

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION

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THOMSON REUTERS (HEALTHCARE) INC.,

Plaintiff,

Case No.

v.

CRAIG CALDWELL, MELANIE CALDWELL,  
and KERRY CARMICHAEL,

Defendants.

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**COMPLAINT**

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Plaintiff Thomson Reuters (Healthcare) Inc. (“Thomson Reuters”), for its Complaint against Defendants Craig Caldwell, Melanie Caldwell, and Kerry Carmichael (together “Defendants”), alleges as follows:

**PRELIMINARY STATEMENT**

1. The Defendants are former Thomson Reuters employees who signed non-solicitation agreements. Since leaving Thomson Reuters, the Defendants have solicited Thomson Reuters’ clients in violation of their non-solicitation agreements. Thomson Reuters has brought this action to request that the Court issue an order which: (a) declares that the Defendants’ non-solicitation agreements are enforceable and that their solicitation of Thomson Reuters’ clients has violated those agreements; and (b) awards Thomson Reuters damages for Craig Caldwell’s violation of his non-solicitation agreement.

**THE PARTIES**

2. Thomson Reuters is a Delaware corporation whose principal place of business is located at 777 E. Eisenhower Parkway, Ann Arbor, Michigan 48108.

3. Craig Caldwell is a citizen of the State of Wisconsin who resides at 6210 N. Alberta Lane, Milwaukee, Wisconsin 53217.

4. Melanie Caldwell is a citizen of the State of Wisconsin who resides at 6210 N. Alberta Lane, Milwaukee, Wisconsin 53217.

5. Kerry Carmichael is a citizen of the State of Wisconsin who resides at 921 Horns Corners Road, Cedarburg, Wisconsin 53012.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000.00. Specifically, Thomson Reuters has brought this action to prevent the loss of client relationships from which it receives in excess of \$75,000.00 per year, as well as to recover damages that it has suffered as a result of Craig Caldwell's breach of his non-solicitation agreement.

7. Venue in this Court is appropriate pursuant to 28 U.S.C. § 1391(a)(1) because the Defendants reside in this district and pursuant to 28 U.S.C. § 1391(a)(2) because the acts giving rise to Thomson Reuters' claims occurred in this district.

### **FACTS**

#### ***Trivantage***

8. Prior to April 22, 2009, Craig Caldwell, Melanie Caldwell, and Kerry Carmichael worked for a private company located in Milwaukee, Wisconsin called Trivantage Pharmacy Strategies, LLC ("Trivantage"). Trivantage provided pharmacy benefit manager ("PBM") consulting and auditing services to assist companies in lowering their healthcare costs by evaluating, selecting, contracting with, and auditing PBMs.

9. Craig Caldwell was a co-founder and a Vice President of Business Development at Trivantage. He was responsible for identifying potential clients, marketing Trivantage's

services, and developing and maintaining relationships with Trivantage's prospective and actual customers, including key personnel at those companies.

10. Melanie Caldwell and Kerry Carmichael were both Vice Presidents of Consulting Services at Trivantage. They were responsible for identifying companies that may be in need of pharmacy consulting services, developing relationships with the appropriate personnel at those companies, and soliciting them to use Trivantage's pharmacy consulting services. Additionally, they were responsible for providing pharmacy consulting services to Trivantage's customers. Such services included, but were not limited to, PBM vendor evaluation and procurement efforts, managing PBM contracting and negotiations, plan design and analysis, and analytic reporting.

11. As a result of their roles at Trivantage, the Defendants had extensive contact and developed significant personal relationships with Trivantage's actual and potential clients. They also acquired confidential and proprietary information regarding Trivantage's business, clients, and associates.

12. In order to protect the client relationships which the Defendants developed on behalf of Trivantage and the confidential and proprietary information which they acquired from Trivantage and its clients, the Defendants each signed agreements containing certain restrictive covenants.

13. Specifically, on March 24, 2004, Craig Caldwell signed an Employment Agreement ("Employment Agreement") that states:

(a) During Employment Term. During the Employment Term, Executive will not directly or indirectly compete against, or directly or indirectly divert or attempt to divert any Customer's business from, Trivantage.

(b) Following Separation Date.

(A) For a period of two (2) years following the Separation Date, Executive will not directly or indirectly attempt to sell to, or solicit the business of, any Restricted Customer regarding any services of the type, or substantially similar to the type, sold by Trivantage.

(B) For a period of two (2) years following the Separation Date, Executive will not directly or indirectly encourage any Restricted Vendor/Supplier to terminate its relationship with Trivantage or solicit its business or services in any manner which would end or diminish its relationship with Trivantage.

(Craig Caldwell's Employment Agreement is attached as Exhibit A).

