

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Virtual Radiologic Corporation, Plaintiff, vs. Michael Rabern, Defendant.	Civil File No. 0:20-cv-445 <u>COMPLAINT</u>
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Plaintiff Virtual Radiologic Corporation (“vRad”) alleges as follows:

NATURE OF THE ACTION

1. This is an action by vRad against its former employee, Defendant Michael Rabern (“Rabern”), seeking damages and equitable relief for the wrongful and unlawful acts that Rabern committed during and after his employment with vRad.

2. In the months leading up to his resignation, Rabern began actively working for Nines, Inc. (“Nines”), a vRad competitor. While still a vRad employee, and while using a company laptop and company software, he created a presentation ostensibly to use for Nines’s marketing purposes or internal discussions. The presentation incorporated vRad confidential information and business strategies, and Rabern sent this presentation from his vRad email account to a personal email account shortly before resigning from vRad.

3. Also just before resigning, Rabern surreptitiously accessed and misappropriated confidential information relating to vRad’s growth initiatives, market analyses, and other business strategies. On information and belief, Rabern still has possession or control of this information, despite no longer being a vRad employee. On

information and belief, Rabern has shared this information with Nines or otherwise used it for Nines's benefit.

4. Rabern's conduct breached his duty of loyalty and contractual obligations to vRad, violated Minnesota and federal trade secret laws, and constituted unfair competition. Furthermore, Rabern's continued employment with Nines violates the non-compete and non-solicit obligations in his contract with vRad.

PARTIES

5. vRad is a Delaware corporation, with its principal place of business located at 11995 Singletree Lane, Suite 500, Eden Prairie, Minnesota 55344.

6. On information and belief, Michael Rabern is a Georgia citizen who resides in Roswell, Georgia. Rabern was employed by vRad from 2014 until he resigned in August 2019, after which he began employment with Nines.

7. On information and belief, Nines—which is not a party to this case—is a corporation with offices located in Palo Alto, California 94301.

JURISDICTION AND VENUE

8. The Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1331 because vRad alleges a claim under the Defend Trade Secrets Act (18 U.S.C. § 1836 *et seq.*), with supplemental jurisdiction over vRad's remaining claims pursuant to 28 U.S.C. § 1367 because they form part of the same case or controversy. The Court also has original jurisdiction over this case pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000, exclusive of interests and costs, and because there is a complete diversity of citizenship between vRad and Rabern.

9. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events giving rise to vRad's claims against Rabern occurred in this judicial district. Furthermore, in the Virtual Radiologic Corporation Team Member Agreement giving rise to vRad's claims, Rabern acknowledged that claims related to the interpretation or enforcement of the agreement would "be subject to the exclusive jurisdiction of the state and federal courts located in Hennepin County, Minnesota." Rabern expressly consented to the jurisdiction of such courts.

FACTUAL BACKGROUND

I. vRad is a Market Leader in Teleradiology.

10. Founded in 2001, vRad is a leader in the field of teleradiology services. Teleradiology is the transmission of radiological patient images, such as x-rays, CTs, and MRIs, from one location to another location for professional diagnostic reading and analysis by a radiologist. These services allow radiologists to provide services without being in the same location as where the image is taken, and to read images transmitted from several different locations during a given working shift. As a result, healthcare facilities can improve radiology turnaround times and have access to high-quality and sub-specialized radiologic services without having to incur the cost of having a full-time staff of radiologists with different areas of expertise.

11. vRad offers a proprietary teleradiology platform that includes sophisticated software allowing hospitals to transmit requests for teleradiology services. vRad's software and hardware ascertains the type of scan and determines the best radiologists to read the scan, based on information such as state licensure, facility credentialing and privileging,

scan type, area of sub-specialization, and availability to read the study within desired timeframes. Once a radiologist has read the scan, the radiologist's report is transmitted back to the originating hospital.

12. vRad serves 2,100 hospital, health system, and radiology group facilities across the country, and affiliates with nearly 500 physicians who are board-certified and board-eligible by the American Board of Radiology.

13. vRad coordinates operations from its headquarters in Eden Prairie, Minnesota, relying on non-physician employees to carry out the key business functions of the company. These functions include business development, sales, and market analysis, among others.

