

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**EDELMAN FINANCIAL ENGINES,  
LLC,**

and

**EDELMAN FINANCIAL ENGINES,  
L.P.,**

Plaintiffs,

v.

**MARINER WEALTH ADVISORS LLC,**

Defendant.

Civil Case No. 2:23-cv-2515

**COMPLAINT**

Plaintiffs Edelman Financial Engines, LLC (“Edelman FE”) and Edelman Financial Engines, L.P. (“Edelman, L.P.”) (together referred to as “Edelman”), by and through undersigned counsel, bring this Complaint against Defendant Mariner Wealth Advisors, LLC (“Mariner”), and allege as follows:

**INTRODUCTION**

1. This action arises out of Defendant’s flagrant and ongoing efforts to misappropriate Edelman’s trade secrets, tortiously interfere with Edelman’s contracts and business expectations, defame Edelman’s reputation, and steal the fruits of Edelman’s multimillion dollar investments in marketing and client goodwill. Mariner has openly stated that its purpose is to “run Edelman out of business” through these unlawful and predatory actions. Edelman hereby seeks damages and injunctive relief to prevent further harm to its business.

2. Edelman is a financial services company that provides financial planning, investment management, and retirement income services to individual and institutional clients. Its business model is unique in the financial planning industry. At most firms, financial planners are themselves expected to generate client leads. This expectation, which requires financial planners to invest significant time and energy into obtaining clients, incentivizes planners to seek out and serve only high-net-worth clients. Unlike these other firms, Edelman handles lead generation for its planners, investing tens of millions annually in targeted marketing to generate client leads. In addition to identifying high-net-worth individuals as prospects, Edelman spends millions annually to market to individuals who might not otherwise have access to financial planning services. These marketing efforts include the production of podcasts, webinars, written publications, and newsletters. The client leads, information, referral sources, and financial analyses that result from these marketing efforts are confidential information belonging to Edelman and are not publicly available. The resulting data on current and prospective clients, their ability to invest, investment histories, investment positions applied to client portfolios, actual fees charged to clients, and actual fees paid to planners and referral sources are among Edelman's most valuable trade secrets and give it a competitive advantage in the industry.

3. Defendant Mariner is a direct competitor of Edelman. Mariner, founded in 2006, is a relatively new company and has significantly fewer resources to devote to research, marketing, and client development. Evidently intent on free-riding off Edelman's enormous investments in identifying clients and developing goodwill, Mariner has launched an unlawful campaign to hire away high-performing Edelman financial planners ("the Departed Edelman Planners") and incentivize them to disclose the proprietary client information Edelman has spent decades curating. Mariner has also knowingly procured multiple breaches of the Departed Edelman Planners'

employment agreements, which required them to keep Edelman’s client information confidential, and prohibited them from soliciting and accepting business at Mariner from the Edelman clients they serviced. Through these and other unlawful efforts detailed below, Mariner has procured hundreds of breaches of contract by the Departed Edelman Planners and has caused the departure of at least 851 Edelman clients representing over \$621 million in Assets Under Management (“AUM”).

4. Defendant’s unlawful scheme to poach Edelman’s clients and steal its business and trade secrets is ongoing. To date, Mariner has convinced ten Edelman Planners to accept employment with Mariner and solicit the Edelman clients they serviced to move their AUM to Mariner. Defendant continues to actively solicit more Edelman planners to join Mariner, including by engaging in pressure tactics and making patently false statements to the employees that Edelman’s business is failing, that it is a “sinking ship,” that “everyone is leaving,” and that they will be left without employment if they remain with Edelman much longer.<sup>1</sup>

5. Plaintiffs now file this Complaint seeking monetary damages and injunctive relief to stop Mariner’s flagrantly unlawful conduct.

#### **THE PARTIES**

6. Edelman FE is a Delaware limited liability company, with its principal place of business at 28 State Street, 21st Floor, Boston, Massachusetts 02109. It serves clients through local offices across the United States, including in Kansas. Edelman FE is a wholly owned subsidiary of Edelman L.P. It was formed in approximately April 2018 when two companies, Financial Engines, Inc., and Edelman Financial Services, LLC, merged, forming Financial

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<sup>1</sup> Notwithstanding Mariner’s unlawful actions, Edelman manages over \$245 billion in AUM and was voted best investment advisor by numerous publications. It is precisely because of Edelman’s success that Mariner seeks to steal its trade secrets and clients and free-ride off its marketing investments and goodwill.

Engines, Inc. Financial Engines, Inc. later converted to a limited liability company, Financial Engines, LLC, and then changed its name to Edelman Financial Engines, LLC.

7. Edelman FE is the Departed Edelman Planners' former employer for all purposes. Edelman FE has the right to enforce the contractual obligations discussed in this Complaint, a right the Departed Edelman Planners expressly agreed to. Edelman L.P. is an indirect parent company and affiliate of Edelman FE and entered into contracts with the Departed Edelman Planners as further discussed below.

8. Upon information and belief, Defendant Mariner is a Kansas limited liability company with its principal place of business in Kansas. Mariner has engaged in a pattern of unlawful activity in this District and elsewhere that has caused Plaintiffs harm in this District and across the country.

#### **JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction over Edelman's federal claim pursuant to 28 U.S.C. § 1331 and supplemental subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

10. This Court has personal jurisdiction over Mariner because it resides in this state, has engaged in business in this state, has engaged in unlawful activities in this state that have caused Plaintiffs damage in this state, and Plaintiffs' claims arise out of Mariner's unlawful activities causing harm in this state.

11. Venue is proper pursuant to 28 U.S.C. § 1391, because, upon information and belief, the acts giving rise to the claims alleged herein occurred in this District and/or caused harm to Plaintiffs in this District.

## GENERAL ALLEGATIONS

### **I. Edelman's Business Model**

12. Edelman is a financial services company that provides financial planning, investment management, and retirement income services, with the belief that everyone deserves a trusted financial advocate.

13. The financial services industry is highly competitive. A company's competitive advantage in the industry is substantially dependent upon its ability to obtain, maintain, and protect client goodwill and relationships. Developing and protecting confidential, proprietary, and trade secret information pertaining to clients, prospective clients, and referral sources is also critically important.

14. Through substantial expenditures of time, money, and effort, Edelman has developed significant goodwill and relationships with its clients, prospective clients, and referral sources.

15. Edelman's business model is unique in the industry. Most financial planning and investment firms—including Mariner—require planners to generate their own clients. This requires time-intensive and expensive efforts. According to the 2020 U.S. Census, there are over 258 million adults living in the United States and most of those individuals do not have the means to engage a financial planner to invest a significant portion of their income. Thus, finding a viable potential client can be like finding a needle in a field of haystacks. This reality also means that planners required to generate their own leads are incentivized to focus only on obtaining and serving high-net-worth clients, as their compensation is based on their AUM.

16. In contrast, Edelman was founded on the democratization of financial planning and investment management. Edelman seeks to provide financial planning services to anyone interested, whether they are a teacher, plumber, nurse, bus driver, lawyer, or entrepreneur. To that

end, Edelman created a different model for financial planning. Instead of requiring its planners to generate their own books of business, Edelman itself generates client leads for its planners, leaving them free to focus on client service. This allows the planners to serve more clients, which in turn makes it financially viable to serve working and middle-class individuals with less AUM.

17. To generate clients for its planners, Edelman spends millions annually on marketing. These marketing efforts include the production of podcasts, webinars, written publications, and newsletters. The client leads, information, referral sources, and financial analyses that result from these marketing efforts are confidential information belonging to Edelman and are not publicly available. In return for its expensive investment in marketing, Edelman extrapolates a list of viable potential clients from that sea of 258 million American adults. The resulting list of clients and their ability to invest is among Edelman's most valuable trade secrets and gives it a competitive advantage in the industry.

18. Once Edelman generates client leads through its marketing efforts, it assigns each prospective client to a "planner," who, with Edelman's support, develops the client relationship and ultimately acts as the client's dedicated financial advisor on Edelman's behalf. In addition to its own extensive marketing efforts on the front end of a client relationship, Edelman then pays for office space, technology, and further marketing expenses to assist its planners with maintaining and developing the client relationship.

19. The planner develops the relationship and advises each client with the constant support of Edelman's investment management team – a special division of the company that consists of highly qualified professionals, many of them with PhDs in Economics, CFA designations, and decades of experience in the industry. Edelman's investment management team utilizes an investment management approach that is unique and proprietary to Edelman. Edelman

spends significant time, money and effort developing its proprietary market analyses, recommended investment positions and advice. This proprietary information gives Edelman a competitive advantage in the marketplace and is a key factor in developing client goodwill, repeat business, and referral business.

20. Edelman employs and compensates its planners to service the clients it obtains through its marketing efforts, as well as to document all client details in Edelman's secured database. This guarantees that the client is provided uniform service should the planner assigned to that client end his or her employment at Edelman.

21. As with its marketing efforts, Edelman's investment in client management is expensive and energy intensive. If disclosed to or used by competitors, the client lists and other confidential and proprietary information in Edelman's internal database would undermine Edelman's competitive advantage and hijack the investments it has made in its client relationships.

22. Given the sensitive nature of financial, investment, and retirement-related matters, Edelman takes its clients' confidentiality and privacy seriously. Accordingly, access to the information in Edelman's internal database is restricted within the company and limited to disclosures that are necessary to conduct business.

23. Edelman also protects the identities and personal information of its clients because that information is competitively valuable and sensitive: it is procured at great cost to Edelman and could be used by a competitor to identify viable investors. Edelman protects its proprietary database and compilation of confidential information with reasonable security measures, including multi-layer authentication, password protection, encryption, and other accepted security measures within the industry.

24. Edelman charges its planners with maintaining the security of Edelman's trade secret, confidential, and proprietary information. Planners are instructed regarding the importance of keeping client information confidential, and Edelman's employee handbook and stand-alone policies address the storage, access, and use of confidential information. In addition, planners are required to sign employment agreements requiring them to maintain the confidentiality of Edelman's trade secrets and proprietary information.

## **II. Mariner's Unlawful Scheme to Steal Edelman's Trade Secrets and Poach Edelman's Clients and Employees**

25. Mariner directly competes with Edelman in the financial services industry. Mariner is a relatively new company, having been founded in 2006.

26. Upon information and belief, Mariner lacks the resources, infrastructure, and ability to make the tens of millions of dollars in investments Edelman makes each year on identifying clients with the ability to invest. Mariner has therefore decided to free-ride off Edelman's multi-million-dollar investment by purloining Edelman's trade secrets, goodwill, and client relationships.

27. To accomplish this objective, Mariner has launched an unlawful campaign to hire away high-performing Edelman Planners and incentivize them to disclose the proprietary client information Edelman has spent decades curating. Through the actions detailed below, Mariner procured multiple breaches of the Departed Edelman Planners' employment agreements, which required them to keep Edelman's client information confidential, and prohibited them from soliciting and accepting business at Mariner from the Edelman clients they serviced. Through these and other ongoing unlawful efforts Mariner has procured hundreds of breaches of contract by the Departed Edelman Planners and has caused the departure of at least 851 Edelman clients representing over \$621 million in AUM.



**A. Michael Horne**

28. Horne began working as a financial planner for an Edelman predecessor on January 26, 2016, and worked continuously for Edelman and its predecessors until his abrupt resignation without notice on July 10, 2021.

29. During his employment, Edelman paid Horne to, among other things, develop, solidify, enhance, and expand Edelman's goodwill for and on behalf of Edelman. Edelman also provided client referrals based on its extensive, multi-million-dollar marketing efforts and allowed Horne to access and utilize Edelman's proprietary market analyses and investment strategies to develop client goodwill, advise clients and otherwise carry out his duties on behalf of Edelman. Edelman also paid for business expenses to help Horne develop, maintain, solidify, and expand customer relationships and goodwill on Edelman's behalf.

30. One of the ways Edelman protects its goodwill, trade secrets, and confidential information is through standard post-employment restrictive covenant agreements. As an employee with Edelman and its predecessors, Horne entered into restrictive covenant agreements.

31. On or about February 10, 2016, Edelman and Horne entered into the Proprietary Information, Non-Solicitation, Non-Disparagement and Arbitration Agreement ("Non-Solicitation Agreement"), which contains confidentiality obligations.

