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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF NEVADA**

14 _____
15 **MARINA DISTRICT DEVELOPMENT**
16 **COMPANY, LLC d/b/a BORGATA**
HOTEL CASINO & SPA,

17 **Plaintiff,**

18 v.

19 **AC OCEAN WALK, LLC d/b/a OCEAN**
20 **CASINO RESORT,**

21 **WILLIAM CALLAHAN,**

22 **KELLY ASHMAN BURKE,**

23 **Defendants.**
24 _____

CIVIL ACTION NO.:

VERIFIED COMPLAINT AND
REQUEST FOR INJUNCTIVE
RELIEF

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VERIFIED COMPLAINT

1
2 Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa
3 (“Borgata”), by and through its undersigned counsel, hereby brings this action against Defendant
4 AC Ocean Walk, LLC d/b/a Ocean Casino Resort (“Ocean”) and Defendants William Callahan
5 (“Callahan”) and Kelly Ashman Burke (“Burke”).

6 As set forth below, Ocean is in the process of raiding Borgata’s casino marketing
7 department. Injunctive relief is necessary because all informal efforts to resolve the dispute and
8 protect Borgata’s business from irreparable harm have failed. The raid began when Ocean hired
9 Burke and Callahan. Burke, Borgata’s former Executive Director of Marketing (a position which
10 gave her unique access intimate knowledge of Borgata’s marketing strategies and customer
11 loyalty databases), was hired at the end of the term of her employment agreement but in violation
12 of her post-employment non-competition and other restrictions. Ocean solicited away Callahan,
13 Borgata’s Vice President of Relationship Marketing, in the middle of his contractual term of
14 employment. Callahan never returned his Borgata company phone and all of the trade secrets
15 stored therein; even now, he and his counsel have refused to return it. And, in a transparent ruse
16 to circumvent his non-competition obligations, Ocean gave the career casino marketing executive
17 the title of “SVP of Hotel Operations” despite the fact that during his eighteen years of work at
18 Borgata, he had never overseen hotel operations, never overseen housekeeping, never overseen
19 front desk, bell desk, or janitorial services (all of which are core hotel functions).

20 Ocean announced its hiring of Callahan and Burke on August 13, 2020. Since then, it has
21 hired away three more Borgata executives who worked with Callahan and Burke to service
22 Borgata’s most valuable casino clients, including Chris O’Connor (Borgata’s Director of Casino
23 Credit), Steve Ebner (Borgata’s Director of Slots) and Ryan Burch (Borgata’s Director of Front
24 Office Operations), as well as Ted Herschel, Borgata’s former Vice President of Slots, who while
25 no longer employed is subject to contractual non-solicitation obligations. The near simultaneous
26 solicitation and hiring of these individuals – all of whom are subject to statutory and common law
27 trade secret restrictions – to work in positions which will require the immediate misuse of those
28 trade secrets and other confidential and proprietary information demonstrates Ocean’s intention to

1 cripple Borgata's casino operation and misappropriate both Borgata's business relationships and
2 its trade secrets and other confidential and proprietary information.

3 Borgata demanded that Ocean cease and desist its activities last Thursday, August 20,
4 2020. Ocean's counsel responded on Monday, August 24, 2020 and asked for time to respond.
5 Despite the fact that Burke and Callahan's employment clearly and indefensibly violates their
6 agreements with Borgata, Ocean has thus far refused to discontinue their employment, and with
7 respect to Callahan, has repeatedly refused to turn over his Borgata cellular phone and all of the
8 trade secrets and confidential and proprietary information contained on the device. Immediate
9 injunctive relief is necessary, and because Burke and Callahan's employment agreements vest
10 courts in Nevada with exclusive jurisdiction over any claim relating to or arising out of their
11 employment with Borgata, Borgata has filed its lawsuit in this District.

12 **PARTIES**

13 1. Borgata is a New Jersey limited liability company with its principal place of
14 business at 1 Borgata Way, Atlantic City, NJ 08401.

15 2. Borgata is a hotel casino which provides luxury hotel accommodations, luxury spa
16 services, dining, and casino gaming.

17 3. Ocean is a New Jersey corporation with its principal place of business at 500
18 Boardwalk, Atlantic City, NJ, 08401.

19 4. Ocean is located less than three miles away from Borgata, and like Borgata it is a
20 hotel casino which provides luxury hotel accommodations, luxury spa services, dining, and casino
21 gaming.