II. Rabern was a Senior Member of vRad's Sales Team and Entered into a Valid Employment Agreement with vRad.

14. Rabern joined vRad in 2014, initially as an Area Director, and later served as a Senior Area Director. These were positions in vRad's Sales Division, and prior to joining vRad, Rabern did not have professional experience with teleradiology or sales in the radiology services market generally.

15. Rabern's duties included making sales directly, as well as various leadership functions. He was responsible for providing support to the sales team, such as: training new and existing staff; providing feedback to vRad's Sales vice presidents regarding sales, to support company initiatives and growth strategies; prospect development and client retention activities in his area; and managing a book of current clients to ensure that vRad was meeting their needs and to identify additional services that vRad could provide.

16. Rabern was also involved in all aspects of vRad's client acquisition and retention processes, including:

- a. receiving leads for prospective clients from vRad's marketing and account management teams;
- b. developing leads for prospective clients through his own, independent contact with hospitals, radiology practices, and other potential clients;
- c. negotiating, in connection with vRad's legal team, the terms of engagement for new clients under vRad service agreements; and
- d. serving as the lead client-facing vRad employee for all clients in his geographic area, which included managing critical client information and relationships to ensure client satisfaction and retention.

17. At the beginning of his employment, Rabern and vRad entered into a Virtual Radiologic Corporation Team Member Agreement, dated November 13, 2013, (the "Agreement"). The Agreement governed the terms and conditions of Rabern's employment with vRad. A copy of the Agreement is attached as **Exhibit A**.

18. The Agreement established Rabern's duties and obligations regarding vRad's confidential information and trade secrets during his employment with the company, as well as Rabern's ongoing obligations after ending his employment.

19. In particular, Rabern acknowledged that during his employment, he would have access to vRad trade secrets, confidential information, and customer goodwill. Rabern also acknowledged that he would personally benefit from his access to this information.

20. Consistent with the Agreement, vRad gave Rabern access to highly confidential and proprietary information, including but not limited to:

- a. vRad's teleradiology agreements with specific customers, which provide key information on pricing and services;

- b. vRad's Salesforce database, which is the company's central location for client information, key contacts, client volume and revenue, and notes of interactions;
- c. the training materials for vRad's sales force, which describe in detail vRad's services, sales strategies, and growth initiatives; and
- d. vRad pricing and expense information.

21. As an Area Director and a Senior Area Director, Rabern was invited to regular meetings to discuss vRad's sales strategies, annual business plans, and market analyses.

22. By having access to this highly confidential and trade secret information, Rabern gained a deep understanding of the vRad platform, its customers, and its business strategies.

23. vRad takes extensive measures to protect its confidential information and trade secrets. By way of example, these measures include:

- a. limiting access to confidential information to only those individuals with a business need to know;
- b. implementing and enforcing company policies prohibiting the disclosure of confidential information;
- c. limiting access to critical information systems and databases to need-to-know personnel with password access;
- d. including robust confidentiality and non-disclosure provisions in team member agreements; and
- e. annual restatement and team member acknowledgement of confidentiality obligations in the annual commission plan agreements of members of the Sales Division.

24. vRad also included robust confidentiality provisions and restrictive covenants in the Agreement to protect its confidential information and trade secrets, customer goodwill, and other business interests.

25. With regard to vRad's confidential information and trade secrets, the Agreement required Rabern to maintain the secrecy of these materials during his employment and after it ended. Specifically, the Agreement provided:

PROTECTION OF TRADE SECRETS AND CONFIDENTIAL INFORMATION: Team member agrees to hold vRad Trade Secrets and Confidential Information in the strictest confidence during Team member's employment with vRad and to the fullest extent permitted by law after Team member's employment relationship with vRad is voluntarily or involuntarily terminated. To this end:

A. Team member will not make copies of, permit copies to be made, download, or transfer or transmit by any means Trade Secrets and Confidential Information, except as necessary to carry out Team member's duties for the Company;

B. Team member will not disclose any Trade Secret or Confidential Information to any person except other Company team members with a need to know the information or to persons who are authorized by vRad to receive the information and are bound by obligations of confidentiality and non-disclosure owed to vRad;

C. Team member will take all reasonable precautions to prevent the inadvertent disclosure of Trade Secrets and Confidential Information to any unauthorized person;

D. Team member acknowledges that the Company is the owner of the Company's Trade Secrets and Confidential Information and agrees not to contest any such ownership rights of the Company, either during or after Team member's employment with the Company.

