

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

STANGE LAW FIRM, PC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 18SL-CC00540
	)	
CHELSEA MERTA and	)	Division No.: 14
LOTUS LAW AND LEGAL SERVICES,	)	
LLC, d/b/a LOTUS LAW, LLC,	)	
	)	
Defendants.	)	

**AMENDED PETITION FOR DAMAGES AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff Stange Law Firm, PC (“SLF”), through counsel, and for its Amended Petition for Damages and Injunctive Relief, states as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. SLF is a Missouri professional corporation with its principal place of business in St. Louis County, Missouri.
2. Defendant Chelsea Merta (“Merta”) is a citizen of the City of St. Louis, Missouri who was employed by Plaintiff between June 20, 2016 and February 9, 2018.
3. Defendant Lotus Law and Legal Services, LLC (“the LLC”) is a Missouri Limited Liability Company that Merta organized on January 31, 2018. Merta is the LLC’s registered agent, and the LLC is located in an office space situated at 1409 Washington Boulevard, Saint Louis, Missouri 63103.
4. This Court has personal jurisdiction over Merta and the LLC, as both are present and domiciled in Missouri.
5. Venue is proper in this Court pursuant to section 508.010.4 because Plaintiff was first injured by the wrongful conduct alleged herein in St. Louis County, Missouri. Moreover,

Merta signed a contract with SLF (discussed below) agreeing to venue and jurisdiction in the Circuit Court of St. Louis County.

### FACTUAL BACKGROUND

6. SLF is a law firm practicing in the area of domestic relations law.
7. On June 20, 2016, Merta accepted employment as an associate attorney with SLF.
8. From the date of her employment until she voluntarily resigned on February 9, 2018, Merta worked at SLF's main office in Clayton, Missouri.
9. When Merta was first hired, as a condition of her employment, she signed an "Attorney Agreement," dated June 20, 2016 (the "Agreement"). The Agreement is attached hereto as Exhibit A, and is incorporated as though fully set forth herein.
10. The Agreement provided, among other things, that while she was employed by SLF, Merta was required to "devote [her] best efforts, skill, and attention to the business interests of [SLF] and faithfully and diligently perform the duties and responsibilities assigned to [her]." Ex. A, Section 1.5.
11. The Agreement further prohibited Merta from, among other things, using or disclosing documents and files received and developed during the course of her employment with SLF, as well as from copying any such files. Ex. A, Section 2.1.
12. The Agreement specifically provides that she is not permitted to use SLF information (which includes client information) "other than as expressly authorized by [SLF]." Id.
13. Furthermore, SLF's Employment Policy Manual, which Merta confirmed she received and understood on more than one occasion, provides, in part, as follows (in a section entitled "Use of Firm Work Product"):

.....  
Each Employee of the Firm, including attorneys, paralegals/legal assistants, secretaries and all other employees, will treat and hold confidential all attorney work production information, including, but not limited to, legal brief banks, legal memoranda, office legal forms (including briefs, estate planning documents, business forms, and other attorney-prepared documents) irrespective of who created, modified, or amended such work product. **All work product created, modified, or amended by attorneys, paralegals/legal assistants, secretaries, and others while employed by or acting on behalf of the Firm is considered by the Firm to be proprietary work product belonging to the Firm and/or its clients (as the case may be). The use of such work product by anyone for personal purposes, or personal gain, without permission of Founding Partners is prohibited.**

**In addition, while you are employed by the Firm, any work product you create or contribute to creating on Firm time or if during your own time that relates to the Firm's business, shall be deemed the property of the Firm.**

.....  
(emphasis added).

14. For at least six weeks before her February 9, 2018 voluntary resignation from SLF, Merta began secretly planning to create her own law firm, to leave SLF, and prepared to solicit and persuade as many SLF clients as possible to transfer their representations to her at the LLC.

15. Upon information and belief, Merta acquired a domain for the LLC on January 7, 2018.

16. On January 31, 2018, Merta filed Articles of Organization organizing the LLC and identifying herself as its registered agent.

17. Merta did not inform SLF of her intention to create the LLC and operate it as her own firm, nor did she provide SLF with a reasonable period of notice that she intended to resign her employment.

18. On February 9, 2018 at 4:00 p.m., Merta sent an email to SLF's Human Resources Director, advising that she was resigning her employment and that her resignation would be effective one hour later, at 5:00 p.m.

19. In the days and/or week prior to her notice of resignation, Merta solicited at least three SLF clients and informed them that she would soon be leaving SLF and starting her own firm.

20. Upon information and belief, Merta waited to convey her resignation to SLF until she knew that SLF Founding Partner, Kirk Stange, and Managing Partner, Jillian Wood, were out of the office, thereby limiting SLF's ability to react to Merta's resignation.