32. Under Section 1(a) of the Non-Solicitation Agreement, Horne agreed that:

[A]t all times during the term of this Agreement and after the termination of employment, the Employee shall: (i) hold in confidence and refrain from disclosing to any other party all information of a proprietary or confidential nature, whether written or oral, tangible or intangible, that concerns EFS or the Company or any of their subsidiaries or affiliates and their business and operations, and all files, letters, memoranda, reports, records, computer disks or other computer storage medium, data, specifications, models or any photographic or other tangible materials containing proprietary or confidential information (collectively, "*Proprietary Confidential Information*"), such as

information relating to customers, Clients, Potential Clients, vendors, service providers, business and investment plans, financial and strategic data, sales, promotional or marketing plans, projections, contracts, research, financial investment and other products and programs, operations, techniques, methodologies, practices or strategies, any expansion plans. . .any customer, ***Client or Potential Client lists, Client or Potential Client financial and personal information***, any trade secrets, and any confidential and/or proprietary knowledge, data, or information received from third parties (“*Third Party Information*”) (emphasis added).

33. Section 4(b) of the Non-Solicitation Agreement also sets forth additional obligations that Horne agreed to, stating in relevant part:

(b) Employee hereby agrees that Employee will not (other than on behalf of EFS while employed by EFS), individually or through an agent, employee, or on behalf of another, as an employee, director, owner, partner, member, sole proprietor, consultant, agent, representative, shareholder, or in any other manner or capacity whatsoever, while employed by EFS and for the Restricted Period<sup>2</sup>(as defined herein). . .

(1) Initiate contact with, directly or indirectly, or otherwise solicit, persuade, or induce or attempt to solicit, persuade, or induce, any Client with whom Employee has worked, communicated with or dealt during Employee’s term of employment hereunder. . . to terminate, reduce or not renew its relationship with EFS (or any subsidiary or affiliate thereof);

(2) Solicit, engage in, perform, divert or accept any business of the same or similar nature to the Business of EFS with or from any Client or Potential Client whom Employee has solicited (directly or indirectly), with whom Employee has worked, communicated or dealt during Employee’s term of employment. . .

(3) Disclose the names of any Client or Potential Client of EFS or Company to any other person, firm, corporation or other entity; or

.....  
(7) Assist any person, firm, entity, employer,

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<sup>2</sup> The Restricted Period includes the period of fifteen (15) months after the date of termination. See Section 4(e).

business associate or member of Employee's family to commit any of the foregoing acts.

34. Section 1 and Section 4 of the Non-Solicitation Agreement prevent Horne from disclosing to competitors or using for his own benefit the identities of clients or potential clients, disclosing to competitors, or using for his own benefit the amount of AUM clients place with Edelman, and soliciting Edelman clients that he previously worked with for a period of fifteen (15) months after the end of his employment.

35. Section 4 also prevents Horne from engaging in, diverting or accepting any business from clients that he previously worked with while at Edelman for a period of fifteen (15) months after the end of his employment.

36. Under Section 5 of the Agreement, Horne also agreed that he had the duty of loyalty to Edelman, and that he would not engage in business activity that is competitive with Edelman while still employed by Edelman:

*Duty of Loyalty During Employment.* Employee agrees that during the period of his/her employment by EFS, Employee will not, without EFS's express written consent, directly or indirectly engage in any employment or business activity which is directly or indirectly competitive with or would otherwise conflict with his/her employment by EFS.

37. Mariner recruited Horne and solicited him to leave Edelman and move the Edelman Clients he was servicing and their AUM to Mariner. Upon information and belief, Mariner asked for and was provided a copy of Horne's Non-Solicitation Agreement with Plaintiffs. Based on its review of Horne's agreements with Edelman, Mariner provided advice to Horne on how to position himself to best defend a lawsuit from Plaintiffs for breach of the Non-Solicitation Agreement.

38. Upon information and belief, Mariner also asked for and received details about the Edelman clients Horne was servicing, including their assets under management. Based on this

data, Mariner determined a compensation package for Horne that was sized on the assumption that Horne would, with Mariner's participation and assistance, solicit the Edelman clients Horne was servicing to move their business with him to Mariner.

39. Upon information and belief, Mariner gave Horne an offer of employment in or around June 2021, which Horne accepted. Upon information and belief, Mariner required Horne to sign a Non-Solicitation and Confidentiality Agreement with Mariner that, among other things, contained covenants that were longer in duration and at least as restrictive as the covenants in Horne's Non-Solicitation Agreement with Edelman.

40. Horne resigned from Edelman on July 9, 2021, without any notice. Immediately after he resigned, Horne began working for Mariner.

41. Upon information and belief, Mariner and Horne conspired to convey Edelman's trade secrets and proprietary client information to Mariner and solicit and accept business from those Edelman clients in violation of Horne's Non-Solicitation Agreement with Edelman.

42. With Mariner's assistance, Horne recreated a list of Edelman clients he had serviced, which he then conveyed to Mariner and used on behalf of Mariner. In doing so, Horne breached the Non-Solicitation Agreement with Edelman by disclosing the identities of Edelman clients. He also misappropriated Edelman's trade secret client list of the individuals Horne had been servicing, including information about their AUM and ability to make further investments. This information identifying individuals as having significant assets to invest and the ability to make future investments is not publicly available and constitutes one of Edelman's most valuable trade secrets.

43. Mariner unlawfully accepted and used this trade secret and proprietary information knowing that Horne had violated the terms of the Edelman Non-Solicitation Agreement. Upon

information and belief, Mariner actively encouraged Horne to breach the Edelman Non-Solicitation Agreement by, among other things, tying his compensation to performance milestones that assumed he would work to bring in the Edelman clients he had been servicing.

44. With Mariner's knowledge and assistance, Horne further breached the Edelman Non-Solicitation Agreement by initiating contact with the Edelman clients he had identified on the list shared with Mariner. He did this with the purpose of soliciting those clients to leave Edelman and move their accounts and assets under management to Mariner. When Edelman clients agreed to move their accounts, Horne diverted and accepted their business in further violation of his Non-Solicitation Agreement.

45. These and other communications constituted improper solicitation, engagement, diversion and acceptance of business under the Non-Solicitation Agreement, which Mariner knew from its review of the agreement.

46. These unlawful solicitations, acceptance of business and disclosures of Edelman trade secrets caused the departure of 84 Edelman clients representing \$83M in AUM. Upon information and belief, Mariner accepted the AUM and the fee revenue it represented knowing that it was the fruit of Horne's violations of the Non-Solicitation Agreement with Edelman, which Mariner encouraged, aided, and abetted.

47. Mariner's knowing facilitation of Horne's breaches of his Edelman Non-Solicitation Agreement was particularly egregious in light of the terms of Mariner's own Non-Solicitation and Confidentiality Agreement with Horne, which would be violated by the very actions Mariner encouraged Horne to take on its behalf.

**B. Joseph Azzopardi**

48. Joseph Azzopardi began working as a financial advisor for Edelman's predecessor Edelman Financial Services, LLC, in September 2017 and worked continuously for Edelman Financial Services, LLC and then Edelman until his abrupt resignation on February 7, 2022.

49. During his employment, Edelman paid Azzopardi to, among other things, develop, solidify, enhance, and expand Edelman's goodwill for and on behalf of Edelman. Edelman also provided client referrals based on its extensive, multi-million-dollar marketing efforts and allowed Azzopardi to access and utilize Edelman's proprietary market analyses and investment strategies to carry out his duties on behalf of Edelman. Edelman also paid for business expenses to help Azzopardi develop, maintain, solidify, and expand customer relationships and goodwill on Edelman's behalf.

50. One of the ways Edelman protects its goodwill, trade secrets, and confidential information is through standard post-employment restrictive covenant agreements. As an employee with Edelman and its predecessors, Azzopardi entered into a confidentiality agreement.

51. On or about September 13, 2017, Edelman and Azzopardi entered into the Proprietary Information, Non-Solicitation, Non-Disparagement and Arbitration Agreement ("Confidentiality Agreement"), which contains confidentiality obligations.

52. Under Section 1(a) of the Confidentiality Agreement, Azzopardi agreed that:

[A]t all times during the term of this Agreement and after the termination of employment, the Employee shall: (i) hold in confidence and refrain from disclosing to any other party all information of a proprietary or confidential nature, whether written or oral, tangible or intangible, that concerns EFS or the Company or any of their subsidiaries or affiliates and their business and operations, and all files, letters, memoranda, reports, records, computer disks or other computer storage medium, data, specifications, models or any photographic or other tangible materials containing proprietary or confidential information (collectively, "*Proprietary Confidential Information*"), such as

information relating to customers, Clients, Potential Clients, vendors, service providers, business and investment plans, financial and strategic data, sales, promotional or marketing plans, projections, contracts, research, financial investment and other products and programs, operations, techniques, methodologies, practices or strategies, any expansion plans. . .any customer, ***Client or Potential Client lists, Client or Potential Client financial and personal information***, any trade secrets, and any confidential and/or proprietary knowledge, data, or information received from third parties (“*Third Party Information*”).

53. Section 4(b) of the Confidentiality Agreement also sets forth additional obligations that Azzopardi agreed to, stating in relevant part:

(b) Employee hereby agrees that Employee will not (other than on behalf of EFS while employed by EFS), individually or through an agent, employee, or on behalf of another, as an employee, director, owner, partner, member, sole proprietor, consultant, agent, representative, shareholder, or in any other manner or capacity whatsoever, while employed by EFS and for the Restricted Period<sup>3</sup>(as defined herein). . .

(3) Disclose the names of any Client or Potential Client of EFS or Company to any other person, firm, corporation or other entity; or

....

(7) Assist any person, firm, entity, employer, business associate or member of Employee’s family to commit any of the foregoing acts.

54. Sections 1 and Section 4 of the Confidentiality Agreement prevent Azzopardi from disclosing to competitors or using for his own benefit Edelman confidential, proprietary and trade secret information, including the identities of clients or potential clients, the amount of AUM clients placed with Edelman, the specific fees Edelman charged the clients Azzopardi serviced on Edelman’s behalf and the specific fees Edelman paid Azzopardi for servicing Edelman clients.

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<sup>3</sup> The Restricted Period includes the period of fifteen (15) months after the date of termination. See Section 4(e).

55. Mariner recruited Azzopardi and solicited him to leave Edelman and move the Edelman Clients he was servicing and their AUM to Mariner. Upon information and belief, Mariner asked for and was provided a copy of Azzopardi's Confidentiality Agreement with Edelman. Based on its review of Azzopardi's agreements with Edelman, Mariner provided advice to Azzopardi on how to position himself to best defend a lawsuit from Edelman for breach of the Confidentiality Agreement.

56. Upon information and belief, Mariner also asked for and received details about the Edelman clients Azzopardi was servicing, including their assets under management. Based on this data, Mariner determined a compensation package for Azzopardi that was sized on the assumption that Azzopardi would, with Mariner's participation and assistance, disclose Edelman clients Azzopardi was servicing to Mariner.

57. Upon information and belief, Mariner required Azzopardi to sign a Confidentiality Agreement with Mariner that was similar to the provisions in Azzopardi's Confidentiality Agreement with Edelman.

58. Azzopardi resigned from Edelman on February 7, 2022, without any notice. Immediately after he resigned, Azzopardi began working for Mariner.

59. Upon information and belief, Mariner and Azzopardi conspired to convey Edelman's trade secrets and proprietary client information to Mariner and use it in violation of Azzopardi's Confidentiality Agreement with Edelman.

60. Upon information and belief, with Mariner's assistance, Azzopardi recreated a list of Edelman clients he had serviced, which he then conveyed to Mariner and used on Mariner's behalf. In doing so, Azzopardi breached obligations to Edelman by disclosing the identities of Edelman clients and misappropriated Edelman's trade secret client list of the individuals



Azzopardi had been servicing, including information about their AUM and ability to make further investments. This information identifying individuals as having significant assets to invest and the ability to make future investments is not publicly available and constitutes one of Edelman's most valuable trade secrets.