22 5. Ocean is a direct competitor to Borgata.

23 6. Defendant William Callahan is an individual and a resident of Ocean City, New
24 Jersey.

25 7. Defendant Kelly Ashman Burke is an individual and a resident of Northfield, New
26 Jersey.

27 8. Ted Herschel, Chris O'Connor, Ryan Burch and Steve Ebner are former Borgata
28 employees who have been solicited to work at Ocean within the last several weeks. Although not

1 named as Defendants at this time, their new positions at Ocean appear to require the inevitable
2 disclosure of Borgata's trade secrets and other confidential and proprietary information, and on
3 that basis, this action may be amended to name all four individuals as defendants at an appropriate
4 date.

5 JURISDICTION AND VENUE

6 9. The Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as
7 Borgata's Defend Trade Secrets Act (18 U.S.C. § 1831, *et seq.*) ("DTSA") and Racketeer
8 Influenced and Corrupt Organizations (18 U.S.C. § 1961, *et seq.*) ("RICO") claims arise under
9 federal law.

10 10. The Court has personal jurisdiction over Callahan and Burke because their
11 employment agreements with Borgata vest courts in Clark County, NV with exclusive jurisdiction
12 over any and all claims arising from their violation of those agreements, including but not limited
13 to the DTSA, RICO, non-competition, non-solicitation and misappropriation claims alleged
14 below. The Court has personal jurisdiction over Ocean because Callahan and Burke have
15 perpetrated those violations while employed by and acting as agents of Ocean. Their conduct,
16 which vests this Court with personal jurisdiction, is imputed to their employer, Ocean and vests
17 this Court with personal jurisdiction over Ocean as well.

18 11. Venue is proper in the District of Nevada for the same reasons.

19 12. Callahan and Burke's employment agreements contain New Jersey choice of law
20 provisions, and on that basis, the allegations in the Complaint are pleaded under federal and/or
21 New Jersey state law.

22 FACTUAL ALLEGATIONS

23 13. Borgata hired Callahan in 2002, and he worked for Borgata continuously for the
24 next eighteen years, ultimately entering into an employment agreement to work as Borgata's Vice
25 President of Relationship Marketing.

26 14. As the Vice President of Relationship Marketing, Callahan oversaw the
27 development and maintenance of Borgata's relationships with its most important casino
28

1 customers, including but not limited to casino customers who had “Noir” status in MGM Resorts’
2 M-Life loyalty program.

3 15. At the time of his resignation in July 2020, Callahan had just completed the first
4 year of a new three-year contract which paid him several hundred thousands of dollars per year
5 plus bonus¹. The “Specified Term” of employment began March 20, 2019 through March 19,
6 2022. *See* Callahan Employment Agreement attached hereto as Exhibit “A”.

7 16. As set forth in that agreement, the focus of Callahan’s job duties was the overall
8 guest experience for high level guest, included developing relationships with Borgata’s potential
9 and existing clients, securing relationships with existing clients, and acting as a high-level liaison
10 for Borgata’s highest level casino clientele and large corporate patrons.

11 17. To that end, Callahan personally oversaw Borgata’s highest-level patrons,
12 including those who spend or gamble \$1.5 million to \$4 million *per visit* to Borgata and are
13 collectively responsible for approximately \$25 million in revenue to Borgata per year.

14 18. Callahan used Borgata corporate resources to develop and enrich close personal
15 relationships with these patrons, including making the Company’s corporate jet available to them,
16 attending weddings, providing luxury accommodations, attending football and basketball games,
17 and other social activities.

18 19. Callahan also possessed detailed knowledge of the these players’ particular
19 requirements and practices and had knowledge of how Borgata extended credit to these
20 individuals, when and in what amounts Borgata might discount large losses, the extent to which
21 Borgata would negotiate and modify certain rules that might affect the outcome of game play, the
22 assignment of players to Borgata’s exclusive “Residence” hotel rooms, which are exclusive suites
23 not available for cash reservations, and players’ amenity and food and beverage preferences, and
24 other information about the players and their tendencies that Borgata relied upon to provide it
25 with a competitive advantage in retaining these players during their visits to Atlantic City.

26
27
28 ¹ To protect the secrecy of the agreement, we have redacted Callahan’s employment agreement
and will make it available for review by the Court.

