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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF THURSTON

EMBRACE PET INSURANCE AGENCY, LLC, Plaintiff, v. OFFICE OF THE INSURANCE COMMISSIONER and EMILY BRILL, an individual, Defendants.	Case No. **DECLARATION OF BRIAN MACIAS IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, Brian Macias, hereby certify and declare as follows:

1. I am the President of Embrace Pet Insurance Agency, LLC ("Embrace"). I have held this position since November 2019. I am over the age of 18, have personal knowledge of the information contained in this declaration, and am competent to testify thereto if called as a witness.

2. I submit this declaration in support of Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction to enjoin the Washington Office of the Insurance Commissioner ("OIC") from disclosing Embrace's proprietary trade secrets and private information concerning its business strategies and affiliate partners to the requester, Emily Brill.

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I. BACKGROUND ON EMBRACE AND THE OIC INQUIRY

3. Based in Cleveland, Ohio, Embrace is a leading U.S. pet health insurance provider for dogs and cats. Embrace offers a comprehensive accident and illness insurance plan as well as a "Wellness Rewards" optional preventative care product that is unique in the pet insurance industry.

4. For a period of time, Embrace had a program in Washington through which it paid referral fees to affiliates who submitted "qualified leads" (*i.e.*, partially completed applications for pet insurance) (the "Marketing Affiliate Program"). Embrace discontinued its Marketing Affiliate Program in Washington in January 2021.

5. On September 1, 2021, Embrace received a letter from the OIC advising that the OIC had received a complaint that Embrace was allegedly paying unlicensed producers to solicit insurance in possible violation of RCW 48.17.490(1), and that the OIC was conducting an investigation into that complaint (the "OIC Inquiry"). The OIC presented Embrace with a list of questions pertaining to its Inquiry.

6. Embrace was required to respond to the OIC Inquiry under the Washington regulations that govern insurance companies.

7. In October 2021, Embrace responded to the OIC Inquiry through written answers and supporting documents. Embrace's written answers provided confidential information about Embrace's business and marketing and strategies, including confidential details regarding the contractual terms, design, and participants in Embrace's Marketing Affiliate Program. This response also included confidential financial information regarding the costs of the Marketing Affiliate Program and the total value of customer premiums attributable to that specific program, as well as reports of business data related to the program, such as the number of qualified leads generated by a particular partner that resulted in a customer's purchase of insurance from Embrace.

8. Embrace designated the confidential information and documents that it provided in response to the OIC Inquiry as "Confidential & Trade Secret."

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9. On December 16, 2021, the OIC informed Embrace that it had concluded that the allegation that Embrace had violated Washington's insurance code was unsubstantiated.

II. EMBRACE'S TRADE SECRETS

10. Embrace's success depends to a great extent on its ability to successfully design and implement marketing strategies and programs with effective partners and affiliates, at appropriate cost and with appropriate return on investment.

11. Embrace has invested substantial resources building up its base through marketing and promotional activity.

12. Embrace has designed and implemented various marketing strategies and programs, including the Marketing Affiliate Program.

13. Embrace's marketing programs, and agreements reflecting their design and implementation, are based on complicated analyses. A significant amount of work goes into formulating the best offerings to maximize benefits and minimize costs.

14. Embrace maintains confidential data regarding, among other things, the fees it has paid to specific marketing partners, as well as web traffic and revenue attributable to specific marketing partners under specific marketing programs.

III. VALUE OF EMBRACE'S TRADE SECRETS TO COMPETITORS

15. A full list of Embrace's partners in any given marketing program, including the Marketing Affiliate Program, is not readily ascertainable from any public source.

16. Financial data concerning Embrace's payments to partners in the Marketing Affiliate Program and concerning the total value of customer premiums that Embrace attributes to this marketing program are not publicly available or readily ascertainable from any public source.

17. Descriptions of any given Embrace marketing strategy (including the Marketing Affiliate Program), its design, implementation, and the business data related to it are not publicly available or readily ascertainable from any public source.

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18. If the confidential business information that Embrace disclosed to OIC in October 2021 were to become public, Embrace's competitors would have access to a ready-made list of potential marketing affiliates without having to expend the resources that Embrace did to develop this list of partners.

19. If the confidential business information that Embrace disclosed to OIC in October 2021 were to become public, Embrace's competitors would have access to confidential Embrace data regarding the relative success of Embrace's relationships with each of its marketing partners in its Marketing Affiliate Program, which would (among other things) allow Embrace's competitors to target Embrace's most successful partners for enrollment in their own competitive programs.

20. If the details of Embrace's Marketing Affiliate Program that Embrace disclosed to OIC in October 2021 were to become public, Embrace's competitors could adopt or imitate Embrace's strategy with none of the resource investment than Embrace had to expend in designing and implementing this strategy in the first place.

21. The concerns related to competitor free-riding identified above apply just as well to Embrace's smaller competitors and new entrants to the market.