See Agreement, § 3.

26. The Agreement also required that Rabern return all vRad property to the company after ending his employment and delete all confidential information and trade

secrets from any mobile or other devices that he used to conduct company business during his employment. Specifically, the Agreement provided:

RETURN OF PROPERTY: Upon termination of employment, Team member shall deliver all vRad property (including but not limited to keys, records, notes, data computer storage media, memoranda, models, and equipment) that is in the Team member's possession or under the Team member's control. Team member also will, upon termination of employment with the Company or upon request by the Company, deliver promptly to the Company and permanently delete from any electronic media in Team member's possession, custody, or control, or to which Team member has access, all Trade Secret and Confidential Information, whether in hard copy, electronic or other form, or copies thereof, and will permit the Company to inspect non-Company computer(s) and/or mobile devices used to conduct Company business and remove from such non-Company computer all data belonging to vRad.

See Agreement, § 10.

27. With regard to vRad's customer goodwill, the Agreement required that Rabern not solicit any vRad customer or prospective customer for a period of one year after ending his employment. Specifically, the Agreement provided:

NON-SOLICITATION OF CUSTOMERS. Team Member further agrees that for a period of one (1) year following the Team Member's termination of employment, whether voluntary or involuntary, Team Member will not directly or indirectly, alone or with another person or entity, solicit business from, do business with, or have any business-related contact with any customer or prospective customer or aid in soliciting of a customer or prospective customer of the Company for any purpose relating to Conflicting Products or Services. For purposes of this paragraph, the term "customer or prospective customer" means any customer or client of the Company during the last 24 months of Team Member's employment with the Company and any prospective customer or client with whom or with which Team Member personally had direct or indirect contact or about whom or which Team Member saw, heard or otherwise obtained Trade Secrets, Confidential Information or other special knowledge as a result of Team Member's position with vRad.

See Agreement, § 6.

28. The Agreement also required that Rabern not unfairly compete with vRad or accept conflicting employment with another company for a period of one year after ending his employment. Specifically, the Agreement provided:

NO CONFLICTING EMPLOYMENT: During Team member's employment with the Company and for a period of one (1) year after that employment ends, regardless of reason, whether voluntary or involuntary, Team member agrees that Team member will not directly or indirectly work for, consult with, lend assistance to, become engaged with, become associated with or otherwise render services to a Conflicting Organization in any capacity, directly or indirectly, alone or with another person or entity, whether as an employer, team member, sole proprietor, owner, investor, advisor, consultant, independent contractor, associate, principal, member, agent, partner, officer, director, shareholder, investor, lender, joint venturer or otherwise; *provided, however*, that Team member may be employed with or provide consulting services to a large diversified organization in a separate and distinct division that does not compete, directly or indirectly, with the Company, but only if: (A) the Company first receives written assurances from the prospective employer and from Team member, satisfactory to the Company in its reasonable discretion, confirming that Team member will render no services, directly or indirectly, to any divisions or business units that independently would qualify as a Conflicting Organization; and (B) the Company's General Counsel gives advance written approval for Team member to provide the proposed employment or consulting services.

See Agreement, § 5 (original emphasis).

29. With regard to vRad's business interests, the Agreement required that Rabern not solicit other vRad employees to terminate their employment with the company for a period of one year after ending his employment. Specifically, the Agreement provided:

NON-SOLICITATION OF TEAM MEMBERS. Team Member agrees that for a period of one (1) year following the Team Member's termination, of employment, whether voluntary or involuntary, Team Member will not, directly or indirectly, cause or solicit, directly or indirectly, any team member or team members of the Company, to terminate their employment with the Company.

See Agreement, § 8.

III. vRad Discovered that Rabern Misrepresented His Future Employer’s Business to Obtain a Conditional Amendment of His Restrictive Covenants.

30. In August 2019, Rabern notified vRad that he had been offered a position as Head of Growth with Nines, a company he described as providing medical and radiologic artificial intelligence services. Rabern explicitly stated that Nines’s products and services in no way overlapped with vRad’s products and services and that, accordingly, his contemplated new employment would not constitute “Conflicting Employment,” as defined in the Agreement.