1 20. Callahan communicated with these players directly with the smartphone Borgata
2 provided to him for work purposes. On information and belief – because Callahan has thus far
3 refused to return the phone -- this phone contains the personal cell phone numbers for these
4 players and patrons, as well as text message conversations and other trade secret information
5 about high value players.

6 21. Callahan’s use of the smartphone was subject to various Borgata policies.

7 22. Borgata uses the Mobile/Cellular Device Acceptance Policy provided by MGM
8 Resorts International.

9 23. The Policy states that “Team member is responsible to return the device and all
10 supplied accessors (i.e. charger, USB cable, SIM card, headphone) to Information Technology
11 upon request or termination of employment.”

12 24. The Policy states that “MGMRI is the owner of the device and the team member is
13 the custodian.”

14 25. The Policy states that “MGMRI reserves the right to monitor or review any and all
15 data and information contained on the team member[‘s] device, including use of the Internet and
16 email or any other electronic communication, without prior notice.”

17 26. The Policy states that “Email and internet access are not private. Information that
18 you enter into the device is the property of MGMRI and may be used for any purpose that
19 management determines is appropriate.”

20 27. Borgata also maintains a Computer Use Agreement, a Computer Use Policy, and a
21 Code of Conduct Policy. All of these policies state that company smartphones and email systems
22 contain trade secrets and confidential information, are monitored and that employees such as
23 Callahan should not expect privacy.

24 28. Anyone in possession of this smartphone is in actual possession of Borgata’s
25 highest-tier player and patron list and the means to communicate with them directly.

26 29. Upon his resignation, Callahan refused to return the smartphone and is still in
27 possession of the smartphone and all of the communications and player and patron phone
28

1 numbers inside it, and all of the players' and patrons' particular needs and requests overseen and
2 handled by Callahan.

3 30. This type of knowledge is highly sensitive information in the gaming industry and
4 is the exact type of information that could be used by Borgata's competitors to sway high level
5 players and corporate clientele to patronize their hotels and casinos.

6 31. The contents of Borgata's smartphone constitute highly sensitive Borgata trade
7 secrets and they remain within his control. Borgata instructed Callahan to return the phone on
8 July 17, 2020. Although he said he would do so, he has not.

9 32. Even without the smartphone itself, Callahan has personal and intrinsic knowledge
10 of the particular wants and needs, permissions sought, accommodation preferences, schedules,
11 gaming habits, credit requirements, comp requirements, and staffing preferences for Borgata's
12 highest-level players and top patrons.

13 33. Due to Callahan's high-level position with Borgata and inevitable obtainment and
14 development of detailed personal and professional knowledge of Borgata's most valuable
15 clientele, his Employment Agreement contained restrictive covenants, including non-solicitation,
16 confidentiality, and non-competition provisions.

17 34. In the Employment Agreement, Callahan specifically acknowledges that he would
18 obtain sensitive information rising to the level of "Confidential Information" in the performance
19 of his job functions:

20 Employee acknowledges that, in the course of performing Employee's
21 responsibilities under this Agreement, Employee will form relationships and
22 become acquainted with "Confidential Information" (defined below in Section 22).
23 Employee further acknowledges that such relationships and the Confidential
24 Information are valuable to Employer and the Company, and the restrictions on
25 Employee's future employment contained in this Agreement, if any, are reasonably
26 necessary in order for Employer to remain competitive in Employer's various
27 businesses and to prevent Employee from engaging in unfair competition against
28 Employer after termination of Employee's employment with Employer for any
reason.

26 See Exhibit "A", ¶ 8.

27 35. Callahan agreed to a non-competition provision in the Employment Agreement:
28

1 Competition. Except as otherwise explicitly provided in Paragraph 10 of
2 this Agreement, during the entire Specified Term and thereafter for the
3 “Restrictive Period” (defined below in Section 22) Employee shall not
4 directly or indirectly be employed by, provide consultation or other services
5 to, engage in, participate in or otherwise be connected in any way with any
6 “Competitor” (defined below in Section 22) in any capacity that is or directs
7 the same, substantially the same or similar to the position or capacity
8 (irrespective of title or department) as that held at any time during
9 Employee’s employment with Employer; provided, however, that if
10 Employee remains employed at-will by Employer after expiration of the
11 Specified Term Employee shall not be subject to this Section 8.1 unless (i)
12 Employee is terminated for Employer’s Good Cause as determined by
13 Employer or (ii) Employee resigns his or her position, in which case
14 Employee will remain subject to this Section 8.1 for the remainder of the
15 Restrictive Period.