61. Mariner unlawfully accepted and used this proprietary information knowing that Azzopardi had violated the terms of the Edelman Confidentiality Agreement. Mariner actively encouraged Azzopardi to breach the Edelman Confidentiality Agreement by, among other things, tying his compensation to performance milestones that assumed he would work to bring in the Edelman clients had been servicing.

62. With Mariner's assistance, Azzopardi initiated contact with the Edelman clients he had identified on the list provided to Mariner.

63. For example, on February 15, 2022, only 6 days after Azzopardi's date of termination, Edelman was notified that Azzopardi contacted Edelman clients that he previously serviced.

64. These unlawful disclosures of Edelman trade secrets caused the departure of 57 Edelman clients representing \$63M in AUM. Upon information and belief, Mariner accepted the AUM and the fee revenue it represented knowing that it was the fruit of Azzopardi's violations of the Confidentiality Agreement with Edelman, which Mariner encouraged, aided, and abetted.

65. Mariner's knowing facilitation of Azzopardi's breaches of his Edelman Confidentiality Agreement was particularly egregious in light of the terms of Mariner's own agreement with Azzopardi, which would be violated by the very actions Mariner encouraged Azzopardi to take on its behalf.

**C. Kevin Garvey**

66. Kevin Garvey began working as a financial advisor for Edelman's predecessor Edelman Financial Services, LLC, in January 2012 and worked continuously for Edelman Financial Services, LLC and then Edelman until his abrupt resignation on February 3, 2023.

67. During his employment, Edelman paid Garvey to, among other things, develop, solidify, enhance, and expand Edelman's goodwill for and on behalf of Edelman. Edelman also provided client referrals based on its extensive, multi-million-dollar marketing efforts and allowed Garvey to access and utilize Edelman's proprietary market analyses and investment strategies to carry out his duties on behalf of Edelman. Edelman also paid for business expenses to help Garvey develop, maintain, solidify, and expand customer relationships and goodwill on Edelman's behalf.

68. One of the ways Edelman protects its goodwill, trade secrets, and confidential information is through standard post-employment restrictive covenant agreements.

69. On or about January 9, 2012, Garvey entered into an employment agreement with Edelman Financial Services, LLC, a predecessor of Edelman Financial Engines, LLC, in which he agreed to a restrictive covenant prohibiting him, for two years after his employment ended, from (among other things) soliciting, engaging in, diverting, or accepting any business from the clients with whom he dealt with during his employment. This agreement also required him to maintain the confidentiality of Edelman's confidential, proprietary and trade secret information, which included the identifies of the client's he had been servicing.

70. On or about December 3, 2019, Garvey entered into and signed a Phantom Unit Award Agreement under the Edelman Financial Engines, L.P. 2018 Class B Unit Incentive Plan, which includes a Restrictive Covenant Agreement.

71. Under the Class B Incentive Plan, Garvey received certain benefits, including "phantom units" of Edelman equity that entitled him to dividend payments.

72. Garvey agreed to be bound by the terms of the Restrictive Covenant Agreement, “in consideration of the mutual covenants contained” therein and that the Restrictive Covenant Agreement was supported by “other valuable consideration, the receipt and adequacy of” which Garvey expressly acknowledged.

73. Under Section 1(a)(1) of the Restrictive Covenant Agreement, Garvey agreed to forever hold in confidence proprietary or confidential information, including “information relating to customers, Clients, Potential Clients, . . . any customer, Client or Potential Client lists, Client or Potential Client financial and personal information.”

74. Under Section 4(b) of the Agreement, Garvey agreed to the following:

Participant hereby agrees that Participant will not. . . directly or indirectly, individually or through an agent, employee, or on behalf of another, as an employee, director, owner, partner, member, sole proprietor, consultant, agent, representative, shareholder, or in any other manner or capacity whatsoever, during the Restricted Period:<sup>4</sup>

(1) Initiate contact with, or otherwise solicit, persuade, or induce or attempt to solicit, persuade, or induce, any Client with whom Participant has worked, communicated or dealt on behalf of the Partnership Group, or any other Client that received services from any office, branch or principal work location at which Participant was based, to terminate, reduce or not renew its relationship with the Partnership Group; or

(2) Solicit, engage in, perform, divert or accept any business of the same or similar nature to the Business of the Partnership with or from any Client or Potential Client whom Participant has solicited (directly or indirectly) or with whom Participant has worked, communicated or dealt on behalf of the Partnership Group, or any other Client that received

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<sup>4</sup> The “Restricted Period” is “the period beginning on the date of [the Agreement] and ending on the date that is fifteen (15) months after the earlier of the date on which (i) Participant ceases to own any Phantom Units or (ii) Participant’s employment with the Partnership Group is terminated.” Section 4(e)(1).

services from any office, branch or principal work location at which Participant was based;

(3) Disclose the names of any Client or Potential Client to any other person, firm, corporation or other entity;

...

(7) Assist any person, firm, entity, employer, business associate or member of Participant's family to commit any of the foregoing acts.

75. Section 1 and Section 4 of the Restrictive Covenant Agreement prevent Garvey from disclosing to competitors or using for his own benefit the identities of clients or potential clients, disclosing to competitors, or using for his own benefit the amount of AUM clients place with Edelman, and soliciting Edelman clients that he previously worked with for a period of fifteen (15) months after the end of his employment.

76. Section 4 also prevents Garvey from accepting any business from clients that he previously worked with while at Edelman for a period of fifteen (15) months after the end of his employment.

77. Mariner recruited Garvey and solicited him to leave Edelman and move the Edelman Clients he was servicing and their AUM to Mariner. Upon information and belief, Mariner asked for and was provided a copy of Garvey's Restrictive Covenant Agreement with Edelman. Based on its review of Garvey's agreements with Edelman, Mariner provided advice to Garvey on how to position himself to best defend a lawsuit for breach of the Restrictive Covenant Agreement.

78. Upon information and belief, Mariner also asked for and received details about the Edelman clients Garvey was servicing, including their assets under management. Based on this data, Mariner determined a compensation package for Garvey that was sized on the assumption

that Garvey would, with Mariner's participation and assistance, solicit the Edelman clients Garvey was servicing to move their business with him to Mariner.

79. Upon information and belief, Mariner required Garvey to sign a Non-Solicitation and Confidentiality Agreement with Mariner. This agreement, among other things, contained covenants that were longer in duration and at least as restrictive as the covenants in Garvey's Restrictive Covenant Agreement with Edelman.

80. Garvey resigned from Edelman on February 3, 2023, without any notice. Immediately after he resigned, Garvey began working for Mariner.

81. Upon information and belief, Mariner and Garvey conspired to convey Edelman's trade secrets and proprietary client information to Mariner and solicit and accept business from those Edelman clients in violation of Garvey's Restrictive Covenant Agreement with Edelman.

82. With Mariner's assistance, Garvey recreated a list of Edelman clients he had serviced, which he then conveyed to Mariner and used on Mariner's behalf. In doing so, Garvey breached obligations with Edelman by disclosing the identities of Edelman clients and misappropriated Edelman's trade secret client list of the individuals Garvey had been servicing, including information about their AUM and ability to make further investments. This information identifying individuals as having significant assets to invest and the ability to make future investments is not publicly available and constitutes one of Edelman's most valuable trade secrets.

83. Mariner unlawfully accepted and used this proprietary information knowing that Garvey had violated the terms of the Edelman Restrictive Covenant Agreement. Mariner actively encouraged Garvey to breach the Edelman Restrictive Covenant Agreement by, among other things, tying his compensation to performance milestones that assumed he would work to bring in the Edelman clients he had been servicing.

84. With Mariner’s assistance, Garvey further breached the Restrictive Covenant Agreement by initiating contact with the Edelman clients he had identified. He did this with the purpose of soliciting those clients to leave Edelman and move their accounts and assets under management to Mariner. When Edelman clients agreed to move their accounts, Garvey accepted their business in further violation of his Restrictive Covenant Agreement.

85. Garvey has admitted to immediately initiating contact with and soliciting Edelman clients after his resignation in violation of the Restrictive Covenant Agreement. In his own declaration, filed as an exhibit to his Memorandum in Opposition to Motion for Temporary Injunction in *Edelman Financial Engines, LLC and Edelman Financial Engines, L.P. v. Kevin Garvey*, Case No. 50-2023-CA-001855-XXXX-MB (Circuit Court Palm Beach County, Florida), Garvey stated that “following [his] resignation from Edelman. . . [he] took steps to announce to clients. . . that [he] had left Edelman and had become associated with Mariner.” Kevin Garvey Declaration ¶ 20. If Garvey managed to get the client on the phone, he “informed the client of the professional move. . . and provided [his] new telephone number, email, and office address.” *Id.* ¶ 21.

86. Publicly available filings in *Edelman Financial Engines, LLC and Edelman Financial Engines, L.P. v. Kevin Garvey*, Case No. 50-2023-CA-001855-XXXX-MB (Circuit Court Palm Beach County, Florida) similarly outline Garvey’s blatant unlawful solicitation of Edelman clients. According to Garvey’s Memorandum in Opposition to Motion for Temporary Injunction, “[o]nly where a client requested further contact or information has Kevin followed-up so that those clients could make *informed* decisions concerning *their own* financial futures . . . [a]fter Kevin resigned. . . he utilized publicly-available resources. . .to find contact information for clients who were not family or friends. For the clients he reached, he. . .informed the client of the

professional move he had made. For those clients who did not answer his call and whose voicemail he reached, Kevin left a message stating that he had left Edelman and joined Mariner, providing his new telephone number, email and office address.” Memorandum in Opposition to Motion for Temporary Injunction pp. 1, 4 (emphasis in original).<sup>5</sup>

87. These and other communications, including communications to clients that responded to Garvey’s initial calls, constituted improper solicitation under the Restrictive Covenant Agreement, which Mariner knew from its review of the agreement.

88. These unlawful solicitations, acceptance of business and disclosures of Edelman trade secrets caused the departure of 168 Edelman clients representing \$127M in AUM. Upon information and belief, Mariner accepted the AUM and the fee revenue it represented knowing that it was the fruit of Garvey’s violations of the Restrictive Covenant Agreement with Edelman, which Mariner encouraged, aided, and abetted.

89. Mariner’s knowing facilitation of Garvey’s breaches of his Edelman Restrictive Covenant Agreement was particularly egregious in light of the terms of Mariner’s own Non-Solicitation and Confidentiality Agreement with Garvey, which would be violated by the very actions Mariner encouraged Garvey to take on its behalf.

#### **D. Brian McGuire**

90. Brian McGuire began working as a financial advisor for Edelman’s predecessor Edelman Financial Services, LLC, in April 2014 and worked continuously for Edelman Financial Services, LLC and then Edelman until his abrupt resignation on March 24, 2023.

91. During his employment, Edelman paid McGuire to, among other things, develop, solidify, enhance, and expand Edelman’s goodwill for and on behalf of Edelman. Edelman also

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<sup>5</sup> On March 21, 2023, the Circuit Court of Palm Beach County entered a Temporary Injunction against Garvey.

provided client referrals based on its extensive, multi-million-dollar marketing efforts and allowed McGuire to access and utilize Edelman’s proprietary market analyses and investment strategies to carry out his duties on behalf of Edelman. Edelman also paid for business expenses to help McGuire develop, maintain, solidify, and expand customer relationships and goodwill on Edelman’s behalf.

92. One of the ways Edelman protects its goodwill, trade secrets, and confidential information is through standard post-employment restrictive covenant agreements.

93. During his employment at Edelman, McGuire entered into and signed three separate agreements containing restrictive covenants preventing him from disclosing confidential information, including client lists, and prohibiting the solicitation of clients he previously serviced during his employment at Edelman for a distinct period after his employment ended.

94. On or about April 22, 2014, McGuire entered into and signed an Employment Agreement with Edelman. Pursuant to ¶ 3(a), McGuire agreed “not [to] disclose any Confidential Information, directly or indirectly, or use them in any way. . . during the term of [the] Agreement or *at any time thereafter* . . . . (emphasis added). Confidential information explicitly included “client lists.” Employment Agreement, ¶ 3(a).