22. The confidential marketing program information discussed in the preceding paragraphs is even more economically valuable to Embrace's competitors when combined with the financial data relating to the Marketing Affiliate Program that Embrace disclosed to OIC, such as Embrace's total expenditures on the program and total revenue attributable to the marketing program.

23. The fees Embrace negotiated with each affiliate under the Marketing Affiliate Program, Embrace's total expenditures under the program, and the total revenue attributable to the program all provide points of comparison for a competitor to assess and design its own marketing strategies with the goal of pulling market share from Embrace.

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24. The volume of Embrace's partners in the Marketing Affiliate Program, and the cost, customer leads, and revenue attributable to these affiliate partners, which Embrace disclosed to the OIC in October 2021, are an indicator of Embrace's market share.

IV. EMBRACE'S EFFORTS TO MAINTAIN THE SECRECY OF ITS TRADE SECRETS

25. Embrace has undertaken specific and reasonable efforts to maintain the secrecy of its business and marketing strategies, financial data, business data, and lists of customers and business partners, including the information that Embrace disclosed to OIC in confidence in October 2021.

26. Embrace has never publicly disclosed the confidential business information that it disclosed to OIC in response to the OIC Inquiry in October 2021.

27. Embrace has internal policies and procedures to maintain the confidentiality of its files, including policies and procedures to safely store and limit access to such information.

28. Under Embrace's Nondisclosure, Non-Competition, and Invention Assignment Agreement, all Embrace employees are required to safeguard the confidentiality of Embrace's business and marketing strategies, financial data, business data, and lists of customers and business partners.

29. Embrace has further established a formal set of information security policies and supporting procedures, which all employees must review and acknowledge on a yearly basis. These policies and procedures help ensure the safety and security of Embrace's confidential information.

30. Embrace protects the confidentiality of all business information related to its Marketing Affiliate Program, pursuant to the terms of its affiliate program agreement, which contains specific confidentiality provisions.

31. Internally, Embrace stores its confidential business information—including documents containing non-public details of Embrace's marketing strategies and data regarding

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costs and revenues associated with specific partners in Embrace's Marketing Affiliate Program—on a security-controlled private network. Only those Embrace employees with a "need to know" this information to perform their job functions have access to this confidential information.

V. RISK OF IRREPARABLE HARM FROM DISCLOSURE OF TRADE SECRETS

32. Due to its highly competitive value, public disclosure of the confidential business information that Embrace disclosed in confidence to OIC in October 2021, will cause substantial and irreparable competitive harm to Embrace.

33. If the confidential business information that Embrace NSM disclosed in confidence to OIC in October 2021 were disclosed, Embrace's competitors would use Embrace's information to erode Embrace's market share, unfairly compete with Embrace using Embrace's confidential information, and disrupt Embrace's significant investment in recruiting and retaining affiliate partners by recruiting partners away from Embrace.

34. If the confidential business information that Embrace disclosed in confidence to OIC in October 2021 were disclosed, this disclosure would undercut Embrace's competitive position in the pet insurance market, which in turn could result in less choice, higher prices, fewer earning opportunities, and more limited options for customers.

35. Additionally, Embrace is committed to protecting all of its partners' and affiliates' confidential business information, including that which is collected from their collaboration with Embrace such as through the Marketing Affiliate Program.

36. Embrace's partners in the Marketing Affiliate Program participated in the program subject to an agreement to keep non-public business information regarding the program confidential.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of March, 2023, in Cleveland, Ohio.

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DocuSigned by:
Brian Macias
EC0700524CBE483...

BRIAN MACIAS

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that on this date I caused the foregoing DECLARATION OF BRIAN MACIAS IN SUPPORT OF EMBRACE PET INSURANCE, LLC'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION on the following parties:

Emily Brill
1148 5th Avenue, Apt. #8A
New York, NY 10128-0807
emily@thecaninereview.com
917-297-3537

Defendant Emily Brill

Marta DeLeon
Assistant Attorney General
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Attorney for Defendant Office of the Insurance Commissioner

Office of the Insurance Commissioner
5000 Capitol Blvd., SE
Tumwater, WA 98501

Defendant Office of the Insurance Commissioner

by causing the document to be delivered by the following indicated method or methods:

☑ by electronic mail to the addresses listed above on the date set forth below.

☐ by mailing full, true and correct copies thereof in sealed, first class postage prepaid envelopes, addressed to the parties and/or their attorneys as shown above, to the last-known office addresses of the parties and/or attorneys, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.

☐ by causing full, true, and correct copies thereof to be hand-delivered to the parties and/or their attorneys at their last-known office addresses listed above on the date set forth below.

☐ by sending full, true, and correct copies thereof, via overnight courier in sealed, prepaid envelopes, addressed to the parties and/or their attorneys as shown above, to the last-known office addresses of the parties and/or their attorneys, on the date set forth below.

DATED March 7, 2023.

s/
Kristin Asai

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