14. On September 10 and 19, 2005 respectively, Kerry Carmichael and Melanie Caldwell each signed an Intellectual Property and Nonsolicitation Agreement ("Agreement") that states:

**Non-Solicitation of Customers/Accounts** – I agree that for a period of eighteen (18) months following my last day of employment by Trivantage, I will not individually or as an agent of any person or entity, directly or indirectly, solicit or entice, attempt to solicit or entice, or accept as a client, any customers or accounts of Trivantage with whom I had significant business-related contact during my last (18) months of employment by Trivantage, or on whose account I worked at some point during my last eighteen (18) months of employment by Trivantage, so as to cause any such customer or account not to retain Trivantage or to retain some other party to provide information or consulting services which compete with the services provided by Trivantage. For purposes of this Agreement, a "customer" or an "account" of Trivantage shall mean and include any natural person, firm, corporation (whether profit or nonprofit), partnership or other legal entity to whom Trivantage is providing consulting or information services on the date my employment at Trivantage terminates, or any natural person, firm, corporation (whether profit or nonprofit), partnership or other legal entity upon whom Trivantage has expended substantial time or energy, which shall include at least one face to face meeting or conference call, within the six (6) month period preceding my termination of employment in an attempt to persuade such person or entity to purchase or continue to purchase consulting or information services.

(Melanie Caldwell's and Kerry Carmichael's Agreements are attached as Exhibit B).

15. Craig Caldwell's Employment Agreement and Melanie Caldwell and Kerry Carmichael's Agreements each explicitly allowed Trivantage to assign those agreements to its successor(s). Specifically, Craig Caldwell's Employment Agreement states:

This Agreement...may be assigned by Trivantage, in whole or in part without Executive's consent.

(Exhibit A, ¶ 4.7). Likewise, both Melanie Caldwell and Kerry Carmichael's Agreements state:

This Agreement...inures to the benefit of Trivantage and its successors and assigns. I hereby consent to any assignment by Trivantage of this Agreement to any person or entity that provides me with employment substantially similar to employment by Trivantage and agree that in the event of any such assignment, "Trivantage" as used in this Agreement shall thereafter mean such assignee, where substantially similar employment shall mean the same work schedule, responsibilities and remote office location.

(Exhibit B, ¶ 10).

### ***Thomson Reuters Acquires Trivantage***

16. On April 17, 2009, Trivantage and Craig Caldwell entered into another agreement (the "Sale of Business Agreement") in anticipation of Thomson Reuters acquiring Trivantage. A copy of the Sale of Business Agreement is attached as Exhibit C. In the Sale of Business Agreement, Craig Caldwell reaffirmed his non-solicitation obligations under his Employment Agreement in exchange for Trivantage's agreement to give him five percent of the net proceeds of its sale to Thomson Reuters.

17. On April 22, 2009, Thomson Reuters acquired Trivantage. As part of that acquisition, Thomson Reuters specifically acquired the right to enforce the restrictive covenants quoted above. Additionally, Craig Caldwell received 5 percent of Trivantage's net proceeds from the sale pursuant to the Sale of Business Agreement.

18. After the acquisition, Craig Caldwell went to work for Thomson Reuters as the Director of Sales for its pharmacy benefits strategies segment. Melanie Caldwell and Kerry Carmichael went to work for Thomson Reuters as Directors of Consulting Services in its pharmacy benefits strategies segment. The Defendants continued to perform the same functions as they had performed prior to the acquisition at Trivantage.

### ***Thomson Reuters Terminates the Defendants' Employment***

19. In mid-2011, Thomson Reuters recognized that Craig Caldwell, Melanie Caldwell, and Kerry Carmichael were not devoting their business efforts to their responsibilities

for Thomson Reuters. Instead, Thomson Reuters suspected they were setting up and/or operating a competitive business.

20. As a result, Thomson Reuters terminated Craig Caldwell's employment on August 2, 2011 and then terminated Melanie Caldwell and Kerry Carmichael on August 17, 2011.

21. On August 18, 2011, Thomson Reuters sent the Defendants each a letter reminding them of their obligations under their respective non-solicitation agreements.

22. Shortly thereafter, the Defendants responded and argued that their non-solicitation agreements are not enforceable.

### ***Defendants Violate Their Restrictive Covenants***

23. Subsequently, Thomson Reuters discovered that the Defendants had, in fact, begun working for a newly-formed company called Remedy Analytics, Inc. ("Remedy Analytics").

24. Remedy Analytics was incorporated in May 2011 (3 months before Thomson Reuters fired Defendants) and operated, and/or continues to operate, from Craig and Melanie Caldwell's home address.