95. Section 4(b) of the Employment Agreement prohibited McGuire from engaging in the following behavior for a period of two years after his termination:

(1) Initiat[ing] contact with, directly or indirectly, or otherwise solicit[ing] or induc[ing] or attempt[ing] to solicit or induce, any Client with whom [McGuire] ha[d] dealt during [McGuire’s] term of employment. . .

(2) Solicit[ing], engag[ing] in, perform[ing], divert[ing] or accept[ing] any business of the same or similar nature of the Business of the Employer with or from any Client with whom [McGuire] ha[d] dealt during [McGuire’s] term of employment hereunder; or



(3) Disclos[ing] the names of any Past Client, Present Client, or Potential Client of Employer to any other person, firm, corporation or other entity; or. . .

(6) Assist any person, firm, entity, employer, business associate. . .to commit any of the foregoing acts.

96. Section 3(a) and Section 4(b) of the Employment Agreement prevent McGuire from disclosing to competitors or using for his own benefit the identities of clients or potential clients and soliciting Edelman clients that he previously worked with for a period of two years after the end of his employment.

97. On or about February 19, 2016, Edelman and McGuire entered into the Proprietary Information, Non-Solicitation, Non-Disparagement and Arbitration Agreement (“Confidentiality Agreement”), which contains confidentiality obligations.

98. Under Section 1(a) of the Confidentiality Agreement, McGuire agreed that:

[A]t all times during the term of this Agreement and after the termination of employment, the Employee shall: (i) hold in confidence and refrain from disclosing to any other party all information of a proprietary or confidential nature, whether written or oral, tangible or intangible, that concerns EFS or the Company or any of their subsidiaries or affiliates and their business and operations, and all files, letters, memoranda, reports, records, computer disks or other computer storage medium, data, specifications, models or any photographic or other tangible materials containing proprietary or confidential information (collectively, “*Proprietary Confidential Information*”), such as information relating to customers, Clients, Potential Clients, vendors, service providers, business and investment plans, financial and strategic data, sales, promotional or marketing plans, projections, contracts, research, financial investment and other products and programs, operations, techniques, methodologies, practices or strategies, any expansion plans. . .any customer, ***Client or Potential Client lists, Client or Potential Client financial and personal information***, any trade secrets, and any confidential and/or proprietary knowledge, data, or information received from third parties (“*Third Party Information*”).

99. Section 4(b) of the Confidentiality Agreement also sets forth additional obligations that McGuire agreed to, stating in relevant part:

(b) Employee hereby agrees that Employee will not (other than on behalf of EFS while employed by EFS), individually or through an agent, employee, or on behalf of another, as an employee, director, owner, partner, member, sole proprietor, consultant, agent, representative, shareholder, or in any other manner or capacity whatsoever, while employed by EFS and for the Restricted Period<sup>6</sup>(as defined herein). . .

(3) Disclose the names of any Client or Potential Client of EFS or Company to any other person, firm, corporation or other entity; or

....

(7) Assist any person, firm, entity, employer, business associate or member of Employee's family to commit any of the foregoing acts.

100. Sections 1 and Section 4 of the Confidentiality Agreement prevent McGuire from disclosing to competitors or using for his own benefit Edelman confidential, proprietary and trade secret information, including the identities of clients or potential clients, the amount of AUM clients placed with Edelman, the specific fees Edelman charged the clients McGuire serviced on Edelman's behalf and the specific fees Edelman paid McGuire for servicing Edelman clients.

101. On or about December 3, 2019, McGuire entered into and signed a Phantom Unit Award Agreement under the Edelman Financial Engines, L.P. 2018 Class B Unit Incentive Plan, which includes a Restrictive Covenant Agreement.

102. Under the Class B Incentive Plan, McGuire received certain benefits, including "phantom units" of Edelman equity that entitled him to dividend payments.

103. McGuire agreed to be bound by the terms of the Restrictive Covenant Agreement, "in consideration of the mutual covenants contained" therein and that the Restrictive Covenant

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<sup>6</sup> The Restricted Period includes the period of fifteen (15) months after the date of termination. See Section 4(e).

Agreement was supported by “other valuable consideration, the receipt and adequacy of” which McGuire expressly acknowledged.

104. Under Section 1(a)(1) of the Restrictive Covenant Agreement, McGuire agreed to forever hold in confidence proprietary or confidential information, including “information relating to customers, Clients, Potential Clients, . . . any customer, Client or Potential Client lists, Client or Potential Client financial and personal information.”

105. Under Section 4(b) of the Agreement, McGuire agreed to the following:

Participant hereby agrees that Participant will not. . . directly or indirectly, individually or through an agent, employee, or on behalf of another, as an employee, director, owner, partner, member, sole proprietor, consultant, agent, representative, shareholder, or in any other manner or capacity whatsoever, during the Restricted Period:<sup>7</sup>

(1) Initiate contact with, or otherwise solicit, persuade, or induce or attempt to solicit, persuade, or induce, any Client with whom Participant has worked, communicated or dealt on behalf of the Partnership Group, or any other Client that received services from any office, branch or principal work location at which Participant was based, to terminate, reduce or not renew its relationship with the Partnership Group; or

(2) Solicit, engage in, perform, divert or accept any business of the same or similar nature to the Business of the Partnership with or from any Client or Potential Client whom Participant has solicited (directly or indirectly) or with whom Participant has worked, communicated or dealt on behalf of the Partnership Group, or any other Client that received services from any office, branch or principal work location at which Participant was based;

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<sup>7</sup> The “Restricted Period” is “the period beginning on the date of [the Agreement] and ending on the date that is fifteen (15) months after the earlier of the date on which (i) Participant ceases to own any Phantom Units or (ii) Participant’s employment with the Partnership Group is terminated.” Section 4(e)(1).

(3) Disclose the names of any Client or Potential Client to any other person, firm, corporation or other entity;

...

(7) Assist any person, firm, entity, employer, business associate or member of Participant's family to commit any of the foregoing acts.

106. Section 1 and Section 4 of the Restrictive Covenant Agreement prevent McGuire from disclosing to competitors or using for his own benefit the identities of clients or potential clients, disclosing to competitors or using for his own benefit the amount of AUM clients place with Edelman, and soliciting Edelman clients that he previously worked with for a period of fifteen (15) months after the end of his employment.

107. Section 4 also prevents McGuire from accepting any business from clients that he previously worked with while at Edelman for a period of fifteen (15) months after the end of his employment.

108. Mariner recruited McGuire and solicited him to leave Edelman and move the Edelman Clients he was servicing and their AUM to Mariner. Upon information and belief, Mariner asked for and was provided a copy of McGuire's Restrictive Covenant Agreement with Edelman. Based on its review of McGuire's agreements with Edelman, Mariner provided advice to McGuire on how to position himself to best defend a lawsuit for breach of the Restrictive Covenant Agreement.

109. Upon information and belief, Mariner also asked for and received details about the Edelman clients McGuire was servicing, including their assets under management. Based on this data, Mariner determined a compensation package for McGuire that was sized on the assumption that McGuire would, with Mariner's participation and assistance, solicit the Edelman clients McGuire was servicing to move their business with him to Mariner.

110. Upon information and belief, Mariner required McGuire to sign a Non-Solicitation and Confidentiality Agreement with Mariner. This agreement, among other things, contained covenants that were longer in duration and at least as restrictive as the covenants in McGuire's Restrictive Covenant Agreement with Edelman.

111. McGuire resigned from Edelman on March 24, 2023, without any notice. Immediately after he resigned, McGuire began working for Mariner.

112. Upon information and belief, Mariner and McGuire conspired to convey Edelman's trade secrets and proprietary client information to Mariner and solicit and accept business from those Edelman clients in violation of McGuire's Restrictive Covenant Agreement with Edelman.

113. With Mariner's assistance, McGuire recreated a list of Edelman clients he had serviced, which he then conveyed to Mariner and used on Mariner's behalf. In doing so, McGuire breached obligations to Edelman by disclosing the identities of Edelman clients and misappropriated Edelman's trade secret client list of the individuals McGuire had been servicing, including information about their AUM and ability to make further investments. This information identifying individuals as having significant assets to invest and the ability to make future investments is not publicly available and constitutes one of Edelman's most valuable trade secrets. Mariner accepted and used this proprietary information knowing that McGuire had violated the terms of his Restrictive Covenant Agreement.

114. Mariner unlawfully accepted and used this proprietary information knowing that McGuire had violated the terms of the Edelman Restrictive Covenant Agreement. Mariner actively encouraged McGuire to breach the Edelman Restrictive Covenant Agreement by, among other things, tying his compensation to performance milestones that assumed he would work to bring in the Edelman clients he had been servicing.

115. With Mariner’s assistance, McGuire breached the Restrictive Covenant Agreement by initiating contact with the Edelman clients he had identified on the list provided to Mariner. He did this with the purpose of soliciting those clients to leave Edelman and move their accounts and assets under management to Mariner. When Edelman clients agreed to move their accounts, McGuire accepted their business in further violation of his Restrictive Covenant Agreement.

116. McGuire’s efforts are outlined in an Excel spreadsheet that was discussed on the record at a public hearing in the Circuit Court for Montgomery County, Maryland. At that time, McGuire contacted 111 Edelman clients, accepting business from at least 55 of them. In his solicitations with Edelman clients, McGuire encouraged Edelman clients to move to Mariner by enticing them with lower fees. To one Edelman client, McGuire indicated that he was “able to do all of what [he could] do at a lower cost.” To another Edelman client, McGuire claimed he could even “do *more* at a lower cost.” (emphasis added).<sup>8</sup>

117. These and other communications constituted improper solicitation under the Restrictive Covenant Agreement, which Mariner knew from its review of the agreement.

118. These unlawful solicitations, acceptance of business and disclosures of Edelman trade secrets caused the departure of 103 Edelman clients representing \$95M in AUM. Upon information and belief, Mariner accepted the AUM and the fee revenue it represented knowing that it was the fruit of McGuire’s violations of the Restrictive Covenant Agreement with Edelman, which Mariner encouraged, aided, and abetted.

119. Mariner’s knowing facilitation of McGuire’s breaches of his Edelman Restrictive Covenant Agreement was particularly egregious in light of the terms of Mariner’s own Non-

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<sup>8</sup> On May 11, 2023, the Circuit Court of Montgomery County, Maryland denied Edelman’s motion for preliminary injunction and the parties are currently in arbitration as mandated by the Restrictive Covenant Agreement.

Solicitation and Confidentiality Agreement with McGuire, which would be violated by the very actions Mariner encouraged McGuire to take on its behalf.

**E. John Geilfus**

120. John Geilfus began working for Edelman's predecessor Edelman Financial Services, LLC in 2018 and worked continuously for Edelman Financial Services, LLC and then Edelman until his abrupt resignation on May 9, 2023.

121. During his employment, Edelman paid Geilfus to, among other things, develop, solidify, enhance, and expand Edelman's goodwill for and on behalf of Edelman. Edelman also provided client referrals based on its extensive, multi-million-dollar marketing efforts and allowed Geilfus to access and utilize Edelman's proprietary market analyses and investment strategies to carry out his duties on behalf of Edelman. Edelman also paid for business expenses to help Geilfus develop, maintain, solidify, and expand customer relationships and goodwill on Edelman's behalf.

122. One of the ways Edelman protects its goodwill, trade secrets, and confidential information is through standard post-employment restrictive covenant agreements. As an employee with Edelman and its predecessors, Geilfus entered into restrictive covenant agreements.

123. On or about December 15, 2021, Edelman and Geilfus entered into the Confidential Information and Invention Assignment Agreement ("Confidential Information Agreement"), which contains confidentiality obligations.

124. Under Section 2 of the Confidential Information Agreement, Geilfus agreed to "not engage in any use or disclosure of Confidential Information. . ." for reasons other than performing his job functions at Edelman. Section 2(a). Confidential Information is defined as "an item of information or compilation of information....related to Company's business that [the employee] acquire[s] or gain[s] access to in the course of [the employee's] Relationship with Company, that Company has not authorized public disclosure of, and that is not readily available through proper

means to the public or persons outside Company. . . including, but not limited to. . .customer lists and customers (including, but not limited to, customers of the Company on whom [the employee] called or with whom [the employee] became acquainted during the term of [the employee’s] employment). . .” Section 2(b).