16 See Exhibit “A”, ¶ 8.1.

17 36. The Employment Agreement defines the Restrictive Period as “the twelve (12)
18 month period immediately following any separation of employee from active employment for any
19 reason occurring during the Specified Term or the twelve (12) month period immediately
20 following the expiration of the Specific Term.” See Exhibit “A”, p. 16.

21 37. Callahan specifically agreed not to work for Borgata’s competitors as follows (in
22 relevant part):

23 (1) Any person, corporation, partnership, limited liability company or
24 other entity or any kind, no matter how defined or identified, that is either directly,
25 indirectly or through an affiliated entity, engaged in or proposes to engage in the
26 ownership, operation or management of a gaming establishment that (i) is located
27 anywhere worldwide and will regularly or on occasion accept single hand Baccarat
28 wagers equal to or greater than \$25,000 USD or (ii) is located in Macau, Hong
Kong, Singapore, Taiwan, Japan, South Korea or within the city limits of Atlantic
City, Philadelphia, Boston or Baltimore or within Prince Georges County,
Maryland; or

See Exhibit “A”, p. 14.

 38. Borgata is informed and believes that Callahan began communicating with Ocean
at least as early as June 2020, and during that month, it appears that he sought counsel regarding
potential methods to circumvent his noncompetition agreement and also communicated with
Mark Conboy, a partner in Luxor Capital, the hedge fund which owns and operates Ocean, about
accepting employment at Ocean.

1 39. On or about July 22, 2020, Mark Donovan, Ocean’s Senior Vice President and
2 Chief Marketing Officer left Ocean. On or about the same date, Ocean hired Callahan, but it
3 appears that Ocean and Callahan conspired together in a transparent attempt to coverup
4 Callahan’s breach of the restrictive covenants in his employment agreement with Borgata. On
5 information and belief, Callahan performs the same functions for Ocean that he performed as
6 Vice President of Relationship Marketing for Borgata, including overseeing and managing
7 Ocean’s relationships with high level players – their “guest experience.”

8 40. Nevertheless, despite the functional equivalency of those job functions, and despite
9 the fact that during an eighteen-year career with Borgata during which Callahan never supervised
10 or oversaw hotel operations, Ocean gave Callahan the title of Senior Vice President of Hotel
11 Operations.

12 41. Ocean is indisputably Borgata’s direct and primary competitor for high-level
13 casino customers in Atlantic City.

14 42. As such, Callahan has breached his Employment Agreement with Borgata and has
15 specifically breached the non-competition provision in his employment agreement.

16 43. Callahan’s Employment Agreement also contains a confidentiality provision:

17 Confidentiality. In addition to Employee’s common law obligations, at all
18 times during Employee’s employment with the Company, and at all times
19 thereafter, Employee shall not, without the prior written consent of the
20 Company’s Chief Executive Officer, Chief Operating Officer or General
21 Counsel in each and every instance--such consent to be within the
22 Company’s sole and absolute discretion--use, disclose or make known to
any person, entity or other third party outside of the Company Group any
Confidential Information belonging to Company Group or its individual
members.

23 See Exhibit “A”, ¶ 8.3.

24 44. Despite this obligation, Callahan did not return his phone to Borgata when he
25 resigned. He did not return it on July 20,2020 as promised. And when Borgata demanded his
26 phone on August 24, 2020, Callahan continued to refuse its return. Despite Borgata’s offer to
27 permit the phone to be delivered directly to a third-party expert forensic examiner to make a
28

1 forensic copy which would then be available to the extent appropriate via discovery requests,
2 Ocean's counsel has refused to turn over the phone.

3 45. Upon information and belief, Callahan has used, and inevitably will use, the
4 contents of Borgata's smartphone and/or his intrinsic knowledge of Borgata's confidential
5 information and trade secrets in the performance of his job functions for Ocean.

6 46. On information and belief, Callahan has disclosed, or will inevitably disclose,
7 Borgata's confidential information and trade secrets in the performance of his job functions for
8 Ocean which are, upon information and belief, the same job functions that Callahan performed for
9 Borgata.

10 47. Since Callahan's departure from Borgata and beginning of employment with
11 Ocean, five (5) more of Borgata's employees have left Borgata and become employees of Ocean.

