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14 FIDELITY BROKERAGE SERVICES LLC

15 UNITED STATES DISTRICT COURT  
16 EASTERN DISTRICT OF CALIFORNIA  
17 SACRAMENTO DIVISION

18 FIDELITY BROKERAGE )  
19 SERVICES LLC, )  
20 Plaintiff, )  
21 v. )  
22 JOHN NORDSTROM; and )  
23 INNOVATION WEALTH )  
24 MANAGEMENT, )  
25 Defendants. )

CASE NO. 2:17-at-295

COMPLAINT FOR:

1. MISAPPROPRIATION OF TRADE SECRETS IN VIOLATION OF THE DEFEND TRADE SECRETS ACT [18 U.S.C. §§ 1836 *et seq.*];
2. UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE §§17200 *et seq.*; AND
3. INJUNCTIVE RELIEF.

1 Plaintiff Fidelity Brokerage Services LLC (“Fidelity”), by its undersigned  
2 counsel, hereby brings this action for injunctive relief against Defendants John  
3 Nordstrom (“Nordstrom”) and Innovation Wealth Management (“IWM”)  
4 (collectively “Defendants”) for misappropriation of trade secrets and unfair  
5 competition, as follows:

6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction over this action pursuant to 28  
8 U.S.C. § 1331, as this matter involves a cause of action arising under the Federal  
9 Defend Trade Secrets Act (“DTSA”), 18 U.S.C. §§ 1836 *et seq.* See 18 U.S.C. §  
10 1836(c) (West 2017) (“The district courts of the United States shall have original  
11 jurisdiction of civil actions brought under this section.”). This Court has  
12 supplemental jurisdiction over the California unfair competition claim herein  
13 pursuant to 28 U.S.C. § 1367 because the unfair competition claim is so related to the  
14 DTSA claim for which this Court has original jurisdiction that they form part of the  
15 same controversy. Notably, Defendants used Fidelity’s customer information to  
16 solicit Fidelity customers and disparage Fidelity.

17 2. This Court also has jurisdiction over this action pursuant to 28 U.S.C. §  
18 1332 as the parties are diverse and the amount in controversy exceeds \$75,000.00,  
19 exclusive of interest and costs. Indeed, Nordstrom’s conduct threatens  
20 approximately 230 customer households, representing in excess of \$210 million in  
21 assets under Fidelity management.

22 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because  
23 both Defendants reside in this District, and a substantial part of the events giving rise  
24 to Fidelity’s claims occurred in this District.

25 **NATURE OF THE CASE**

26 4. Through this action, Fidelity seeks immediate injunctive and other relief  
27 to stop Defendants’ continuing misappropriation of Fidelity’s trade secrets and unfair  
28 competition.

1           5. Nordstrom, a former Fidelity Financial Consultant, has taken Fidelity’s  
2 confidential and trade secret customer information that he had access to by virtue of  
3 his employment with Fidelity, and has used that information to unlawfully solicit  
4 Fidelity customers to transfer their business to a competing brokerage institution and  
5 to disparage Fidelity to Fidelity’s customers.

6           6. On February 16, 2017, Nordstrom abruptly resigned from Fidelity and  
7 immediately joined IWM, which is affiliated with LPL Financial, LLC (“LPL”).

8           7. After Nordstrom resigned, Fidelity reminded him of his legal and  
9 contractual obligations to Fidelity. Despite those obligations, Nordstrom took  
10 Fidelity’s confidential and trade secret customer information and began using and  
11 continues to use that information to unlawfully target Fidelity customers to solicit  
12 them to transfer their accounts to IWM and to disparage Fidelity.

13           8. Fidelity has done all it reasonably could do to avoid court intervention in  
14 this matter. When Fidelity first heard reports that Nordstrom may have  
15 misappropriated Fidelity customer information and used it to solicit Fidelity  
16 customers in violation of federal and California law, it immediately sent a cease and  
17 desist letter to Nordstrom asking that all Fidelity customer information be returned  
18 and that Nordstrom cease any solicitation of Fidelity customers. Instead of  
19 complying with the cease and desist letter and stopping their wrongful conduct,  
20 Fidelity has recently received reports from multiple customers demonstrably showing  
21 that Defendants continue to possess Fidelity’s confidential trade secret information  
22 and continue to use Fidelity’s confidential trade secret information to solicit Fidelity  
23 customers and disparage Fidelity to Fidelity’s customers.

24           9. Fidelity has learned that Nordstrom solicited multiple Fidelity customers  
25 by calling and asking them to discuss moving their accounts to Nordstrom at his new  
26 firm, IWM. During the messages and/or telephone calls, Nordstrom disparaged  
27 Fidelity’s practices and offered to discuss how he could provide superior services  
28 compared to Fidelity.

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1           10. Assuming, *arguendo*, that Nordstrom is permitted under Federal and/or  
2 California law to use Fidelity’s trade secret customer information to announce his  
3 new affiliation with IWM and LPL, Nordstrom already made such announcement  
4 when he first joined IWM and LPL. Nordstrom has no legal basis to retain any  
5 Fidelity trade secret information. As shown by the recent report from multiple  
6 Fidelity customers that Nordstrom solicited them and disparaged Fidelity on behalf of  
7 IWM, Defendants still possess Fidelity trade secret customer information and are  
8 using that information to solicit Fidelity’s customers. This conduct is unlawful under  
9 Federal and California law. Accordingly, Defendants should be required to return  
10 any such information to Fidelity and ordered to cease any solicitation of Fidelity’s  
11 customers. Defendants should also be prohibited from using Fidelity’s confidential  
12 customer information to disparage Fidelity to its customers.

