\_\_\_\_ through the vehicle of the business in which \_\_\_\_\_ and \_\_\_\_\_ had an interest, \_\_\_\_\_. This wrongful conduct by \_\_\_\_\_ was unknown to \_\_\_\_\_ at the time and was subsequently discovered by him/her. Immediately upon committing these wrongful

acts, became a trespasser without consent to be upon the premises of owned or controlled by . Accordingly, counter-defendants are liable to plaintiff for trespass, breach of fiduciary duty, and civil conspiracy.

6. Plaintiffs/counter-defendants have made false, defamatory and disparaging remarks about and his/her business and have proximately caused damage to as a consequence of those remarks. They have knowingly made those remarks with intent to harm 's business. Accordingly, counter-defendant's clientele believed that there was an identity of interest between and , when in fact there has been no such connection. In this manner, and his/her co-conspirators, and , sought to "palm off" the trade of as the trade of , to the detriment and damage of . In short, counter-defendants, together with , conspired to commit the unlawful act of, and undertook specific conduct to carry out the unlawful objective to, siphon good will that is rightfully the property only of . Accordingly, counter-defendants are liable to for the tort of unfair competition.

7.

8. misappropriated to his/her own use 's digital pager and failed and refused to return the pager to both upon constructive and actual revocation of 's consent to possession of the pager. In defiance of 's rights to the pager, used the pager in furtherance of his/her unlawful scheme to pilfer the good will of 's business, . Accordingly, counter-defendants are liable to for the tort of conversion.

9. In of 20 , loaned \$ . In of , loaned \$ . In of , loaned \$ . At least \$ of these amounts remains unpaid although due and payable. has failed and refused to pay these past-due sums and by so doing has enhanced his/her own financial integrity at the expense of in furtherance of his/her scheme to harm 's business, , and to improve the amounts: Invoice No. , dated , 20 , in the amount of \$ ; Invoice No. , dated , 20 , in the amount of \$ ; and an indebtedness on open account in the amount of \$ representing products supplied by to , on , 20 , , 20 , , 20 , and , 20 . The foregoing inventory supplied by to and for which to date has failed and refused to pay were obtained by under false pretenses and by means of fraudulent representations that would not, upon receipt of the inventory, in turn supply it for his/her own profit to customers of , with the exception of customers and for business in and . At the time received this inventory; he/she knowingly made those fraudulent representations with the intent to deceive and to induce him/her to supply the inventory to him/her at favorable prices not available to the general consuming public. Reasonably relying upon 's fraudulent representations and ignorant of their falsity, supplied the inventory to at a time when had no present intention to pay for the inventory but on the contrary had a present intention to dispense inventory from contrary to his/her representations to concerning the clientele to whom inventory would be supplied on behalf of . Accordingly, counter-defendants are liable to for fraud, misrepresentation, and tortious breach of contract.

FOR THE STATED REASONS, defendant/counter-plaintiff, demands judgment in counter-defendants' complaint and in pursuit of counter-plaintiff's counterclaim.

Respectfully submitted,