12 48. These employees formerly worked closely with Callahan at Borgata and
13 collectively made up a large portion of Borgata's casino marketing and hotel executives.

14 49. Upon information and belief, Callahan is responsible for soliciting these
15 individuals to work for Ocean.

16 50. By raiding Borgata's casino marketing and hotel executives in a concerted and
17 rapid fashion, it intentionally has sought to disrupt Borgata's casino operations and secure a
18 critical mass of Borgata executives who are all familiar with the same confidential information
19 and trade secrets of Borgata.

20 51. Callahan, at the instruction of Ocean, has deliberately targeted and hired these
21 Borgata casino marketing and hotel executives for the purpose of having them use their collective
22 knowledge of Borgata's confidential information and trade secrets to unlawfully compete with
23 Borgata.

24 52. The Employment Agreement contains a non-solicitation provision, in which
25 Callahan agreed that "at all times during Employee's employment with [Borgata], and for 12
26 months thereafter, Employee will not, without the prior written consent of [Borgata]:"
27
28

1 (c) approach, solicit, contract with or hire any current Business
2 Contacts of Company Group or entice any Business Contact
3 to cease his/her/its relationship with Company Group or end
4 his/her employment with Company Group, without the prior
5 written consent of Company, in each and every instance,
6 such consent to be within Company's sole and absolute
7 discretion.

8 *See Exhibit "A", ¶ 8.2(c).*

9 53. Callahan's solicitation and "poaching" of Borgata's employees is a direct violation
10 of the Employment Agreement's non-solicitation provision.

11 54. One former Borgata employee that Callahan solicited to join Ocean is Kelly
12 Ashman Burke.

13 55. Burke's employment with Borgata was contractual, with the "Specified Term" of
14 employment from July 19, 2017 through July 18, 2020. *See* Burke Employment Agreement
15 attached hereto as Exhibit "B".

16 56. Burke received compensation over one hundred thousand dollars in return for her
17 specific performance under the terms of the Employment Agreement.²

18 57. Burke was a high-level employee with the job title "Executive Director of
19 Marketing".

20 58. Burke's job duties included developing Burke's job duties included devising and
21 executing marketing strategies including advertising, brand development, direct mail, promotional
22 offers, special events and gift giveaways to drive revenues, including use of the Company's M
23 Life database.

24 59. Burke has detailed personal and professional knowledge of Borgata's customer
25 database as a result of her job duties for Borgata.

26 60. This type of knowledge is highly sensitive information in the gaming industry and
27 is the exact type of information that could be used by Borgata's competitors to influence behavior
28 and motivate customers to patronize their hotels and casinos.

² To protect the secrecy of the agreement, we have redacted Burke's employment agreement and will make it available for review by the Court.

1 61. Due to Burke's high-level position with Borgata, access to and use of Borgata's
2 marketing strategies, customer loyalty programs, and database information, her Employment
3 Agreement contained restrictive covenants, including non-solicitation, confidentiality, and non-
4 competition provisions.

5 62. The restrictive covenant provisions of Burke's Employment Agreement and
6 Callahan's Employment Agreement are identical.

7 63. Like Callahan, Burke's Employment Agreement contained a non-competition
8 agreement with a Restrictive Period (following the end of employment with Borgata) of twelve
9 (12) months.

10 64. Immediately after her employment with Borgata ended on or about July 18, 2020,
11 Burke began employment with Ocean. Burke acknowledged the applicability of the non-
12 competition provision in post-employment discussions.

13 65. Nevertheless, Burke accepted her position at Ocean in violation of those
14 restrictions, and upon information and belief, Burke performs the same job functions at Ocean
15 that she performed as Executive Director of Marketing for Borgata.

16 66. Burke is in direct violation of the non-competition provisions of her Employment
17 Agreement.

18 67. Burke has disclosed, or will inevitably disclose, Borgata's confidential information
19 in the performance of her job functions for Ocean which are, upon information and belief, the
20 same job functions that Burke performed for Borgata.

21 68. Other former Borgata employees that Callahan solicited to join Ocean include: (1)
22 Ted Herschel (Borgata's Vice President of Slots); (2) Christopher O'Connor (Borgata's Director
23 of Casino Credit); (3) Stephen Ebner (Borgata's Director of Slots), and; (4) Ryan Burch
24 (Borgata's Director of Hotel Operations).