125. Under Section 6(b), Geilfus agreed that

(b) During [his] relationship with the Company, and for a period of twelve (12) months after [his] Relationship with the Company ends, [he] shall not, directly or through others, solicit any company customer, or a licensor or licensee of the Company’s products (collectively “Covered Customers”), that [he has] Material Contact with in the Look Back Period, for the purpose of providing or selling any business, products or services that are competitive with those offered (or demonstrably under development) by the Company that [he] had involvement with or was provided Confidential Information about in the Look Back Period.

126. Material Contact is defined as contact resulting from the relationship with the Company that gives rise to a protectable interest. Section 6(b). Material Contact is presumed if (1) there was a material business-related contact between the Covered Customer and the employee or someone being supervised by the employee on behalf of the company, (2) the employee was provided access to Confidential Information about the Covered Customer or (3) the employee received commissions or other beneficial credit for business conducted with the Covered Customers. Section 6(b).

127. The “Look Back period” refers to the last two years of employment prior to termination. Section 6(a).

128. Section 2 and Section 6 of the Confidential Information Agreement prevent Geilfus from disclosing to competitors or using for his own benefit the identities of clients or potential clients, disclosing to competitors or using for his own benefit the amount of AUM clients place with Edelman, and disclosing to competitors or using for his own benefit the amount of fees



Edelman charged the clients Geilfus serviced, and soliciting Edelman clients that he previously worked with for a period of twelve months after the end of his employment.

129. Mariner recruited Geilfus and solicited him to leave Edelman and move the Edelman Clients he was servicing and their AUM to Mariner. Upon information and belief, Mariner asked for and was provided a copy of Geilfus's Confidential Information Agreement with Edelman. Based on its review of Geilfus's agreements with Edelman, Mariner provided advice to Geilfus on how to position himself to best defend a lawsuit for breach of the Confidential Information Agreement.

130. Upon information and belief, Mariner also asked for and received details about the Edelman clients Geilfus was servicing, including their assets under management. Based on this data, Mariner determined a compensation package for Geilfus that was sized on the assumption that Geilfus would, with Mariner's participation and assistance, solicit the Edelman clients Geilfus was servicing to move their business with him to Mariner.

131. Mariner required Geilfus to sign a Confidentiality Agreement with Mariner. Mariner's Confidentiality Agreement, defines confidential information as information "not generally and publicly known." According to the Mariner Confidentiality Agreement, this includes "identities of customers or clients" and "prospective customers or clients."

132. Upon information and belief, Mariner required Geilfus to sign a Non-Solicitation Agreement that was identical to the agreements it required other Departed Edelman Planners to sign. This agreement, among other things, contained covenants that were longer in duration and at least as restrictive as the covenants in Geilfus's Confidential Information Agreement with Edelman.

133. Upon information and belief, Mariner and Geilfus conspired to convey Edelman's trade secrets and proprietary client information to Mariner and solicit business from those Edelman clients in violation of Geilfus's Confidential Information Agreement with Edelman.

134. This is evidenced by a Mariner document Edelman discovered on Geilfus's Edelman computer after his departure titled "Due Diligence Questionnaire for Lift Out." The use of the term "lift outs" conveys Mariner's desire to "lift out" Edelman clients. The Questionnaire directly asks Geilfus to disclose Edelman trade secrets including the "financial plan" for clients Geilfus was servicing and Edelman's "investment modeling" for those clients. Upon information and belief, Mariner required all the Departed Edelman Planners to fill out such a form.

135. Geilfus resigned from Edelman on May 9, 2023, without any notice. Immediately after he resigned, Geilfus began working for Mariner.

136. With Mariner's assistance, Geilfus recreated a list of Edelman clients he had, which he then conveyed to Mariner and used on Mariner's behalf. In doing so, Geilfus breached obligations to Edelman by disclosing the identities of Edelman clients and misappropriated Edelman's trade secret client list of the individuals Geilfus had been servicing, including information about their AUM and ability to make further investments. This information identifying individuals as having significant assets to invest and the ability to make future investments is not publicly available and constitutes one of Edelman's most valuable trade secrets.

137. Mariner unlawfully accepted and used this proprietary information knowing that Geilfus had violated the terms of the Edelman Confidential Information Agreement. Mariner actively encouraged Geilfus to breach the Edelman Confidential Information Agreement by, among other things, tying his compensation to performance milestones that assumed he would work to bring in the Edelman clients he had been servicing.

138. With Mariner's assistance, Geilfus immediately began contacting the Edelman clients he had identified on the list provided to Mariner. He did this with the purpose of soliciting those clients to leave Edelman and move their accounts and AUM to Mariner.

139. These and other communications constituted improper solicitation under the Confidential Information Agreement, which Mariner knew from its review of the agreement.

140. These unlawful solicitations and disclosures of Edelman trade secrets caused the departure of 12 Edelman clients representing \$4.7M in AUM. Upon information and belief, Mariner accepted the AUM and the fee revenue it represented knowing that it was the fruit of Geilfus's violations of the Confidential Information Agreement with Edelman, which Mariner encouraged, aided, and abetted.

141. Mariner's knowing facilitation of Geilfus's breaches of his Edelman Confidential Information Agreement was particularly egregious in light of the terms of Mariner's own Non-Solicitation and Confidentiality Agreements with Geilfus, which would be violated by the very actions Mariner encouraged Geilfus to take on its behalf.

#### **F. Seth Kelly**

142. Seth Kelly began working as a financial advisor for Edelman's predecessor Edelman Financial Services, LLC, in 2013 and worked continuously for Edelman Financial Services, LLC and then Edelman until his abrupt resignation on May 12, 2023.

143. During his employment, Edelman paid Kelly to, among other things, develop, solidify, enhance, and expand Edelman's goodwill for and on behalf of Edelman. Edelman also provided client referrals based on its extensive, multi-million-dollar marketing efforts and allowed Kelly to access and utilize Edelman's proprietary market analyses and investment strategies to carry out his duties on behalf of Edelman. Edelman also paid for business expenses to help Kelly develop, maintain, solidify, and expand customer relationships and goodwill on Edelman's behalf.

144. One of the ways Edelman protects its goodwill, trade secrets, and confidential information is through standard post-employment restrictive covenant agreements.

145. During his employment at Edelman, Kelly signed multiple agreements with restrictive covenant agreements, including his Employment Agreement.<sup>9</sup>

146. On or about September 9, 2013, Kelly entered into and signed an Employment Agreement with Edelman. Pursuant to ¶ 3(a), Kelly agreed “not [to] disclose any Confidential Information, directly or indirectly, or use them in any way. . .during the term of [the] Agreement or *at any time thereafter* . . . . (emphasis added). Confidential information explicitly included “client lists.” Employment Agreement, ¶ 3(a).

147. Section 4(b) of the Employment Agreement prohibited Kelly from engaging in the following behavior for a period of two years after his termination:

- (1) Initiat[ing] contact with, directly or indirectly, or otherwise solicit[ing] or induc[ing] or attempt[ing] to solicit or induce, any Client with whom [Kelly] ha[d] dealt during [Kelly’s] term of employment. . .
- (2) Solicit[ing], engag[ing] in, perform[ing], divert[ing] or accept[ing] any business of the same or similar nature of the Business of the Employer with or from any Client with whom [Kelly] ha[d] dealt during [Kelly’s] term of employment hereunder; or
- (3) Disclos[ing] the names of any Past Client, Present Client, or Potential Client of Employer to any other person, firm, corporation or other entity; or. . .
- (6) Assist any person, firm, entity, employer, business associate. . .to commit any of the foregoing acts.

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<sup>9</sup> During his employment, Kelly signed four separate agreements containing prohibitions on sharing confidential information, including client lists, and restrictions on soliciting clients that he worked with while at Edelman for a period of time after his employment ended. These agreements are as follow: (1) December 17, 2011 Confidentiality and Non-Solicitation Agreement ¶ 1 (confidential information) and ¶ 2 (nonsolicitation provisions); (2) September 9, 2013 Employment Agreement (described above); (3) February 19, 2016 Proprietary Information, Non-Solicitation, Non-Disparagement and Arbitration Agreement ¶ 1 (confidential information) and ¶ 4 (nonsolicitation provisions); and (4) December 3, 2019 Phantom Unit Award Agreement under the Edelman Financial Engines, L.P. 2018 Class B Unit Incentive Plan (described above).

148. Section 3(a) and Section 4(b) of the Employment Agreement prevent Kelly from disclosing to competitors or using for his own benefit the identities of clients or potential clients and soliciting Edelman clients that he previously worked with for a period of two years after the end of his employment.

149. On or about December 3, 2019, Kelly entered into and signed a Phantom Unit Award Agreement under the Edelman Financial Engines, L.P. 2018 Class B Unit Incentive Plan, which includes a Restrictive Covenant Agreement.

150. Under the Class B Incentive Plan, Kelly received certain benefits, including “phantom units” of Edelman equity that entitled him to dividend payments.

151. Kelly agreed to be bound by the terms of the Restrictive Covenant Agreement, “in consideration of the mutual covenants contained” therein and that the Restrictive Covenant Agreement was supported by “other valuable consideration, the receipt and adequacy of” which Kelly expressly acknowledged.

152. Under Section 1(a)(1) of the Restrictive Covenant Agreement, Kelly agreed to forever hold in confidence proprietary or confidential information, including “information relating to customers, Clients, Potential Clients, . . . any customer, Client or Potential Client lists, Client or Potential Client financial and personal information.”

153. Under Section 4(b) of the Restrictive Covenant Agreement, Kelly agreed to the following:

Participant hereby agrees that Participant will not. . . directly or indirectly, individually or through an agent, employee, or on behalf of another, as an employee, director, owner, partner, member, sole

proprietor, consultant, agent, representative, shareholder, or in any other manner or capacity whatsoever, during the Restricted Period:<sup>10</sup>

(1) Initiate contact with, or otherwise solicit, persuade, or induce or attempt to solicit, persuade, or induce, any Client with whom Participant has worked, communicated or dealt on behalf of the Partnership Group, or any other Client that received services from any office, branch or principal work location at which Participant was based, to terminate, reduce or not renew its relationship with the Partnership Group; or

(2) Solicit, engage in, perform, divert or accept any business of the same or similar nature to the Business of the Partnership with or from any Client or Potential Client whom Participant has solicited (directly or indirectly) or with whom Participant has worked, communicated or dealt on behalf of the Partnership Group, or any other Client that received services from any office, branch or principal work location at which Participant was based;

(3) Disclose the names of any Client or Potential Client to any other person, firm, corporation or other entity;

...

(7) Assist any person, firm, entity, employer, business associate or member of Participant's family to commit any of the foregoing acts.

154. Section 1 and Section 4 of the Restrictive Covenant Agreement prevent Kelly from disclosing to competitors or using for his own benefit the identities of clients or potential clients, disclosing to competitors or using for his own benefit the amount of AUM clients place with Edelman, and soliciting Edelman clients that he previously worked with for a period of fifteen (15) months after the end of his employment.

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<sup>10</sup> The "Restricted Period" is "the period beginning on the date of [the Agreement] and ending on the date that is fifteen (15) months after the earlier of the date on which (i) Participant ceases to own any Phantom Units or (ii) Participant's employment with the Partnership Group is terminated." Section 4(e)(1).

155. Section 4 also prevents Kelly from accepting any business from clients that he previously worked with while at Edelman for a period of fifteen (15) months after the end of his employment.

156. Mariner recruited Kelly and solicited him to leave Edelman and move the Edelman Clients he was servicing and their AUM to Mariner. Upon information and belief, Mariner asked for and was provided a copy of Kelly's Restrictive Covenant Agreement with Edelman. Based on its review of Kelly's agreements with Edelman, Mariner provided advice to Kelly on how to position himself to best defend a lawsuit for breach of the Restrictive Covenant Agreement.

157. Upon information and belief, Mariner also asked for and received details about the Edelman clients Kelly was servicing, including their assets under management. Based on this data, Mariner determined a compensation package for Kelly that was sized on the assumption that Kelly would, with Mariner's participation and assistance, solicit the Edelman clients Kelly was servicing to move their business with him to Mariner.