31. Claiming that he wanted to avoid confusion about his ability to work for Nines, Rabern asked whether vRad would be willing to amend the Agreement.

32. Nines was a new company at the time, with a limited website and little publicly available information about its products and services. In fact, a December 2019 news article explained that Nines had been operating in “stealth mode” for years:

A new teleradiology company aiming to aid radiologists to prioritize imaging for review has officially launched.

Nines, which came out of stealth mode recently, was founded in 2017. In a news release, the Palo Alto startup announced that it is backed by \$16.5 million in venture capital and the money is being used to build out a team of radiologists and data scientists.

See Elise Reuter, *Teleradiology startup comes out of stealth mode, announces \$16.5M funding round*, MedCity News, <https://medcitynews.com/2019/12/teleradiology-startup-nines-brings-in-two-big-backers/> (last visited January 31, 2020).

33. Before agreeing to amend the Agreement, vRad undertook reasonable steps to verify Rabern’s representation about the company and its products and services.

Specifically, vRad reviewed the Nines website (which was not fully developed at the time) and other available information vRad had learned several months ago through discussions with Nines about partnering with vRad to develop artificial intelligence services. None of these sources indicated that Nines also offered or planned to offer teleradiology services, leaving vRad to rely on Rabern's representations regarding the company and the scope of his contemplated new employment.

34. On August 13, 2019, based on Rabern's representations, vRad conditionally agreed to amend portions of the Agreement ("the Conditional Amendment"). A copy of the Conditional Amendment is attached as **Exhibit B**.

35. The Conditional Amendment purported to amend three provisions of the Agreement: Section 5 (regarding conflicting employment), Section 6 (regarding solicitation of vRad customers), and Section 8 (regarding solicitation of vRad employees). In particular, Rabern and vRad agreed to enforce the restrictive covenants regarding conflicting employment and solicitation of vRad customers only in the states of Alabama, Connecticut, Florida, Georgia, Kentucky, South Carolina, and the U.S. territory of Puerto Rico. Rabern and vRad also agreed that the restrictive covenants regarding solicitation of vRad team members would include solicitation of radiologists employed by a vRad affiliate or contracted to provide services on behalf of a vRad affiliate. Specifically, the Conditional Amendment provided:

Revision of Restricted Periods. The time periods contemplated in Sections 5 (titled "No Conflicting Employment", hereinafter "Section 5"), 6 (titled "Non-solicitation of Customers", hereinafter "Section 6"), and 8 (titled "Non-solicitation of Team Members", hereinafter "Section 8") of the Agreement shall be defined as the "Restriction Periods." In consideration of

(i) vRad's agreement to modify Sections 5 and 6 of the Agreement, and
(ii) your agreement to modify Section 8 of the Agreement, we hereby agree to amend the Agreement as follows:

a. The restrictions binding on you under Sections 5 and 6 of the Agreement shall only apply to the fields of medical specialties in which MEDNAX, Inc. and its subsidiaries and affiliates (collectively, the "MEDNAX Affiliates") are engaged in the states of Alabama, Connecticut, Florida, Georgia, Kentucky, South Carolina, Tennessee, and the U.S. territory of Puerto Rico.

b. You acknowledge and agree that any activity that would directly or indirectly compete with a service or other offering of a MEDNAX Affiliate practice or entity in any jurisdiction would constitute a Conflicting Product or Service (as defined in the Agreement).

c. The non-solicitation restrictions under Section 8 of the Agreement shall also apply to all radiologists employed by, or directly or indirectly contracted to provide services on behalf of, any vRad affiliate.

See Conditional Amendment, § 2.

36. The Conditional Amendment provided that all other provisions of the Agreement would remain in full force and effect. *See* Conditional Amendment, § 4.

37. Unbeknownst to vRad, Rabern's assurances in requesting and negotiating the Conditional Amendment were completely false. In fact, Nines offers *directly competing* teleradiology services. As its public website now proclaims: "Nines supercharges our customers by offering actionable teleradiology reports delivered in a timeframe they can count on. . . . Our happy, trusted radiologists create state-of-the-art technology to prioritize patient care." *See* Nines: Exceptional teleradiology elevating radiologists, <https://www.nines.com/> (last visited January 31, 2020).

