

1 CHRISTENSEN & AUER
2 JAY D. CHRISTENSEN - State Bar No. 65446
225 South Lake Avenue, 9th Floor
Pasadena, California 91101

FILED
TULARE COUNTY
SUPERIOR COURT

APR 27 1999

3 KLOSTER, RUDDLELL, HORNBERG,
4 COCHRAN, STANTON & SMITH, LLP
5 GLENN A. STANTON #72790
1102 North Chinowth Street
6 Visalia, California 93291
Telephone: (559) 733-5770

Stephen Konishi, Clerk
By: _____

7
8 Attorneys for Plaintiff, Kaweah Delta Health Care District

9
10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF TULARE

13 99-186487

14 KAWEAH DELTA HEALTH CARE
15 DISTRICT

Case No.

16 Plaintiff,

COMPLAINT FOR:

17 v.

1. Breach of Contract
2. Libel
3. Misappropriation of Trade Secrets
4. Unfair competition ✓

18 JOSEPH MOZA, M.D., and DOES 1
through V, Inclusive,

19 Defendant.

20
21 Plaintiff, Kaweah Delta Health Care District ("Kaweah") alleges as follows:

22 GENERAL ALLEGATIONS

23 1. Kaweah is, and at all times herein mentioned was, a California Health Care
24 District, doing business in Visalia, California.

25 2. Defendant, Joseph Moza, M.D., is, and at all times herein mentioned was, an
26

1 individual who resides and practices medicine in Visalia, California.

2 3. Kaweah is ignorant of the true names and capacities of defendants sued herein as
3 DOES 1 through V, inclusive, and therefore sues these defendants by such fictitious names.
4 Kaweah will amend this complaint to allege their true names and capacities when ascertained.
5 Kaweah is informed and believes and thereon alleges that each of the fictitiously named
6 defendants is responsible in some manner for the occurrences herein alleged and that Kaweah's
7 damages as herein alleged were proximately caused by their conduct.
8

9 **FIRST CAUSE OF ACTION**

10 (Breach of Contract)

11 4. Kaweah incorporates by reference herein the allegations of Paragraphs 1 through
12 3 above as though set forth in full herein.

13 5. On or about July 1, 1997, Kaweah and Moza entered into a written contract (the
14 "Contract") whereby Kaweah agreed to process and consider Moza's application for appointment
15 to the Medical Staff at Kaweah's hospital facility and Moza agreed, among other things, to abide
16 by the provisions of Kaweah's Medical Staff organization bylaws, including the provision that
17 requires staff members to keep peer review information and medical staff, department, or
18 committee minutes, files and records confidential. Moza made this agreement without regard to
19 whether or not he was appointed to the Medical Staff. A copy of that Contract is attached hereto
20 as Exhibit "A".
21

22 6. Kaweah has performed all terms and conditions required of it by the Contract,
23 including verifying Moza's educational background, licensure, and prior hospital affiliations and
24 checking his references. During the time this credentialing process was in progress, Moza was
25
26

1 afforded temporary Medical Staff privileges at Kaweah's hospital facility.

2 7. On or about September 28, 1998, Moza was notified by the Medical Executive
3 Committee that in accordance with Section 8.3-1 of the Medical Staff Bylaws, the Medical Staff
4 had voted to recommend denial of his application for medical staff membership and clinical
5 privileges. A copy of Section 8.3-1 of the Medical Staff Bylaws is attached hereto as Exhibit "B".
6

7 8. On or about October 1, 1998, Moza requested a formal hearing in accordance with
8 the Medical Staff Bylaws and Section 809 of the Business and Professions Code, to contest the
9 recommendations to deny his application. During the course of the hearing process, Moza was
10 entitled to obtain and did obtain certain confidential credentials committee, medical executive
11 committee, and department of surgery meeting minutes and peer review reports.
12

13 9. On or about September 25, 1998 and again on November 6, 1998, Moza breached
14 the Contract by disclosing the confidential Medical Staff peer review information to the Joint
15 Commission for the Accreditation of Healthcare Organizations ("JCAHO") in an improper
16 attempt to circumvent the hearing and appeal process provided for in the Medical Staff bylaws
17 and required by Section 809.
18

19 10. As a direct and proximate result of Moza's breach of the Contract, Kaweah's
20 reputation has been injured, its ability to conduct peer reviews has been inhibited, and it has
21 suffered damage to its business prospects all in an amount subject to proof at trial.

22 11. Moza's wrongful conduct in breaching his Contract, and in particular, Kaweah's
23 Medical Staff bylaws, Article XIII, Paragraph 13.2 (Confidentiality of Information), unless and
24 until enjoined and restrained by order of this court, will cause great and irreparable injury to
25 Kaweah's business in that the peer review and medical staffing process will be compromised if
26

1 participants are not confident that all aspects of the proceedings will be kept confidential.
2 Without an effective peer review and medical staffing process, Kaweah will not be able to
3 properly control the quality of medical services being provided to the public and assure high
4 quality patient care.