25 69. Ocean has willfully and maliciously employed Callahan and Burke despite being
26 aware that Callahan and Burke were prohibited from working for Ocean due to the Employment
27 Agreements.

28

1 78. Borgata and Burke are parties to an enforceable Employment Agreement
2 containing non-competition, confidentiality, and non-solicitation provisions.

3 79. Callahan and Burke have violated the Employment Agreements by seeking and
4 obtaining employment with Ocean while still bound by the twelve (12) month Restrictive Period
5 prohibiting them from doing so.

6 80. Callahan violated the Employment Agreement by soliciting Borgata's employees
7 to instead become employed by Ocean, Borgata's direct competitor.

8 81. Callahan and Burke have, or inevitably will, disclose Borgata's confidential
9 information while employed by Ocean, in violation of the Employment Agreements.

10 82. Ocean has, without privilege or justification, induced or facilitated Callahan and
11 Burke to violate the Employment Agreements.

12 83. Ocean has induced or facilitated Callahan and Burke violating the confidentiality
13 provisions of the Employment Agreements.

14 84. Ocean has induced or facilitated Callahan to violate the non-solicitation provisions
15 of the Employment Agreement by employing former Borgata employees who Callahan solicited.

16 85. Borgata is suffering irreparable harm, the equities tilt in Borgata's favor, and the
17 public interest is served by upholding fundamental tenets of contract law as the Employment
18 Agreements are narrowly tailored to protect Borgata's legitimate business interests.

19 WHEREFORE, Borgata respectfully requests judgment in its favor and against Callahan
20 and Burke as follows: (1) for an Order declaring and adjudging that Callahan and Burke are in
21 violation of the Employment Agreement; (2) for an Order declaring and adjudging that Callahan
22 and Burke immediately cease their employment with Ocean; (3) for an Order declaring and
23 adjudging that Callahan has violated the non-solicitation provisions of the Employment
24 Agreement; (4) for an Order declaring and adjudging that Callahan and Burke have, or will
25 inevitably, disclose Borgata's confidential information in the performance of their job functions
26 for Ocean; (5) for an Order declaring and adjudging that Ocean has tortiously interfered with the
27 performance of the Employment Agreements; (6) for an Order declaring and adjudging that
28 Ocean has tortiously interfered with Borgata's prospective economic opportunities; (7) for an

1 order declaring and adjudging in the form of an injunction that Callahan and Burke immediately
2 cease their tortious conduct which continues to cause irreparable injury to Borgata; (8) for such
3 other and further relief as the Court may deem just and proper.

4 **COUNT II – Breach of Contract**
5 **(Against Callahan and Burke)**

6 86. The allegations set forth in the preceding paragraphs are incorporated herein by
7 reference as though set forth in full.

8 87. The Employment Agreements between Borgata and Callahan and Borgata and
9 Burke are valid and binding contracts for which Callahan and Burke received adequate
10 consideration.

11 88. The non-competition provisions of the Employment Agreements prohibit Callahan
12 and Burke from seeking employment with Borgata’s competitors for a period of twelve (12)
13 months and within Atlantic City.

14 89. Callahan and Burke breached the Employment Agreements by accepting
15 employment with Ocean, which is a direct competitor to Borgata.

16 90. Callahan breached the non-solicitation provisions of the Employment Agreement
17 by directly soliciting Borgata’s employees to cease employment with Borgata and begin
18 employment for Ocean.

19 91. Callahan and Burke breached the confidentiality provisions of the Employment
20 Agreements by using their knowledge of Borgata’s confidential information to benefit their new
21 employer, Ocean.

22 WHEREFORE, Borgata respectfully requests judgment in its favor and against Callahan
23 and Burke as follows: (1) for specific performance seeking to enjoin Callahan and Burke from
24 continuing employment with Ocean; (2) for contract reformation, compelling Callahan and Burke
25 to renew the Employment Agreement’s Restrictive Period for a period of time equal to that in
26 which they have been in violation of its provisions; (3) for consequential damages flowing from
27 Callahan and Burke’s breach of contract; (4) reformation of the Employment Agreements to
28 decrease the consideration paid to Callahan and Burke based on the proportionate amount of

1 value of the restrictive covenant provisions with which Callahan and Burke have refused to
2 perform, and (4) for such other and further relief as the Court may deem just and proper.

3 **COUNT III – Tortious Interference**
4 **(Against Callahan and Ocean)**

5 92. The allegations set forth in the preceding paragraphs are incorporated herein by
6 reference as though set forth in full.