21. Immediately upon submitting her notice of resignation, but while still an employee of SLF, Merta began aggressively soliciting clients to transfer their files to her.

22. Having received Merta's resignation email, SLF's Human Resources Director and an attorney supervisor of Merta promptly met with her in her office beginning at approximately 4:09 p.m.

23. As that meeting began, the first of several SLF clients sent an email to SLF, advising that the client wished to transfer his representation to Merta and the LLC.

24. The email was sent by the client and received by SLF before Merta's resignation was even effective and before she had physically left SLF's offices.

25. Merta, on behalf of herself and the LLC, was soliciting some or all of those (and potentially other) clients to leave SLF and join her at her new firm prior to her submitting her resignation. Otherwise, they would not have been prepared to instruct SLF to transfer their files only minutes after Merta submitted her resignation.

26. During the February 9 meeting, Merta refused to disclose where she was going next in her professional career. That information was necessary to discuss a joint letter to clients notifying them of her departure.

27. Upon information and belief, prior to her resignation from employment, Merta deleted all the data related to client communications, including text messages and emails on the mobile phone provided to her by SLF, without SLF's knowledge or authorization.

28. Prior to her resignation from employment, Merta appears to have deleted all editable copies of any pleadings and other documents (including drafts of pleadings) she prepared for any SLF client to whom she had been assigned, and wiped her company-issued mobile phone, all without SLF's knowledge or authority and upon further information and belief, without the knowledge or authority of many (if not all) of the clients.

29. The electronically-stored client information on the mobile phone, the computer, and the storage drive were the property of SLF.

30. Indeed, Merta's private company storage location on SLF's computer system was mysteriously emptied of all files, whereas just weeks prior to her resignation there were dozens of files (containing large amounts of documents) in that storage drive.

31. Prior to deleting the files from SLF's computer systems, during her employment, Merta downloaded to a USB/flash drive electronic copies of most or all of the client files on which she was working on when she resigned.

32. Although Merta deleted all of the files from SLF's system, Merta took that USB drive with her to her new law practice, essentially stealing the SLF documents and files saved to it.

33. In deleting all editable copies of the pleadings and other documents she prepared for SLF's clients, and keeping all of the documents for herself, Merta hampered SLF's ability to continue representing the SLF clients who decided to keep their representations at SLF.

34. In the period of time since Merta's resignation, a number of additional clients advised SLF that they would like to transfer their representations to her and the LLC.

35. Upon information and belief, Merta utilized improper and unlawful methods to solicit SLF's clients to transfer their representation from SLF to Merta and her new law firm.

**COUNT I – VIOLATION OF THE MISSOURI COMPUTER TAMPERING ACT,**  
**§ 537.525, RSMO.**  
**(AGAINST MERTA)**

36. The allegations stated in Paragraphs 1 through 35 of this Petition are incorporated by reference herein with the same force and effect as if set forth fully below.

37. Merta tampered with SLF's computer data by destroying and deleting data and/or documentation that existed on SLF's computer or computer system, without authorization and without reasonable grounds to believe that she had such authorization (and in violation of § 569.095, RSMo.).

38. Merta tampered with SLF's computer data by taking, retaining, using and/or disclosing data from SLF's computer or computer system, without authorization and without reasonable grounds to believe that she had such authorization.

39. Merta's aforementioned actions were *without authorization* from SLF, as made clear by her Agreement and SLF's policies. *See, e.g.*, Paragraphs 9-13 above.

40. Not only were Merta's actions in deleting and destroying SLF's data, and further taking data with her on a USB drive, without authorization, but Merta's actions were brazen in

that she knew that such actions were expressly prohibited in both the Agreement and in SLF's policies.

41. Indeed, even in her short meeting with HR the day of her resignation, she was asked if she had any client files in the box she was taking. Merta slyly answered "no," materially omitting that while she may not have physical paper documents in that box, she had all (or virtually) all of the SLF client files she was working on saved to a USB drive that she already had in her possession.

42. SLF has been damaged by Merta's unauthorized destruction and deletion of data from SLF's computers, and taking of data, because SLF has incurred – and will continue to incur – fees and costs for the examination of computer and email files and because Merta received an unfair competitive advantage over SLF and was positioned to (and did in fact) divert substantial clients and business from SLF.

43. In deleting and destroying data from SLF's computers and/or computer system or network (and/or taking any such data), Merta's actions were willful and malicious, and performed with an evil motive and with reckless indifference to the rights of SLF or SLF's clients.

44. Pursuant to the Missouri Computer Tampering Act, SLF is entitled to recover all of its attorneys' fees and costs incurred enforcing its rights against Merta.