158. Upon information and belief, Mariner required Kelly to sign a Non-Solicitation and Confidentiality Agreement with Mariner that was identical to the agreement it required other Departed Edelman Planners to sign. This agreement, among other things, contained covenants that were longer in duration and at least as restrictive as the covenants in Kelly's Restrictive Covenant Agreement with Edelman.

159. Kelly resigned from Edelman on May 12, 2023, without any notice. Immediately after he resigned, Kelly began working for Mariner.

160. Upon information and belief, Mariner and Kelly conspired to convey Edelman's trade secrets and proprietary client information to Mariner and solicit and accept business from those Edelman clients in violation of Kelly's Restrictive Covenant Agreement with Edelman.

161. With Mariner’s assistance, Kelly recreated a list of Edelman clients he had serviced, which he then conveyed to Mariner and used on Mariner’s behalf. In doing so, Kelly breached obligations to Edelman by disclosing the identities of Edelman clients and misappropriated Edelman’s trade secret client list of the individuals Kelly had been servicing, including information about their AUM and ability to make further investments. This information identifying individuals as having significant assets to invest and the ability to make future investments is not publicly available and constitutes one of Edelman’s most valuable trade secrets.

162. Mariner accepted and used this proprietary information knowing that Kelly had violated the terms of his Restrictive Covenant Agreement. Mariner actively encouraged Kelly to breach the Edelman Confidential Information Agreement by, among other things, tying his compensation to performance milestones that assumed he would work to bring in the Edelman clients he had been servicing

163. With Mariner’s assistance, Kelly breached the Restrictive Covenant Agreement by immediately initiating contact with the Edelman clients he had identified on the list provided to Mariner. He further breached the Edelman agreement by soliciting those clients to leave Edelman and move their accounts and assets under management to Mariner.

164. For example, on or about May 18, 2023, Edelman was notified that Kelly had already contacted Edelman clients he previously serviced and successfully solicited them to transfer their funds to Mariner.

165. On or about May 24, 2023, Edelman employees were notified that Kelly was again calling and soliciting Edelman clients he previously serviced to transfer their funds to Mariner because “nobody at [Edelman]. . .[would know] their historical information,” the company had changed, and the fees were lower at Mariner.



166. In addition, on or about May 31, 2023, Edelman employees were notified that Kelly was encouraging Edelman clients he previously serviced to “make the move sooner rather than later” to Mariner.

167. These and other communications constituted improper solicitation under the Restrictive Covenant Agreement, which Mariner knew from its review of the agreement. Further, Kelly’s solicitous comments that “nobody at Edelman would know their historical information” was knowingly false because all such information was maintained in Edelman’s database.

168. These unlawful solicitations, acceptance of business and disclosures of Edelman trade secrets caused the departure of 184 Edelman clients representing \$92M in AUM. Upon information and belief, Mariner accepted the AUM and the fee revenue it represented knowing that it was the fruit of Kelly’s violations of the Restrictive Covenant Agreement with Edelman, which Mariner encouraged, aided, and abetted.

169. Mariner’s knowing facilitation of Kelly’s breaches of his Edelman Restrictive Covenant Agreement was particularly egregious in light of the terms of Mariner’s own Non-Solicitation and Confidentiality Agreement with Kelly, which would be violated by the very actions Mariner encouraged Kelly to take on its behalf.

**G. Jacob Mercer**

170. Jacob Mercer began working as a financial advisor for Edelman’s predecessor Edelman Financial Services, LLC, in October 2016 and worked continuously for Edelman Financial Services, LLC and then Edelman until his abrupt resignation on September 8, 2023.

171. During his employment, Edelman paid Mercer to, among other things, develop, solidify, enhance, and expand Edelman’s goodwill for and on behalf of Edelman. Edelman also provided client referrals based on its extensive, multi-million-dollar marketing efforts and allowed Mercer to access and utilize Edelman’s proprietary market analyses and investment strategies to

carry out his duties on behalf of Edelman. Edelman also paid for business expenses to help Mercer develop, maintain, solidify, and expand customer relationships and goodwill on Edelman's behalf.

172. One of the ways Edelman protects its goodwill, trade secrets, and confidential information is through standard post-employment restrictive covenant agreements.

173. On or about January 30, 2017, Mercer entered into and signed the Proprietary Information, Non-Solicitation, Non-Disparagement and Arbitration Agreement ("Confidentiality Agreement"), which contains confidentiality obligations.

174. Under Section 1(a) of the Confidentiality Agreement, Mercer agreed that:

[A]t all times during the term of this Agreement and after the termination of employment, the Employee shall: (i) hold in confidence and refrain from disclosing to any other party all information of a proprietary or confidential nature, whether written or oral, tangible or intangible, that concerns EFS or the Company or any of their subsidiaries or affiliates and their business and operations, and all files, letters, memoranda, reports, records, computer disks or other computer storage medium, data, specifications, models or any photographic or other tangible materials containing proprietary or confidential information (collectively, "*Proprietary Confidential Information*"), such as information relating to customers, Clients, Potential Clients, vendors, service providers, business and investment plans, financial and strategic data, sales, promotional or marketing plans, projections, contracts, research, financial investment and other products and programs, operations, techniques, methodologies, practices or strategies, any expansion plans. . .any customer, ***Client or Potential Client lists, Client or Potential Client financial and personal information***, any trade secrets, and any confidential and/or proprietary knowledge, data, or information received from third parties ("*Third Party Information*").

175. Section 4(b) of the Confidentiality Agreement also sets forth additional obligations that Mercer agreed to, stating in relevant part:

(b) Employee hereby agrees that Employee will not (other than on behalf of EFS while employed by EFS), individually or through an agent, employee, or on behalf of another, as an employee, director, owner, partner, member, sole proprietor, consultant, agent, representative, shareholder, or in any other manner or capacity

whatsoever, while employed by EFS and for the Restricted Period<sup>11</sup>(as defined herein). . .

(3) Disclose the names of any Client or Potential Client of EFS or Company to any other person, firm, corporation or other entity; or

. . . .

(7) Assist any person, firm, entity, employer, business associate or member of Employee's family to commit any of the foregoing acts.

176. Sections 1 and Section 4 of the Confidentiality Agreement prevent Mercer from disclosing to competitors or using for his own benefit Edelman confidential, proprietary and trade secret information, including the identities of clients or potential clients, the amount of AUM clients placed with Edelman, the specific fees Edelman charged the clients Mercer serviced on Edelman's behalf and the specific fees Edelman paid Mercer for servicing Edelman clients. .

177. Mariner recruited Mercer and solicited him to leave Edelman and move the Edelman Clients he was servicing and their AUM to Mariner. Upon information and belief, Mariner asked for and was provided a copy of Mercer's Restrictive Covenant Agreement with Edelman. Based on its review of Mercer's agreements with Edelman, Mariner provided advice to Mercer on how to position himself to best defend a lawsuit for breach of the Restrictive Covenant Agreement.

178. Upon information and belief, Mariner also asked for and received details about the Edelman clients Mercer was servicing, including their assets under management. Based on this data, Mariner determined a compensation package for Mercer that was sized on the assumption that Mercer would, with Mariner's participation and assistance, solicit the Edelman clients Mercer was servicing to move their business with him to Mariner.

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<sup>11</sup> The Restricted Period includes the period of fifteen (15) months after the date of termination. See Section 4(e).

179. Upon information and belief, Mariner required Mercer to sign a Non-Solicitation and Confidentiality Agreement with Mariner that was identical to the agreement it required other Departed Edelman Planners to sign. This agreement, among other things, contained covenants that were longer in duration and at least as restrictive as the covenants in Mercer's Restrictive Covenant Agreement with Edelman.

180. Mercer resigned from Edelman on September 8, 2023, without any notice. Immediately after he resigned, Mercer began working for Mariner.

181. Upon information and belief, Mariner and Mercer conspired to convey Edelman's trade secrets and proprietary client information to Mariner and solicit and accept business from those Edelman clients in violation of Mercer's Restrictive Covenant Agreement with Edelman.

182. With Mariner's assistance, Mercer recreated a list of Edelman clients he had serviced, which he then conveyed to Mariner and used on Mariner's behalf. In doing so, Mercer breached obligations to Edelman by disclosing the identities of Edelman clients and misappropriated Edelman's trade secret client list of the individuals Mercer had been servicing, including information about their AUM and ability to make further investments. This information identifying individuals as having significant assets to invest and the ability to make future investments is not publicly available and constitutes one of Edelman's most valuable trade secrets.

183. Mariner accepted and used this proprietary information knowing that Mercer had violated the terms of his Restrictive Covenant Agreement. Mariner actively encouraged Mercer to breach the Edelman Confidential Information Agreement by, among other things, tying his compensation to performance milestones that assumed he would work to bring in the Edelman clients he had been servicing

184. With Mariner's assistance, Mercer breached the Restrictive Covenant Agreement by immediately initiating contact with the Edelman clients he had identified on the list provided to Mariner. He further breached the Edelman agreement by soliciting those clients to leave Edelman and move their accounts and assets under management to Mariner.

185. These and other communications constituted improper solicitation under the Restrictive Covenant Agreement, which Mariner knew from its review of the agreement.

186. Through these unlawful solicitations, acceptance of business and disclosures of Edelman trade secrets, Mercer diverted 37 clients representing \$22M in AUM to move their business to Mariner. Upon information and belief, Mariner accepted the AUM and the fee revenue it represented knowing that it was the fruit of Mercer's violations of the Restrictive Covenant Agreement with Edelman, which Mariner encouraged, aided, and abetted.

187. Mariner's knowing facilitation of Mercer's breaches of his Edelman Restrictive Covenant Agreement was particularly egregious in light of the terms of Mariner's own Non-Solicitation and Confidentiality Agreement with Mercer, which would be violated by the very actions Mariner encouraged Mercer to take on its behalf.

#### **H. Michael Borgatti**

188. Michael Borgatti began working as a financial advisor for Edelman Financial Engines, LLC, in December 2020 and worked continuously for Edelman until his abrupt resignation on November 1, 2023.

189. During his employment, Edelman paid Borgatti to, among other things, develop, solidify, enhance, and expand Edelman's goodwill for and on behalf of Edelman. Edelman also provided client referrals based on its extensive, multi-million-dollar marketing efforts and allowed Borgatti to access and utilize Edelman's proprietary market analyses and investment strategies to

carry out his duties on behalf of Edelman. Edelman also paid for business expenses to help Borgatti develop, maintain, solidify, and expand customer relationships and goodwill on Edelman's behalf.

190. One of the ways Edelman protects its goodwill, trade secrets, and confidential information is through standard post-employment restrictive covenant agreements. As an employee with Edelman and its predecessors, Borgatti entered into restrictive covenant agreements.

191. On or about November 23, 2020, Edelman and Borgatti entered into the Confidential Information and Invention Assignment Agreement ("Confidentiality Agreement"), which contains confidentiality obligations.

192. Under Section 2(a) of the Confidentiality Agreement, Borgatti agreed that:

During my Relationship with the Company and for so long thereafter as the information continues to qualify as Confidential Information under this Agreement, I will not engage in any use or disclosure of Confidential Information except where it is (i) required in the ordinary course of the performance of my duties to the Company and undertaken for the benefit of the Company, (ii) expressly authorized in writing by the Board of Directors of the Company or its designee, or (iii) permitted as Protected Conduct (defined below) and limited in accordance with Section 8 (Protected Conduct) below. I will use all reasonable precautions to assure that Confidential Information, regardless of form or media, is protected and kept from unauthorized persons and unauthorized disclosure and use. I further agree not to make copies of such Confidential Information except as authorized by the Company, and to handle and store Confidential

193. Section 2(b) of the Confidentiality Agreement defines "Confidential Information" to include "customer lists and customers (including, but not limited to, customers of the Company on whom I called or with whom I became acquainted during the term of my employment," as well as "prices and costs."

194. Section 2 of the Confidentiality Agreement prevents Borgatti from disclosing to competitors or using for his own benefit Edelman confidential, proprietary and trade secret

information, including the identities of clients or potential clients, the amount of AUM clients placed with Edelman, the specific fees Edelman charged the clients Borgatti serviced on Edelman's behalf, and the specific fees Edelman paid Borgatti for servicing Edelman clients.