5
6 12. Kaweah has no adequate remedy at law for the injuries which are threatened in that
7 should Moza receive an adverse recommendation at the hearing held by the Medical Executive
8 Committee at Kaweah Delta Healthcare District, Moza will continue to breach the Contract by
9 disclosing confidential Medical Staff peer review information to unauthorized entities and Kaweah
10 would be required to maintain a multiplicity of judicial proceedings to protect its interests.
11

12
13 **SECOND CAUSE OF ACTION**

14 (Trade Libel)

15 13. Kaweah incorporates by reference herein the allegations of Paragraphs 1 through 3
16 and 5 through 12 above as though set forth in full herein.

17 14. At all times herein mentioned, Kaweah has enjoyed a good reputation for
18 providing quality medical services and for conducting itself in a fair and professional manner in its
19 business affairs, including issues relating to hospital Medical Staff privileges and peer review
20 hearings.
21

22 15. On or about September 25, 1998, Moza sent a letter to the JCAHO in which he
23 stated, among other things:

24 I have a very serious problem with Kaweah Delta District Hospital . . .

25 It seems clear that the Medical Staff is abusing its authority because . . .
26

1 I have established my presence as an effective competition to some of the
2 most influential surgeons on the staff . . . I am suspicious of the whole
3 process . . . My case cries out for a serious outside investigation.

4 16. On or about October 6, 1998, Moza sent a letter to the Institute of Medical
5 Quality in which he stated, among other things: *A. M. M. M.*

6 I am concerned about hiding or making new proctor reports . . . proctoring in this
7 department is being used politically to exclude and screen out competitors . . .

8 17. The above-described statements are false and are libelous on their face in that they
9 accuse Kaweah of conducting biased and unfair peer review and medical staffing hearings, and of
10 withholding and manufacturing evidence.

11 18. Moza's letters were seen and read by staff members of the JCAHO and by at least
12 one staff member of the Institute of Medical Quality.

13 19. As a proximate result of the above described letters, Kaweah has suffered a loss to
14 its reputation and has incurred expenses in defending itself all to its damage in an amount subject
15 to proof at trial.

16 20. The above-described letters were written and sent by Moza with malice and
17 oppression in that he knew the statements contained therein were false and sent the letters in an
18 attempt to intimidate Kaweah and influence the outcome of his Medical Staff hearing. Thus,
19 Kaweah seeks an award of punitive damage.

20 THIRD CAUSE OF ACTION

21 (Misappropriation of Trade Secrets)

22 21. Kaweah incorporates by reference herein the allegations of Paragraphs 1 through
23
24
25
26

1 3 , 5 through 12 and 14 through 20 above as though set forth in full herein.

2 22. At all times herein mentioned, Kaweah was in possession of trade secret
3 information consisting of its committee meeting agendas, minutes, and notes and peer review
4 reports.

5 23. Kaweah's trade secret information had and has actual and potential economic
6 value in that it allows Kaweah to attract the best medical personnel possible and thereby allows
7 Kaweah to provide the highest quality medical services to members of the public, obtain health
8 insurance plan contracts, and to attract patient referrals. Kaweah has made reasonable efforts to
9 insure that its trade secret information remains a secret by requiring all Medical Staff members to
10 agree to keep the trade secret information confidential and not to disclose it except in certain
11 limited and necessary circumstances.

12 24. On or about September 25, 1998, Moza breached his contractual duty to keep
13 Kaweah's trade secret information confidential by disclosing certain credentials committee,
14 medical executive committee, and department of surgery meeting minutes and peer review reports
15 to the JCAHO.

16 25. As a proximate result of Moza's disclosure of Kaweah's trade secret information,
17 Kaweah has suffered damages in an amount subject to proof at trial.

18 26. Kaweah is informed and believes and thereon alleges that the aforementioned acts
19 of Moza were willful and malicious in that Moza misappropriated Kaweah's trade secret
20 information with the deliberate intent to injure Kaweah's reputation, to inhibit its ability to
21 conduct peer reviews, and to damage its business prospects. Kaweah is therefore entitled to
22 punitive damages. Kaweah is also entitled to its reasonable attorneys fees in bringing this action.
23
24
25
26

1 27. Moza's wrongful conduct in misappropriating Kaweah's trade secrets, unless and
2 until enjoined and restrained by order of this court, will cause great and irreparable injury to
3 Kaweah's business in that the peer review and medical staffing process will be compromised if
4 participants are not confident that all aspects of the proceedings will be kept confidential.
5 Without an effective peer review and medical staffing process, Kaweah will not be able to
6 properly control the quality of medical services being provided to the public and assure high
7 quality patient care.