WHEREFORE, SLF respectfully prays for the following relief:

- a. Injunctive relief:
  - i. directing Merta to immediately return to SLF any and all files and information Merta transmitted to herself or to any other person without authorization from SLF without retaining any electronic or hard copies of such information or documents (provided, however, that Merta may retain copies in the event the client in question has already authorized the transfer of the client's file);

- ii. directing Merta to make available for forensic examination and forensically-sound mirror-imaging by a computer forensics expert selected by SLF (the “SLF forensics expert”) within four (4) business days any computers, e-mail accounts, smart phones, or other equipment in her possession or control;
  - iii. directing that within forty-eight (48) hours following inspection and copying by the SLF forensics expert, Merta must remove and delete any and all SLF files and information Merta transmitted to herself or to any other person without authorization from SLF from any computers, e-mail accounts, smart phones, or other equipment in her possession or control (provided, however, that Merta may retain such files in the event the files pertain to a client that has already authorized and directed the transfer of the client’s file);
  - iv. directing that following the removal and deletion of any and all of SLF files and information from any computers, email accounts, smart phones or other equipment in her possession or control, Merta allow the SLF forensics expert to verify that any and all of SLF’s confidential and proprietary information, or other business or client-related information, has been deleted from any computers, email accounts, smart phones or other equipment in her possession or control;
  - v. directing Merta to provide SLF’s counsel with access to inspect all e-mail accounts used by Merta, including but not limited to her Ckmerta@gmail.com account, all email accounts associated with the LLC and/or her new law firm, as well as all information necessary to access and inspect such email accounts;
- b. For damages in excess of \$25,000.00 in an amount that is fair and reasonable;
  - c. For SLF’s attorneys’ fees and costs incurred herein; and
  - d. For all other such relief that this Court deems to be just and proper.

**COUNT II – BREACH OF CONTRACT  
(AGAINST MERTA)**

46. The allegations stated in Paragraphs 1 through 45 of this Petition are incorporated by reference herein with the same force and effect as if set forth fully below.



47. By deleting electronically-stored information from the mobile phone, computer, and storage drive that SLF had assigned to Merta, and by taking such information and files with her, all without SLF's authority or the authority of SLF's clients, Merta violated Section 2.1 of the Agreement. *See Ex. A*, Section 2.1.

48. SLF has fully performed its obligations under the Agreement.

49. As a proximate result of Merta's breaches, SLF has suffered damages in an amount to be proven at trial.

50. Pursuant to the terms of the Agreement, SLF is entitled to recover its attorneys' fees and litigation costs enforcing the agreement. *See Ex. A*, Section 4.8.

51. Merta's breaches were malicious, wanton, and oppressive. Because Merta's conduct amounts to an independent, willful tort (as alleged herein), SLF is entitled to an award of punitive damages.

WHEREFORE, SLF respectfully prays for the following relief:

- a. Damages in excess of \$25,000.00 in an amount to be proven at trial;
- b. An award of punitive damages in an amount determined to be appropriate;
- c. An award of SLF's attorneys' fees and costs incurred herein; and
- d. All other relief that this Court deems to be just and proper.

**COUNT III – BREACH OF DUTY OF LOYALTY  
(AGAINST MERTA)**

52. The allegations stated in Paragraphs 1 through 51 of this Petition are incorporated by reference herein with the same force and effect as if set forth fully below.

53. During the term of her employment with SLF, Merta owed a duty of loyalty to SLF.

54. While still an employee of SLF, and upon information and belief, Merta breached her duty of loyalty, including by engaging in the following acts:

- a. She deleted electronically-stored information from the mobile phone, computer, and storage drive owned by SLF and assigned to her;
- b. She solicited SLF clients to terminate their representations by SLF and transfer their representations to her and the LLC before she gave SLF notice of her intention to resign; and
- c. She downloaded to a USB drive SLF and SLF client files for her own use and benefit.

55. The above acts constituted efforts to directly compete with SLF during the time that she remained an employee of SLF.

56. As a proximate result of Merta's breaches, SLF has suffered actual and consequential damages in an amount to be proven at trial.

57. Merta's actions were intentional and outrageous, warranting an award of punitive damages.

WHEREFORE, SLF respectfully prays for the following relief:

- a. Damages in excess of \$25,000.00 in an amount that is fair and reasonable;
- b. Punitive damages in an amount determined to be appropriate;
- c. An award of SLF's attorneys' fees and costs incurred herein; and
- d. All other relief that this Court deems to be just and proper.

**COUNT IV – BREACH OF FIDUCIARY DUTY  
(AGAINST MERTA)**

58. The allegations stated in Paragraphs 1 through 57 of this Petition are incorporated by reference herein with the same force and effect as if set forth fully below.