25. Remedy Analytics directly competes with Thomson Reuters in the pharmacy consulting business. Additionally, the Defendants perform essentially the same jobs at Remedy Analytics as they previously performed at Thomson Reuters; Craig Caldwell is the Vice President of Business Development and Melanie Caldwell and Kerry Carmichael are Vice Presidents of Consulting and Analysis.

26. In November 2011, Thomson Reuters learned that the Defendants had begun soliciting the business of Thomson Reuters' clients, on behalf of themselves and/or Remedy Analytics, in violation of their respective non-solicitation agreements.

27. Specifically, in November 2011, Thomson Reuters' client, Cornell University, notified Thomson Reuters that it was aware that several former Thomson Reuters employees had begun working for Remedy Analytics, and that Remedy Analytics would be responding to a request-for-proposal to assist Cornell University in an upcoming PBM selection.

28. On information and belief, the Defendants were directly or indirectly involved in soliciting Cornell University on behalf of Remedy Analytics.

29. Shortly thereafter, and also in November 2011, Thomson Reuters' client, Safeway, notified Thomson Reuters that it had been contacted by several Remedy Analytics employees in an effort to solicit Safeway to begin working with Remedy Analytics rather than Thomson Reuters on pharmacy consulting matters.

30. On information and belief, the Defendants were directly or indirectly involved in soliciting Safeway on behalf of Remedy Analytics.

31. Each of the Defendants worked on Cornell University's account during the last 18 months of their employment with Thomson Reuters. Additionally, during their employment with Thomson Reuters, each of the Defendants had access to information pertaining to Safeway (including Thomson Reuters' contacts there) because that information was listed in Thomson Reuters' computer database. As a result, their restrictive covenants prohibit them from directly or indirectly soliciting Cornell University's pharmacy consulting business and from using Thomson Reuters' confidential information to directly or indirectly solicit Safeway's pharmacy consulting business.

**FIRST CAUSE OF ACTION - DECLARATORY JUDGMENT**  
**(Against All Defendants)**

32. The allegations of paragraphs 1 through 31 above are incorporated as if fully set forth herein.

33. There is an actual controversy between Thomson Reuters and the Defendants concerning whether the non-solicitation provisions in Craig Caldwell's Employment Agreement and in Melanie Caldwell and Kerry Carmichael's Agreements are enforceable.

34. There is also an actual controversy between Thomson Reuters and the Defendants concerning whether Craig Caldwell, Melanie Caldwell, and Kerry Carmichael's direct or indirect solicitation of Cornell University and Safeway violated their respective agreements.

**SECOND CAUSE OF ACTION - BREACH OF CONTRACT**  
**(Against Craig Caldwell)**

35. The allegations of paragraphs 1 through 34 above are incorporated as if fully set forth herein.

36. Pursuant to the Sale of Business Agreement, Craig Caldwell received substantial compensation for re-acknowledging and agreeing to be bound by the non-solicitation provisions in his Employment Agreement.

37. By soliciting Thomson Reuters' customers, including Cornell University and Safeway, Craig Caldwell has breached the Sale of Business Agreement.

38. As a direct and proximate result of Craig Caldwell's breach of the Sale of Business Agreement, Thomson Reuters did not receive the benefit of its predecessor's bargain and has suffered monetary damages.

WHEREFORE, Thomson Reuters respectfully requests the following relief:

(a) a declaratory judgment that the non-solicitation provisions in Craig Caldwell's Employment Agreement and in Melanie Caldwell's and Kerry Carmichael's Agreements are enforceable;

(b) a declaratory judgment that Craig Caldwell, Melanie Caldwell, and Kerry Carmichael's direct or indirect solicitation of Cornell University and Safeway violated those non-solicitation provisions;

- (c) compensation for the damages it has suffered as a result of Craig Caldwell's breach of his Sale of Business Agreement;
- (d) an award of the costs and attorneys' fees that it necessarily incurred in bringing this action; and
- (e) any further or other relief that this Court deems just and appropriate.

Dated this 13th day of February, 2012.

*s/ Mark E. Schmidt*

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Mark E. Schmidt  
State Bar No. 1052450  
GODFREY & KAHN, S.C.  
780 North Water Street  
Milwaukee, WI 53202-3590  
Phone: 414-273-3500  
Fax: 414-273-5198  
Email: mschmidt@gklaw.com

Attorneys for Plaintiff, Thomson Reuters  
(Healthcare) Inc.

Direct Inquiries To:

Mark E. Schmidt  
414-287-9643

OF COUNSEL:

Zachary C. Jackson  
Epstein Becker & Green, P.C.  
150 North Michigan Avenue, 35th Floor  
Chicago, IL 60601  
Phone: 312-499-1400  
Fax: 312-845-1998  
Email: zjackson@ebglaw.com

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