8
9 28. Kaweah has no adequate remedy at law for the injuries which are threatened in that
10 should Moza receive an adverse recommendation at the hearing held by the Medical Executive
11 Committee at Kaweah Delta Healthcare District, Moza will continue to misappropriate the trade
12 secrets in an effort to explain his denial of privileges to other health care facilities and Kaweah
13 would be required to maintain a multiplicity of judicial proceedings to protect its interests.
14
15

16 **FOURTH CAUSE OF ACTION**

17 (Unfair Trade Practices)

18
19 29. Kaweah incorporates by reference herein the allegations of Paragraphs 1 through
20 3, 5 through 12, 14 through 20, and 22 through 28 above as though set forth in full herein.

21 30. Commencing on or about September 1999, Moza committed acts of unfair
22 competition, as defined by Business & Professions Code § 17200, i.e., acts that are either
23 fraudulent, unlawful or unfair, in the State of California, by engaging in the following practices,
24 *inter alia*: violating his contractual duty to maintain Kaweah's committee meeting agendas,
25 minutes, and notes and peer review reports confidential; misappropriating Kaweah's trade secret
26

1 information; publishing false and defamatory statements regarding Kaweah's integrity and
2 business practices, specifically its medical staff hearing process; and attempting to disrupt
3 Kaweah's medical staff hearing practice by wrongfully involving outside agencies in same.

4
5 31. The foregoing acts, practices and conduct violate Business & Professions Code
6 § 17200, i.e., constitute acts of unfair competition, in that they compromise the peer review and
7 Medical Staff credentialing process. Without an effective peer review and Medical Staff
8 credentialing process, Kaweah will not be able to properly control the quality of medical services
9 being provided to the public and assure high quality patient care.

10
11 32. The harm to Kaweah, and to the members of the general public, outweighs the
12 utility, if any, of Moza's acts and conduct.

13
14 33. Moza's unfair methods of unfair competition unless and until enjoined and
15 restrained by order of this court, will cause great and irreparable injury to Kaweah's business in
16 that the peer review and medical staffing process will be compromised if participants are not
17 confident that all aspects of the proceedings will be kept confidential. Without an effective peer
18 review and medical staffing process, Kaweah will not be able to properly control the quality of
19 medical services being provided to the public and assure high quality patient care.

20
21 34. Kaweah has no adequate remedy at law for the injuries currently being suffered in
22 that Moza will continue to engage in unfair competition unless restrained and enjoined by this
23 court.

24 WHEREFORE, Kaweah prays for judgment as follows:

25 1. On the First Cause of Action for Breach of Contract:

26 A. For general damages in an amount subject to proof at trial; and

1 B. For special damages in an amount subject to proof at trial.

2 C. For a preliminary injunction, and a permanent injunction, all enjoining
3 Moza and his agents, servants, and employees, and all persons acting under, in concert with, or
4 for him, from: engaging in acts or conduct constituting a breach of Moza's Contract with Kaweah
5 by disseminating, or causing to be made or disseminated in any manner whatever, any confidential
6 Medical Staff peer review information.
7

8 2. On the Second Cause of Action for Trade Libel:

9 A. For general damages in an amount subject to proof at trial;

10 B. For special damages in an amount subject to proof at trial;

11 C. For exemplary damages.
12

13 3. On the Third Cause of Action for Misappropriation of Trade Secrets:

14 A. For general damages in an amount subject to proof at trial;

15 B. For special damages in an amount subject to proof at trial;

16 C. For exemplary damages;

17 D. Reasonable attorneys fees; and
18

19 E. For a preliminary injunction, and a permanent injunction, all enjoining

20 Moza and his agents, servants, and employees, and all persons acting under, in concert with, or
21 for him, from: engaging in acts or conduct constituting misappropriation of trade secrets and from
22 disseminating, or causing to be made or disseminated in any manner whatever, any confidential
23 Medical Staff peer review information.
24

25 4. On the Fourth Cause of Action for Unfair Competition:

26 A. For a preliminary injunction, and a permanent injunction, all enjoining

1 Moza and his agents, servants, and employees, and all persons acting under, in concert with, or
2 for him, from: engaging in acts or conduct constituting unfair competition and from disseminating,
3 or causing to be made or disseminated in any manner whatever, any confidential Medical Staff
4 peer review information.

5 5. As to all Causes of Action:

6 A. For costs of suit incurred; and

7 B. For all other relief as the Court may deem necessary and proper.
8
9

10 KLOSTER, RUDDELL, HORNBERG
11 COCHRAN, STANTON & SMITH, LLP

12
13
14 Dated: April 27, 1999

15 By

16 
17 _____
18 GLENN A. STANTON

19
20
21
22
23
24
25
26