59. As an attorney employed by SLF and entrusted with access to clients and client information, Merta owed fiduciary duties to SLF.

60. Those fiduciary duties included to be candid and fair, to not put self-interests before the interests of the firm, and to not compete with the firm in its business while still employed by the firm.

61. While still employed by SLF, Merta engaged in the following acts:

- a. Deleted electronically-stored information from the mobile phone, computer, and storage drive owned by SLF and assigned to her;
- b. Solicited SLF clients to terminate their representations by SLF and transfer their representations to her and the LLC before she gave SLF notice of her intention to resign; and
- c. She downloaded to a USB drive SLF and SLF client files for her own use and benefit.

62. By engaging in the above acts, Merta breached her fiduciary duties to SLF.

63. As a proximate result of Merta's breaches, SLF has suffered actual and consequential damages in an amount to be proven at trial.

64. Merta's actions were intentional and outrageous as evidenced by her evil motive or reckless indifference to SLF's rights, thereby warranting an award of punitive damages.

WHEREFORE, SLF respectfully prays for the following relief:

- a. Damages in excess of \$25,000.00 in an amount that is fair and reasonable;
- b. Punitive damages in an amount determined to be appropriate;
- c. An award of SLF's attorneys' fees and costs incurred herein; and
- d. All other relief that this Court deems to be just and proper.

**COUNT V – CONVERSION  
(AGAINST MERTA AND THE LLC)**

65. The allegations stated in Paragraphs 1 through 64 of this Petition are incorporated by reference herein with the same force and effect as if set forth fully below.

66. As an attorney employed by SLF, Merta was entrusted with access to client information and SLF's computer systems.

67. During Merta's employment, and thereafter, Merta and the LLC wrongfully assumed ownership or possession over SLF's client information without SLF's authority, permission, or knowledge.

68. Merta and the LLC intended to exercise control over such client information even though it was SLF's property.

69. By deleting such client information from SLF's computer systems and storage drive, Merta and the LLC intended to maintain control over such information to the exclusion of SLF's lawful rights to possession.

70. To the extent not already provided to SLF in the course of this litigation, SLF is entitled to immediate possession of the client information that Merta and the LLC misappropriated.

71. Merta's and the LLC's actions were intentional and outrageous as evidenced by her evil motive or reckless indifference to SLF's rights, thereby warranting an award of punitive damages.

WHEREFORE, SLF respectfully prays for the following relief:

- a. Restitution or disgorgement of profits in excess of \$25,000.00 in an amount that is fair and reasonable;
- b. Punitive damages in an amount determined to be appropriate;
- c. An award of SLF's attorneys' fees and costs incurred herein; and
- d. All other relief that this Court deems to be just and proper.

**COUNT VI – UNJUST ENRICHMENT  
(AGAINST MERTA AND THE LLC)**

72. The allegations stated in Paragraphs 1 through 71 of this Petition are incorporated by reference herein with the same force and effect as if set forth fully below.

73. As an attorney employed by SLF, Merta was entrusted with access to clients and client information and the use of SLF’s mobile phone and computer systems.

74. During her employment by SLF, Merta enjoyed, appreciated, and benefitted from the above access and use in that she was afforded the opportunity to gain experience as an attorney representing SLF’s clients.

75. Merta appropriated client information and SLF’s electronically-stored information and transferred that information to the LLC.

76. Merta and the LLC’s acceptance and retention of that information for their own gain was inequitable and unjust and caused SLF to be damaged.

WHEREFORE, SLF respectfully prays for the following relief:

- a. Restitution or disgorgement of profits in an amount greater than \$25,000.00 and that is fair and reasonable;
- b. An award of SLF’s attorneys’ fees and costs incurred herein; and
- c. All other relief that this Court deems to be just and proper.

Dated: July 26, 2018

ARMSTRONG TEASDALE LLP

By: /s/ Michael B. Kass

Eric M. Walter #47297

Michael B. Kass #50717

Jonathan R. Shulan #65426

7700 Forsyth Blvd., Suite 1800

St. Louis, Missouri 63105

314.621.5070

314.621.5065 (facsimile)

ewalter@armstrongteasdale.com

mkass@armstrongteasdale.com

jshulan@armstrongteasdale.com

ATTORNEYS FOR PLAINTIFF

## CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2018, the foregoing was submitted for filing via the Court's electronic filing system, which shall serve a copy of the same upon the following counsel of record:

Robert Eugene Schmittgens  
The Miller/Salsbury Law Firm  
925 West Fifth Street  
Eureka, MO 63025  
636-938-9877  
636-938-6327 (facsimile)  
[res@millersalsbury.com](mailto:res@millersalsbury.com)  
*Attorneys for Defendants*

*/s/ Michael B. Kass*

---