38. As a provider of teleradiology services, Nines falls squarely into the definition of a Conflicting Organization, as defined in the Agreement.

39. On information and belief, Rabern knew that Nines provided teleradiology services when he approached vRad to request amendments to the Agreement. Indeed, it is implausible to think an incoming Head of Growth would be unaware of the company's business plans. Furthermore, Nines announced in December 2019 the closing of a 2018 Series A financing round, which confirms that Nines was planning to provide teleradiology services well before Rabern requested the Conditional Amendment.

40. On information and belief, Rabern intentionally misrepresented the nature of Nines's services for the purpose of inducing vRad to amend the Agreement and enter into the Conditional Amendment.

41. Once vRad became aware of Rabern's deception in securing the Conditional Amendment, it investigated the circumstances of his departure from the company. This investigation revealed other, serious breaches of the Agreement, Rabern's duty of loyalty, and Minnesota and federal law.

42. For example, within a year of resigning from vRad, Rabern called another vRad employee on her personal cell phone and attempted to recruit her to become an employee of Nines.

43. A search of Rabern's vRad email account revealed additional disturbing and unlawful conduct. Specifically, on at least two occasions in July 2019—the month before he resigned—Rabern used his vRad email account to send confidential information and trade secrets to his personal email account.

44. The first email was sent on July 19, 2019, from Rabern's vRad email account to the non-vRad controlled address "vradmike@icloud.com." Among the attachments to

this email was a PowerPoint presentation titled “Nines GTM Discussion.” “GTM” is an acronym that vRad uses internally—it stands for “go to market,” and it refers to the collected activities conducted by vRad’s Sales Division, including market analysis, prospect identification and development, marketing and advertising, and client acquisition and retention. On information and belief, Rabern used vRad trade secrets and confidential information to create this PowerPoint to present to Nines in connection with his then-anticipated employment.

45. The second email was sent on July 29, 2019, sent from Rabern’s vRad email account to “vradmike@icloud.com,” with the subject “Test.” Attached were eleven image files, all of which were photos (presumably taken using a cell phone) of slides in a confidential vRad PowerPoint business growth presentation. The images show the presentation open in read-only mode and clearly identify the user as “Michael Rabern.”

46. The information in the PowerPoint presentation, and the slides that Rabern photographed and emailed to his personal account, give vRad a competitive business advantage in the marketplace. This information was the product of extensive internal analysis by vRad’s Solutions Team—a comprehensive plan that included talking points for sales employees and specific sales targets for key segments of the teleradiology market—and the result of a significant investment of vRad’s time and money.

IV. vRad Discovered Rabern Took its Trade Secrets and Confidential Information and Promptly Attempted to Secure Them and Obtain Rabern’s Compliance with His Contractual Obligations.

47. After learning of Rabern’s unlawful conduct, counsel for vRad sent a letter to Rabern, dated January 7, 2020. The letter reminded Rabern of his contractual obligations

to vRad and described how Rabern had breached those obligations and other legal duties to vRad. The letter also indicated that as a result of Rabern's fraudulent misrepresentations to vRad concerning Nines and his contemplated employment, vRad considered the Conditional Amendment void and no longer in effect. Copies of the Agreement and Conditional Amendment were attached to the letter to Rabern.

48. On the same day, counsel for vRad also sent a similar letter to Nines, again attaching the Agreement and the Conditional Amendment. This letter drew a response from attorneys in the San Francisco, California, office of the Goodwin Procter LLP law firm, who indicated that they represented Nines.

49. Over the course of the next three weeks, counsel for vRad and counsel for Nines discussed the matter by phone and in writing. During one such conversation, counsel for Nines relayed that Rabern told them the only documents he had emailed to himself from his vRad laptop were family pictures. In response, counsel for vRad shared redacted copies of some of the screenshot images that Rabern had emailed to himself—images that were obviously not family pictures.

50. Confronted with proof of Rabern's dishonesty, counsel for Nines indicated on January 21, 2020, that the company would undertake a forensic review of its systems to locate and remove vRad confidential information and trade secrets in its possession or in Rabern's possession. Despite later assurances that the forensic review would be completed "soon," counsel for Nines has not provided the results of the review of Nines's or Rabern's systems and has stated that its forensic vendor was stymied in its review of Rabern's systems because Rabern uses Apple products.