195. The Confidentiality Agreement also contains a "Customer Nonsolicit" provision.

Section 6(b) of the Confidentiality Agreement states:

During my Relationship with the Company, and for a period of twelve (12) months after my Relationship with the Company ends, I shall not, directly or through others, solicit any Company customer, or a licensor or licensee of the Company's products (collectively "Covered Customers"), that I have Material Contact with in the Look Back Period, for the purpose of providing or selling any business, products or services that are competitive with those offered (or demonstrably under development) by the Company that I had involvement with or was provided Confidential Information about in the Look Back Period. Where permitted by law, "Covered Customers" shall be presumed to include active customer prospects that I had Material Contact within the Look Back Period. "Material Contact" is contact resulting from my relationship with the Company that gives rise to a protectable interest under applicable law and will be presumed present if during the Look Back Period: (i) there was material business-related contact between the Covered Customer and me or someone being supervised by me on behalf of the Company; (ii) I was provided access to Confidential Information about the Covered Customer; or (iii) I received commissions or other beneficial credit for business conducted with the Covered Customer. The restriction created by this paragraph shall be referred to as my "Customer Nonsolicit" obligation.

196. Mariner recruited Borgatti and solicited him to leave Edelman and move the Edelman Clients he was servicing and their AUM to Mariner. Upon information and belief, Mariner asked for and was provided a copy of Borgatti's Confidentiality Agreement with Edelman. Based on its review of Borgatti's agreement with Edelman, Mariner provided advice to Borgatti on how to position himself to best defend a lawsuit from Edelman for breach of the Confidentiality Agreement.

197. Upon information and belief, Mariner also asked for and received details about the Edelman clients Borgatti was servicing, including their assets under management. Based on this data, Mariner determined a compensation package for Borgatti that was sized on the assumption that Borgatti would, with Mariner's participation and assistance, disclose Edelman clients Borgatti was servicing to Mariner.

198. Upon information and belief, Mariner required Borgatti to sign a Non-Solicitation and Confidentiality Agreement with Mariner that was identical to the agreement it required other Departed Edelman Planners to sign. This agreement, among other things, contained covenants that were longer in duration and at least as restrictive as the covenants in Borgatti's Restrictive Covenant Agreement with Edelman.

199. Borgatti resigned from Edelman on November 1, 2023, without any notice. Immediately after he resigned, Borgatti began working for Mariner.

200. Upon information and belief, Mariner and Borgatti conspired to convey Edelman's trade secrets and proprietary client information to Mariner and use it in violation of Borgatti's Confidentiality Agreement with Edelman.

201. Upon information and belief, with Mariner's assistance, Borgatti recreated a list of Edelman clients he had serviced, which he then conveyed to Mariner and used on Mariner's behalf. In doing so, Borgatti breached obligations to Edelman by disclosing the identities of Edelman clients and misappropriated Edelman's trade secret client list of the individuals Borgatti had been servicing, including information about their AUM and ability to make further investments. This information identifying individuals as having significant assets to invest and the ability to make future investments is not publicly available and constitutes one of Edelman's most valuable trade secrets.



202. Mariner unlawfully accepted and used this proprietary information knowing that Borgatti had violated the terms of the Confidentiality Agreement. Mariner actively encouraged Borgatti to breach the Confidentiality Agreement by, among other things, tying his compensation to performance milestones that assumed he would work to bring in the Edelman clients had been servicing.

203. On information and belief, with Mariner's assistance, Borgatti initiated contact with the Edelman clients he had identified on the list provided to Mariner and solicited those clients' business to Mariner in violation of Section 6(b) of the Confidentiality Agreement.

204. Mariner's knowing facilitation of Borgatti's breaches of his Edelman Confidentiality Agreement was particularly egregious in light of the terms of Mariner's own agreement with Borgatti, which would be violated by the very actions Mariner encouraged Borgatti to take on its behalf.

### **III. Mariner's Ongoing Unlawful Activity**

205. Mariner's efforts to misappropriate Edelman's trade secrets and poach its Clients and AUM is ongoing. In addition to the Departed Edelman Planners detailed above, Mariner has approached and is continuing to approach multiple other Edelman employees as part of the same unlawful campaign.

206. In addition to soliciting additional Edelman employees to depart with the intent to facilitate breaches of their restrictive covenant agreements and unlawful solicitation and acceptance of business from Edelman clients at Mariner, Mariner has used pressure tactics and published defamatory statements about Edelman.

207. Mariner agents have stated to at least one Edelman employee that "Edelman is a sinking ship." This statement, with its direct connotation that Edelman's business is failing, was false when made. As shown in publicly available information, Edelman has over \$245 billion in

Assets Under Management, recently completed a highly successful year in terms of profits and was ranked the #1 investment advisory firm by *Barron's* and other publications in 2022.

208. In an effort to foment anxiety and pressure Edelman employees to accept a position with Mariner, Mariner agents have also falsely stated that, because of Edelman's allegedly failing business "everyone is jumping overboard" and have rhetorically asked "do you really want to be the last planner standing at that firm." These statements, with their strong connotations that Edelman's business is failing, that Edelman is hemorrhaging employees terrified of losing their jobs, and that if current Edelman employees delay departing Edelman for Mariner, they are in danger of being without employment, were false when made. While Edelman has had some ordinary turnover and unusual departures because of Mariner's unlawful conduct, its record of retention among its planners is excellent. It has also hired over 50 new planners in the last two years to handle its growing business.

209. In another statement designed to pressure Edelman employees to depart for Mariner, at least one Mariner agent has openly stated that "We're running EFE out of business." While this statement may be an accurate disclosure of Mariner's unlawful goals, the unmistakable connotation that Edelman is in imminent danger of going "out of business" was false when made. While Mariner has caused Edelman grievous financial and reputational harm and misappropriated its trade secrets and proprietary information, Edelman is in no danger of imminent collapse.

210. Through its campaign of concerted tortious activity, Mariner has unlawfully purloined proprietary and confidential information concerning hundreds of Edelman clients and has procured hundreds of breaches of contract by the Departed Edelman Planners. To date, these breaches have caused the departure of at least 851 Edelman clients representing over \$621 million in Assets Under Management ("AUM").

**COUNT I**  
**(Defend Trade Secrets Act, 18 U.S.C. § 1839)**

211. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

212. Over many years, Edelman has expended significant time and resources developing and curating its proprietary database and compilation of confidential client lists, client information, referral sources, financial analysis, and client investment data. Edelman relies on that proprietary information in conducting its business, attracting customers, maintaining client relationships, and offering its services to existing and prospective clients.

213. Edelman's proprietary database and compilation of confidential client lists, client information, referral sources, financial analyses, and client investment data is information that is not generally known or publicly available. It is the result of Edelman's extensive investments in marketing, data analysis, data gathering and compilation, and development efforts, is immensely valuable and gives Edelman a competitive advantage in the industry.

214. If disclosed, Edelman's proprietary database and compilation of confidential information would assist a competitor in identifying Edelman's clients, give competitors an advantage in attracting, soliciting, and servicing Edelman's clients, and undermine Edelman's client relationships, goodwill, and reputation.

215. Disclosure of Edelman's proprietary database of confidential information would undermine and damage Edelman's investments in marketing, developing client relationships, data collection and analysis, and its ongoing efforts to compile, develop, and curate that information to initiate and maintain client relationships.

216. Edelman protects its proprietary database of confidential information with reasonable and commonly accepted measures in the industry, including through encryption, multi-

layer authentication, and information security controls and mechanisms (e.g., access controls, auditing, etc.). It also requires all Edelman planners to sign restrictive covenant agreements.

217. Defendant misappropriated Edelman's trade secrets by engaging in a targeted campaign to hire away the Departed Edelman planners and persuade them to disclose Edelman trade secrets, including the identities, AUM, investment positions and ability to make further investments with the intent to solicit and pirate Edelman Clients.

218. Defendant continued to misappropriate Edelman trade secrets by facilitating the use by the Departed Edelman Planners of Edelman's confidential and proprietary client lists and client-related information to improperly contact and solicit Edelman Clients. Mariner took these actions notwithstanding being aware that the Departed Edelman Planners were contractually prohibited from disclosing these trade secrets to Mariner, and that the information constituted protected trade secrets, as shown, inter alia, by Mariner's own Non-Solicitation and Confidentiality Agreements.

219. Defendant misappropriated Edelman's trade secrets by using Edelman's confidential and proprietary client lists and related information without Edelman's consent, to contact, solicit and accept business from Edelman clients through the Departed Edelman Planners.

220. As a direct and proximate result of Mariner's misappropriation of Edelman's trade secrets, Edelman has suffered significant damages and irreparable injury in the form of lost client relationships, goodwill, referrals, and future business.

221. Edelman has office locations across the United States and engages in national sales and services in and that affect interstate commerce.

**COUNT II**  
**(Kansas Uniform Trade Secrets Act, K.S.A. §§ 60-3320-3330)**

222. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

223. Edelman and its predecessors have expended significant time and resources developing and curating its proprietary database and compilation of confidential client lists, client information and analyses, referral sources, financial analyses, and client investment data. Edelman relies on that information in conducting its business and offering services.

224. Edelman's proprietary database and compilation of confidential information—including client lists, client information and demographics, referral sources, financial analyses, and client investment data—is information that is not generally known or publicly available outside of Edelman's business. It is the result of Edelman's costly and time-consuming development efforts and is therefore valuable.

225. If disclosed, Edelman's proprietary database and compilation of confidential information would assist a competitor in identifying Edelman's clients, give competitors an advantage in attracting and soliciting Edelman's clients, and undermine Edelman's client relationships, goodwill, and reputation.

226. Disclosure of Edelman's proprietary client information would negate Edelman's investments in marketing, developing client relationships, data collection and analysis, and its ongoing efforts to compile, develop, and curate that information to initiate and maintain client relationships and goodwill.

227. Edelman protects its proprietary database and compilation of confidential information with reasonable and commonly accepted measures in the industry, including the use of encryption as well as other information security controls and mechanisms.

228. Edelman's proprietary database and compilation of confidential information cannot be easily duplicated or replicated by competitors, as Edelman has compiled it over the years based on its direct relationships, unique analyses, and familiarity with its clients.

229. Defendant misappropriated Edelman's trade secrets by engaging in a targeted campaign to hire away the Departed Edelman planners and persuade them to disclose the identities, AUM, investment positions and ability to make further investments of Edelman clients with the intent to solicit and pirate Edelman Clients.

230. Defendant continued to misappropriate Edelman trade secrets by facilitating the use by the Departed Edelman Planners of Edelman's confidential and proprietary client lists and client-related information to improperly contact, solicit, and accept business from Edelman Clients. Mariner took these actions notwithstanding being aware that the Departed Edelman Planners were contractually prohibited from disclosing these trade secrets to Mariner, and that the information constituted protected trade secrets, as shown, *inter alia*, by Mariner's own Non-Solicitation and Confidentiality Agreements.

231. Defendant misappropriated Edelman's trade secrets by using Edelman's confidential and proprietary client lists and client-related information without Edelman's consent, to contact, solicit and accept business from the Edelman clients through the Departed Edelman Planners.

232. As a direct and proximate result of Mariner's misappropriation of Edelman's trade secrets, Edelman has suffered significant damages and irreparable injury in the form of lost client relationships, goodwill, referrals, and future business.

**COUNT III**  
**(Conspiracy to Misappropriate Trade Secrets)**

233. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

234. Edelman and its predecessors have expended significant time and resources developing and curating its proprietary database and compilation of confidential client lists, client

information and analyses, referral sources, financial analysis, and client investment data. Edelman relies on that information in conducting its business and offering services.

235. Edelman's proprietary database and compilation of confidential information—including client lists, client information and demographics, referral sources, financial analyses, and client investment data—is information that is not generally known or publicly available outside of Edelman's business. It is the result of Edelman's costly and time-consuming development efforts and is therefore valuable.

236. If disclosed, Edelman's proprietary database and compilation of confidential information would assist a competitor in identifying Edelman's clients, give competitors an advantage in attracting and soliciting Edelman's clients, and undermine Edelman's client relationships, goodwill, and reputation.