7 93. Ocean intentionally and tortiously interfered with Callahan and Burke’s
8 performance of the Employment Agreements by soliciting them and employing them in direct
9 contravention of the non-competition provisions of the Employment Agreements.

10 94. Ocean encouraged and/or facilitated Callahan and Burke to breach the
11 confidentiality provisions of the Employment Agreements giving them job functions which have
12 or will result in inevitable disclosure of Borgata’s confidential information known to Callahan and
13 Burke.

14 95. Ocean was not privileged to interfere with Callahan and Burke’s performance of
15 the Employment Agreements.

16 96. Intentionally, and with reckless disregard for the Employment Agreements, Ocean
17 continues to employ Callahan and Burke for the specific purpose of competing with Borgata and
18 making use of Callahan and Burke’s knowledge of Borgata’s confidential information.

19 97. Ocean’s egregious and willful conduct supports an award of punitive damages in
20 this matter.

21 98. Callahan, with reckless disregard for the Employment Agreement, solicited at least
22 three (3) Borgata employees to cease their employment with Borgata and instead become
23 employed by Ocean.

24 99. One employee Callahan solicited was Burke, who was also bound by the restrictive
25 covenant provision of her Employment Agreement.

26 100. By soliciting Burke to become employed by Ocean, he tortiously interfered with
27 Burke’s performance of the non-competition provisions of her Employment Agreement.
28

**COUNT V – Defend Trade Secrets Act, 18 U.S.C. § 1831, et seq.
(Against All Defendants)**

106. The allegations set forth in the preceding paragraphs are incorporated herein by reference as though set forth in full.

107. Callahan has retained Borgata’s smartphone, issued to him in the performance of his job functions for Borgata, following his resignation from Borgata.

108. The smartphone contains names and phone numbers of Borgata’s highest-level players and top ten (10) patrons.

109. The information, in form and function, contains a customer list of Borgata’s highest-level players and patrons.

110. In addition to names and contact information, the phone contains messages about the individual preferences, accommodations, credit requirements, staffing, gaming preferences, rule preferences, and other individualized information that is the exact kind of information that could be used by a competing casino, like Ocean, to directly compete with Borgata for Borgata’s most valuable clientele.

111. Without the smartphone, Callahan still has intrinsic knowledge of this information that he developed while employed by Borgata for 17 years.

112. Burke too has similar intrinsic knowledge of Borgata’s marking strategy and the way Borgata uses its customer database to drive business.

113. Ocean, Burke and Callahan have no privilege to use or possess this information for any legitimate purpose.

114. Borgata took reasonable measures to protect this information, which is not known to the general public, by, among other things, having employees with exposure to Borgata’s information and trade secrets (like Callahan and Burke) sign Employment Agreements containing non-competition, confidentiality, and non-solicitation provisions.

115. Ocean’s raid of Borgata’s casino marketing and hotel executives was an effort to leverage and further make use of their collective intrinsic knowledge of Borgata’s confidential information and trade secrets.

1 116. Ocean's efforts and the individual efforts of the former Borgata employees named
2 herein is a conspiracy to misappropriate and use Borgata's trade secrets.

3 117. Ocean, Callahan and Burke's misappropriation of Borgata's trade secrets violates
4 the DTSA.

5 WHEREFORE Borgata respectfully requests judgment in its favor and against all
6 defendants as follows: (1) for an Order enjoining Ocean from continuing to employ Callahan and
7 Burke; (2) for injunctive relief requiring the immediate return of all devices and documents
8 containing trade secrets and other information, including but not limited to Callahan's
9 misappropriated phone; (3) for actual and consequential damages flowing from Callahan, Burke
10 and Ocean's misappropriation of Borgata's trade secrets; (4) for an award punitive damages; (5)
11 for immediate seizure of Borgata's smartphone given to Callahan in the performance of his job
12 functions for Borgata and now used by Callahan and Ocean to compete with Borgata using the
13 trade secrets contained therein, and; (6) for such other and further relief as the Court may deem
14 just and proper.

15 **COUNT VI – New Jersey Trade Secrets Act, N.J.S.A. § 56:15-1 *et seq.***
16 **(Against All Defendants)**

17 118. The allegations set forth in the preceding paragraphs are incorporated herein by
18 reference as though set forth in full.