51. Counsel for Nines also asserted that the Conditional Amendment was a valid agreement between vRad and Rabern despite the fact that Rabern had fraudulently induced vRad to enter into the agreement.

52. Rabern has not provided any assurance—individually or through counsel—that he has complied with vRad’s demands that he destroy all confidential information and trade secrets in his possession and comply with his contractual and other obligations to vRad. On information and belief, Rabern continues to possess or control the confidential information and trade secrets that he misappropriated from vRad.

53. Rabern’s unlawful conduct has caused more than \$75,000 in damages to vRad, the specific amount to be proven at trial. Furthermore, unless and until the Court enjoins further misappropriation of vRad’s trade secrets and orders Rabern to comply with his contractual and legal obligations, vRad will continue to suffer irreparable harm in the form of damage to its customer goodwill and legitimate business interests.

COUNT 1 – BREACH OF CONTRACT

54. vRad realleges the preceding paragraphs as though fully set forth herein.

55. The Agreement was a valid and enforceable contract that bound the parties to their terms.

56. vRad complied with its obligations under the Agreement.

57. As described above, Rabern breached and continues to breach the Agreement by, without limitation: (1) misappropriating and disclosing vRad confidential information and trade secrets; (2) refusing to return vRad property, including the company’s

confidential information and trade secrets; (3) soliciting at least one vRad employee; and (4) accepting and continuing employment with a Conflicting Organization.

58. The Conditional Amendment is null and void because Rabern fraudulently induced vRad to enter into the agreement. But to the extent the Court concludes otherwise, Rabern has nevertheless breached and continues to breach the Conditional Amendment by, without limitation:

- a. calling vRad employee Katherine Chapman and attempting to recruit her to become an employee of Nines, in violation of Section 8 of the Agreement; and
- b. emailing confidential vRad information from his vRad email account to his personal email account, in violation of Section 3 of the Agreement.

59. Rabern's breach of these agreements has caused and, absent immediate injunctive relief, will continue to cause vRad monetary damages and irreparable harm, including but not limited to the loss of client relationships and goodwill, attorneys' fees and costs related to this litigation, and lost business and profits.

COUNT 2 – BREACH OF EMPLOYEE'S DUTY OF LOYALTY

60. vRad realleges the preceding paragraphs as though fully set forth herein.

61. During his employment with vRad, Rabern owed vRad a duty of loyalty.

62. During his employment with vRad, Rabern took actions to directly compete with vRad, in violation of his duty to act in good faith and loyalty toward his employer.

63. As described above, Rabern breached his duty of loyalty by, without limitation: (1) stealing vRad confidential information and trade secrets for his personal benefit and use and for the benefit and use of Nines; (2) using vRad resources, confidential

information, and trade secrets to prepare materials for use in his contemplated employment as Head of Growth with Nines; and (3) misrepresenting the nature of Nines's business to induce vRad to agree to the Conditional Amendment.

64. Despite his duty of loyalty, Rabern conducted and orchestrated these acts in secrecy and in violation of his obligations as an employee of vRad to act in its best interests.

65. Rabern's breach of his duty of loyalty toward vRad has caused and, absent immediate injunctive relief, will continue to cause vRad monetary damages and irreparable harm, including but not limited to the loss of its competitive advantage in the marketplace, the loss of its competitive advantage in radiologist recruitment and retention, the loss of its client relationships and goodwill, attorneys' fees and costs related to this litigation, and lost business and profits.

COUNT 3 – TRADE SECRET MISAPPROPRIATION UNDER THE MINNESOTA TRADE SECRET ACT (Minn. Stat. § 325C.01 *et seq.*)

66. vRad realleges the preceding paragraphs as though fully set forth herein.

67. As a result of his employment with vRad, his contractual agreements with vRad, and his position of trust and responsibility with vRad, Rabern developed, used, received, and had knowledge of vRad's trade secrets.

68. These trade secrets have independent economic value, are not generally known to or readily ascertainable by persons outside of vRad, and provide vRad with an economic and competitive advantage in the marketplace.

69. vRad has made and continues to make reasonable efforts to maintain the secrecy of its trade secrets.