237. Disclosure of Edelman's database and compilation of confidential information would negate Edelman's investments in marketing, developing client relationships, data collection and analysis, and its ongoing efforts to compile, develop, and curate that information to initiate and maintain client relationships and goodwill.

238. Edelman protects its proprietary database and compilation of confidential information with reasonable and commonly accepted measures in the industry, including the use of encryption as well as other information security controls and mechanisms.

239. Edelman's proprietary database and compilation of confidential information cannot be easily duplicated or replicated by competitors, as Edelman has compiled it over the years based on its direct relationships, unique analyses, and familiarity with its clients.

240. Defendant conspired with the Departed Edelman Planners to misappropriate Edelman's trade secrets by assisting the Departed Edelman Planners in disclosing Edelman's

clients' identities, AUM, investment positions, and ability to make further investments with the intent to solicit and pirate Edelman Clients.

241. Defendant continued to conspire with the Departed Edelman Planners to misappropriate Edelman trade secrets by facilitating the use by the Departed Edelman Planners of Edelman's confidential and proprietary client lists and client-related information to improperly contact and solicit Edelman Clients. Mariner took these actions notwithstanding being aware that the Departed Edelman Planners were contractually prohibited from disclosing these trade secrets to Mariner, and that the information constituted protected trade secrets, as shown, inter alia, by Mariner's own Non-Solicitation and Confidentiality Agreements.

242. As a direct and proximate result of Mariner's misappropriation of Edelman's trade secrets, Edelman has suffered significant damages and irreparable injury in the form of lost client relationships, goodwill, referrals, and future business.

**COUNT IV**  
**(Tortious Interference with Contract)**

243. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

244. Edelman and the Departed Edelman Planners entered valid and enforceable contracts that prohibited the Departed Edelman Planners from disclosing to competitors or using for their own benefit the identities of clients or potential clients, disclosing to competitors or using for their own benefit the amount of AUM clients placed with Edelman, and soliciting Edelman clients that they previously worked with for a period of twelve to fifteen months after the end of their employment.

245. Under their Edelman agreements, most of the Departed Edelman Planners also agreed to refrain from soliciting, engaging in, performing, diverting, or accepting any business of



the same or similar nature to the business of Edelman with or from any Restricted Client or potential Edelman client they had solicited or worked with on behalf of Edelman for twelve to fifteen months after the date of their termination of employment with Edelman.

246. Under the Agreements, the Departed Edelman Planners agreed not to disclose the names of any Client or Potential Client to any other person, firm, corporation, or other entity.

247. Plaintiffs satisfied all or substantially all their material obligations under the Agreement that were not otherwise excused or waived. And all conditions necessary for the Departed Edelman Planners to perform their obligations under the Agreements either occurred or were excused.

248. Mariner was aware that each of the Departed Edelman Planners had entered employment agreements, including agreements containing restrictive covenant agreements, with Plaintiffs. Mariner was aware that the Edelman agreements were valid as a matter of law.

249. Mariner knowingly induced the Departed Edelman Planners to breach their Agreements with Edelman. Mariner recruited the Departed Edelman Planners to leave Edelman and move the clients they were servicing and their AUM to Mariner. To facilitate this scheme, Mariner asked for and received details about the Edelman clients the Departed Edelman Planners were servicing, including their assets under management. With Mariner's assistance, the Departed Edelman Planners each recreated a list of Edelman clients they had serviced before leaving for Mariner and contacted those clients for the purpose of soliciting them to leave Edelman and move their accounts and assets under management to Mariner.

250. The Departed Edelman Planners breached their Agreements with Edelman by soliciting hundreds of Edelman clients they serviced, accepting business from hundreds of

Edelman clients, disclosing the names of hundreds of Edelman clients to Mariner and disclosing Edelman's trade secrets and proprietary information.

251. In addition to being intentional, Mariner's interference was improper in motive and means. Mariner was motivated by the desire to purloin Edelman's highly valuable trade secret and proprietary information, client good will and business expectations, with the long-term purpose of "running Edelman out of business." Mariner's means were also improper and included encouraging the Departed Edelman Planners to disclose Plaintiffs' trade secret client lists and tortiously disparaging Plaintiffs' business and reputation in the industry.

252. As a direct and proximate result of Mariner's tortious interference in Edelman's contracts, Edelman has suffered significant damages and irreparable injury in the form of lost client relationships, goodwill, referrals, fee revenue and future business.

**COUNT V**  
**(Tortious Interference with Business Relations and Expectations)**

253. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

254. Edelman expends millions of dollars annually to market to potential clients and build the goodwill of its existing clients. It also pays its planners—and paid the Departed Edelman Planners—generously to develop, solidify, enhance, and expand Edelman's goodwill for and on behalf of Edelman. Edelman is a client-service business, and the maintenance of its strong business relationship with each client is the heart of its model.

255. Mariner recruited the Departed Edelman Planners to leave Edelman and move the clients they were servicing and their AUM to Mariner. To facilitate this scheme, Mariner asked for and received details about the Edelman clients the Departed Edelman Planners were servicing, including their assets under management. With Mariner's assistance, the Departed Edelman

Planners each recreated a list of Edelman clients they had serviced before leaving for Mariner and contacted those clients for the purpose of soliciting them to leave Edelman and move their accounts and assets under management to Mariner.

256. As a result of Mariner's and the Departed Edelman Planner's solicitation of Edelman's clients, Edelman has lost the business of 851 clients representing \$621 million in AUM.

257. There is a reasonable certainty that, but for Mariner's misconduct, Edelman would have continued its relationship with those clients. Edelman has a high annualized AUM retention rate following a financial planner's resignation. In comparison, after the Departed Edelman Planners left Edelman for Mariner, the AUM retention rate of the clients the Departed Edelman Planners serviced was far lower.

258. In addition to being intentional, Mariner's interference was improper in motive and means. Mariner was motivated by the desire to purloin Edelman's highly valuable trade secret and proprietary information, client good will and business expectations, with the long-term purpose of "running Edelman out of business." Mariner's means were also improper and included encouraging the Departed Edelman Planners to disclose Plaintiffs' trade secret client lists and tortiously disparaging Plaintiffs' business and reputation in the industry.

259. As a direct and proximate result of Mariner's tortious interference in Edelman's business, Edelman has suffered significant damages and irreparable injury in the form of lost client relationships, goodwill, referrals, fee revenue and future business.

**COUNT VI**  
**(Unfair Competition)**

260. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

261. Over many years, Edelman has expended significant time and resources developing and curating its proprietary database and compilation of confidential client lists, client information, referral sources, financial analysis, and client investment data. Edelman relies on that proprietary information in conducting its business, attracting customers, maintaining client relationships, and offering its services to existing and prospective clients.

262. Edelman's proprietary database and compilation of confidential client lists, client information, referral sources, financial analysis, and client investment data is information that is not generally known or publicly available. It is the result of Edelman's extensive investments in marketing, data analysis, data gathering and compilation, and development efforts.

263. If disclosed, Edelman's proprietary database and compilation of confidential information would assist a competitor in identifying Edelman's clients, give competitors an advantage in attracting, soliciting, and servicing Edelman's clients, and undermine Edelman's client relationships, goodwill, and reputation.

264. Disclosure of Edelman's proprietary database of confidential information would undermine and damage Edelman's investments in marketing, developing client relationships, data collection and analysis, and its ongoing efforts to compile, develop, and curate that information to initiate and maintain client relationships.

265. Edelman protects its proprietary database of confidential information with reasonable and commonly accepted measures in the industry, including through encryption, multi-layer authentication, and information security controls and mechanisms (e.g., access controls, auditing, etc.).

266. Edelman also requires all planners to sign restrictive covenant agreements that prohibited the Departed Edelman Planners from disclosing to competitors or using for their own

benefit the identities of clients or potential clients, disclosing to competitors or using for his own benefit the amount of AUM clients place with Edelman, and soliciting Edelman clients that they previously worked with for a period of twelve to fifteen months after the end of their employment.

267. Mariner sought the disclosure of Edelman's trade secrets and proprietary and confidential information by targeting the Departed Edelman Planners to leave Edelman and move the clients they were servicing and their AUM to Mariner. Mariner asked for and received details about the Edelman clients the Departed Edelman Planners were servicing, including their assets under management. With Mariner's assistance, the Departed Edelman Planners each recreated a list of Edelman clients it had serviced before leaving for Mariner and contacted those clients for the purpose of soliciting them to leave Edelman and move their accounts and assets under management to Mariner.

268. As a direct and proximate result of Mariner's unfair competition, Edelman has suffered significant damages and irreparable injury in the form of lost client relationships, goodwill, referrals, fee revenue and future business.

**COUNT VII**  
**(Defamation)**

269. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

270. Mariner has communicated false and defamatory words about Plaintiffs to third parties.

271. Mariner stated to at least one Edelman employee that "Edelman is a sinking ship." This statement, which its direct connotation that Edelman's business is failing, was false when made. As shown in publicly available information, Edelman has over \$245 billion in Assets Under

Management, recently completed a highly successful year in terms of profits and was ranked the #1 investment advisory firm by *Barron's* and other publications in 2022.

272. In an effort to foment anxiety and pressure Edelman employees to accept a position with Mariner, Mariner agents have also falsely stated that, because of Edelman's allegedly failing business "everyone is jumping overboard" and have rhetorically asked "do you really want to be the last planner standing at that firm." These statements, with their strong connotations that Edelman's business is failing, that Edelman is hemorrhaging employees terrified of losing their jobs, and that if current Edelman employees delay departing Edelman for Mariner, they are in danger of being without employment, were false when made. While Edelman has had some ordinary turnover and unusual departures because of Mariner's unlawful conduct, its record of retention among its planners is excellent. It has also hired over 50 new planners in the last two years to handle its growing business.

273. In another statement designed to pressure Edelman employees to depart for Mariner, at least one Mariner agent has openly stated that "We're running EFE out of business." While this statement may be an accurate disclosure of Mariner's unlawful goals, the unmistakable connotation that Edelman is in imminent danger of going "out of business" was false when made. While Mariner has caused Edelman grievous financial and reputational harm and misappropriated its trade secrets and proprietary information, Edelman is in no danger of imminent collapse.

274. Upon information and belief, Mariner has made these same and substantially similar comments about Plaintiffs to third parties, including Edelman clients. As a direct and proximate result of Mariner's defamatory conduct, Edelman has suffered significant damages and irreparable injury in the form of lost client relationships, goodwill, referrals, fee revenue and future business.

**PRAYER FOR RELIEF**

WHEREFORE, Edelman respectfully requests the following relief:

a. An Order finding Mariner violated and conspired with the Departed Edelman Planners to violate the Defend Trade Secrets Act and the Kansas Uniform Trade Secrets Act by persuading and assisting the Departed Edelman Planners to convey Edelman's proprietary and confidential information to Mariner and facilitating the use of that proprietary and confidential information;

b. An Order finding that Mariner engaged in unfair competition against Plaintiffs by persuading and assisting the Departed Edelman Planners to convey Edelman's proprietary and confidential information to Mariner and facilitating the use of that proprietary and confidential information;

c. An Order finding that Mariner engaged in tortious interference in Plaintiffs' contracts with the Departed Edelman Planners when it knowingly induced the Departed Edelman Planners to breach their Agreements with Plaintiffs;

d. An Order finding that Mariner engaged in tortious interference with Plaintiffs' business relations and expectations by assisting and facilitating the Departed Edelman Planners' solicitation and acceptance of the clients they had serviced at Edelman;

e. An Order finding that Mariner defamed Plaintiffs;

f. An Order permanently enjoining Mariner from engaging in the aforementioned misconduct;

g. An Order awarding Plaintiffs the full amount of damages available by law, including compensatory, consequential and punitive damages;

h. An Order awarding Plaintiffs reasonable attorneys' fees and costs incurred in filing and prosecuting the action this action;

- i. An Order awarding pre- and post-judgment interest to Plaintiffs; and
- j. An Order awarding such other and further relief as this Court deems appropriate.

**JURY TRIAL LOCATION REQUEST**

Plaintiffs request that the jury trial in this matter be held in Kansas City, Kansas.



Dated: November 17, 2023

Respectfully submitted,

PERKINS COIE LLP

By: /s/ Timothy J. Davis

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