19 119. Callahan has retained Borgata's smartphone, issued to him in the performance of
20 his job functions for Borgata, following his resignation from Borgata.

21 120. The smartphone contains names and phone numbers of Borgata's highest-level
22 players and top patrons.

23 121. The information, in form and function, contains a customer list of Borgata's
24 highest-level players and top patrons.

25 122. In addition to names and contact information, the phone contains messages about
26 the individual preferences, accommodations, credit requirements, staffing, gaming preferences,
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1 rule preferences, and other individualized information that is the exact kind of information that
2 could be used by a competing casino, like Ocean, to directly compete with Borgata for Borgata's
3 most valuable clientele.

4 123. Without the smartphone, Callahan still has intrinsic knowledge of this information
5 that he developed while employed by Borgata for 17 years.

6 124. Burke too has similar intrinsic knowledge of Borgata's customers, customer
7 databases and marketing strategies.

8 125. Ocean, Burke and Callahan have no privilege to use or possess this information for
9 any legitimate purpose.

10 126. Borgata took reasonable measures to protect this information, which is not known
11 to the general public, by, among other things, having employees with exposure to Borgata's
12 information and trade secrets (like Callahan and Burke) sign Employment Agreements containing
13 non-competition, confidentiality, and non-solicitation provisions.

14 127. Ocean's raid of Borgata's casino marketing and hotel executives was an effort to
15 leverage and further make use of their collective intrinsic knowledge of Borgata's confidential
16 information and trade secrets.

17 128. Ocean's efforts and the individual efforts of the former Borgata employees named
18 herein is a conspiracy to misappropriate and use Borgata's trade secrets.

19 WHEREFORE Borgata respectfully requests judgment in its favor and against all
20 defendants as follows: (1) for an Order enjoining Ocean from continuing to employ Callahan and
21 Burke; (2) for injunctive relief prohibiting misappropriation and requiring the return of all
22 documents and devices containing trade secrets; (3) for actual and consequential damages flowing
23 from Callahan and Ocean's tortious interference; jointly and severally; (4) for an award punitive
24 damages; (5) for immediate seizure of Borgata's smartphone given to Callahan in the
25 performance of his job functions for Borgata and now used by Callahan and Ocean to compete
26 with Borgata using the trade secrets contained therein, and; (6) for such other and further relief as
27 the Court may deem just and proper.

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1 138. Borgata took reasonable measures to protect this information, which is not known
2 to the general public, by, among other things, having employees with exposure to Borgata's
3 information and trade secrets (like Callahan and Burke) sign Employment Agreements containing
4 non-competition, confidentiality, and non-solicitation provisions.

5 139. Ocean's raid of Borgata's casino marketing and hotel executives was an effort to
6 leverage and further make use of their collective intrinsic knowledge of Borgata's confidential
7 information and trade secrets.

8 140. Ocean's efforts and the individual efforts of the former Borgata employees named
9 herein is a conspiracy to misappropriate and use Borgata's trade secrets.

10 WHEREFORE Borgata respectfully requests judgment in its favor and against all
11 defendants as follows: (1) for an Order enjoining Ocean from continuing to employ Callahan and
12 Burke; (2) for injunctive relief; (3) for actual and consequential damages flowing from
13 Defendant's action, jointly and severally; (4) for an award punitive damages; (5) for an award of
14 treble damages; (6) for an accounting of all proceeds gained by Ocean as a result of its unlawful
15 activities and the unlawful activities of Callahan, Burke, and former Borgata employees named
16 herein, and; (7) for such other and further relief as the Court may deem just and proper.

17 WHEREFORE, for each and every Count, Borgata respectfully requests: (1) an award of
18 damages, in an amount to be determined at trial, incurred by Borgata as a result of defendants'
19 unlawful actions; (2) cost and disbursements of this action, including reasonable attorneys' fees,
20 costs, and expenses; (3) pre-trial and post-judgment interest; (4) an accounting and disgorgement
21 of any profits or bonuses earned by Ocean, Callahan, and Burke as a result of their unlawful
22 activities; (5) punitive damages; (6) an order temporarily, preliminarily, and permanently
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1 restraining Ocean from continuing to employ Callahan and Burke and restraining Callahan and
2 Burke from continuing employment with Ocean, and; (7) for such other and further relief as the
3 Court may deem just and proper.

4 Date: August 27th, 2020

5 Respectfully submitted,

6 **JACKSON LEWIS, P.C.**

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