70. Rabern wrongfully retained, disclosed, and used vRad's trade secrets—or threatened to do so—without the express or implied consent of vRad, for his own benefit and for the benefit of Nines or others. Such trade secrets include but are not limited to confidential vRad PowerPoint presentations, market analyses, and growth strategies.

71. The trade secrets Rabern misappropriated relate to products and services used in, and intended for use in, interstate commerce.

72. Rabern's conduct constitutes a violation of Minnesota Statute § 325C.01 *et seq.*, and his violations were willful and malicious.

73. Rabern's misappropriation of vRad's trade secrets has caused and, absent immediate injunctive relief, will continue to cause vRad monetary damages and irreparable harm, including but not limited to the loss of its competitive advantage in the marketplace, the loss of its competitive advantage in radiologist recruitment and retention, the loss of its client relationships and good will, attorneys' fees and costs related to this litigation, and lost business and profits.

**COUNT 4 – TRADE SECRET MISAPPROPRIATION UNDER THE DEFEND
TRADE SECRETS ACT (18 U.S.C. § 1832 *et seq.*)**

74. vRad realleges the preceding paragraphs as though fully set forth herein.

75. As a result of his employment with vRad, his contractual agreements with vRad, and his position of trust and responsibility with vRad, Rabern developed, used, received, and had knowledge of vRad's trade secrets.

76. These trade secrets have independent economic value, are not generally known to or readily ascertainable by persons outside of vRad, and provide vRad with an economic and competitive advantage in the marketplace.

77. vRad has made and continues to make reasonable efforts to maintain the secrecy of its trade secrets.

78. Rabern wrongfully retained, disclosed, and used vRad's trade secrets—or threatened to do so—without the express or implied consent of vRad, for his own benefit and for the benefit of Nines or others. Such trade secrets include but are not limited to confidential vRad PowerPoint presentations, market analyses, and growth strategies.

79. The trade secrets Rabern misappropriated relate to products and services used in, and intended for use in, interstate commerce.

80. Rabern's conduct constitutes a violation of 18 U.S.C. § 1832 *et seq.*, and his violations were willful and malicious.

81. Rabern's misappropriation of vRad's trade secrets have caused and, absent immediate injunctive relief, will continue to cause vRad monetary damages and irreparable harm, including but not limited to the loss of its competitive advantage in the marketplace, the loss of its competitive advantage in radiologist recruitment and retention, the loss of its client relationships and goodwill, attorneys' fees and costs related to this litigation, and lost business and profits.

COUNT 5 – UNFAIR COMPETITION

82. vRad realleges the preceding paragraphs as though fully set forth herein.

83. The conduct described above constitutes an unfair method of competition.

84. Rabern's unfair competition has caused and, absent immediate injunctive relief, will continue to cause vRad monetary damages and irreparable harm, including but not limited to the loss of its competitive advantage in the marketplace, the loss of its competitive advantage in radiologist recruitment and retention, the loss of its client relationships and goodwill, attorneys' fees and costs related to this litigation, and lost business and profits.

COUNT 6 – DECLARATORY JUDGMENT

85. vRad realleges the preceding paragraphs as though fully set forth herein.

86. As discussed above, the Conditional Amendment is not enforceable because, among other reasons, Rabern fraudulently induced vRad to enter into the agreement.

87. An actual controversy exists between Rabern and vRad regarding the validity and enforceability of the Conditional Amendment. This controversy arises within the Court's jurisdiction.

88. vRad is entitled to a declaratory judgment that the Conditional Amendment is unenforceable, null, and void.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, vRad requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, vRad requests the following relief:

1. An order temporarily and permanently restraining Rabern and anyone acting in concert with him from further activities in violation of Rabern's contractual, legal, and other obligations and duties to vRad, enforcing the restrictive

- covenants in the Agreement, and prohibiting Rabern and anyone acting in concert with him from using, possessing, or disclosing vRad's confidential or proprietary information or trade secrets;
2. A declaratory judgment that the Conditional Amendment is unenforceable, null, and void;
 3. An award of direct and consequential damages resulting from Rabern's breach of his contractual, legal, and other obligations and duties to vRad, in an amount to be determined at trial, but exceeding \$75,000 exclusive of interests and costs;
 4. An award of attorneys' fees and costs; and
 5. Such other relief as the Court deems just and equitable.

Dated: February 4, 2020

DORSEY & WHITNEY LLP

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