13           11. Fidelity seeks a temporary restraining order and/or a preliminary  
14 injunction requiring Defendants to return to Fidelity any and all records and/or  
15 documents in any form, received or removed from Fidelity by Defendants, containing  
16 information pertaining to customers Nordstrom served or whose name became known  
17 to Nordstrom while in the employ of Fidelity, including, but not limited to, any  
18 customer list or documents, replicated or “recreated” by Nordstrom by memory or  
19 otherwise, using Fidelity’s confidential and trade secret information concerning  
20 Fidelity’s customers. This injunctive relief is necessary to end Defendants’ unlawful  
21 activities, which include misappropriation of Fidelity’s trade secrets and unfair  
22 competition.

23           12. Fidelity and Nordstrom are subject to the arbitration rules and  
24 regulations of the Financial Industry Regulatory Authority (“FINRA”) pursuant to  
25 FINRA Rule 13200. Accordingly, concurrently with the filing of the *Ex Parte*  
26 Application for TRO (“Application”), Fidelity also is filing a Statement of Claim  
27 with FINRA seeking binding arbitration of this dispute pursuant to Rule

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1 13804(a)(2).<sup>1</sup> Although the merits of this case will likely be resolved in arbitration  
2 before FINRA, pursuant to FINRA Rule 13804, Fidelity is ***required*** to seek and  
3 ***obtain*** immediate injunctive relief in a court of competent jurisdiction ***before*** an  
4 expedited FINRA arbitration is permitted to proceed. Once the preliminary  
5 injunction is issued by this Court, an expedited arbitration will be scheduled with  
6 FINRA within fifteen (15) days of the entry of the preliminary injunction. If no  
7 preliminary injunction is issued, however, this case cannot be heard by FINRA on an  
8 expedited basis and, instead, will be assigned to a standard-track arbitration, which  
9 would likely delay a hearing on the merits for a year or more. ***Preliminary injunctive***  
10 ***relief, therefore, is required to preserve the status quo until the merits of this case***  
11 ***can be adjudicated by FINRA.***

12 **PARTIES**

13 13. Fidelity is a limited liability company, whose sole member is Fidelity  
14 Global Brokerage Group, Inc., a corporation organized and existing under the laws of  
15 the Commonwealth of Massachusetts, with its principal place of business located in  
16 Boston, Massachusetts. Fidelity is qualified to conduct business, and carries on  
17 business in the State of California, and in particular in Placer County, California.

18 14. Nordstrom is a former Financial Consultant of Fidelity's Roseville,  
19 California investor center, is a citizen of the state of California and, upon information  
20 and belief, resides in Roseville, California which is located in Placer County. Upon  
21 information and belief, Nordstrom is presently employed by or holds an ownership  
22 interest in IWM in its Roseville, California office.

23 15. Upon information and belief, IWM is a California limited liability  
24 company with its principal place of business in Roseville, California.

25  
26  
27 <sup>1</sup> IWM is not a FINRA member. If IWM does not consent to arbitrate this case  
28 through FINRA, Fidelity will proceed against Nordstrom before FINRA and against  
IWM in this Court.

1 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

2 **Fidelity’s Unique Customer Development Practices**

3 16. Fidelity and its affiliates provide a variety of financial services—such as  
4 retirement services, investment planning, wealth management, securities execution  
5 and clearing, life insurance services, and equity services—to Fidelity customers, with  
6 whom Fidelity typically enjoys significant, long-term relationships. Fidelity offers  
7 individual investors a broad assortment of trading and cash management features  
8 including buying and selling stocks, bonds, options and more than 10,000 mutual  
9 funds from Fidelity and other well-known fund companies.

10 17. Fidelity is unique in the retail brokerage field because Fidelity does not  
11 have its Account Executives, including its Financial Consultants, make “cold calls”  
12 to persons who have no relationship with Fidelity, or who were not referred to  
13 Fidelity. Fidelity requires its Financial Consultants to develop service relationships  
14 based upon leads that Fidelity provides. Fidelity provides leads to its Financial  
15 Consultants from two primary sources.

16 18. First, Fidelity forwards information to its representatives from  
17 prospective customers who initiate contact with Fidelity either by telephone, over the  
18 internet, or in person. Fidelity and its affiliates devote tens of millions of dollars per  
19 year toward attracting customers to Fidelity’s various businesses by a variety of  
20 means. Fidelity arranges to publish and broadcast national and local advertisements  
21 which invite potential customers to contact Fidelity; Fidelity maintains an interactive  
22 internet page that allows interested persons to establish relationships with Fidelity;  
23 Fidelity maintains multiple call centers that prospective customers can use to initiate  
24 contact with Fidelity; and Fidelity maintains prominent retail locations that  
25 prospective customers can visit. A large portion of Fidelity’s business is derived  
26 from this initial customer contact that is generated by significant investments of time,  
27 labor, and capital by Fidelity.

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1           19. Second, Fidelity forwards information to its representatives regarding  
2 customers, with whom Fidelity already has a relationship, when those customers  
3 experience “triggering events,” such as Fidelity 401(k) distributable events, which  
4 may lead to interest in Fidelity’s retail financial services. In addition, representatives  
5 may be assigned to service customers previously serviced by other representatives in  
6 certain circumstances, such as if the former representative moves, leaves Fidelity, or  
7 is promoted to another position. A significant portion of Fidelity’s business is  
8 derived from servicing the needs of Fidelity’s existing customers.

9           20. Financial Consultants such as Nordstrom are the face of Fidelity,  
10 responsible for developing and sustaining the customer relationships for assigned  
11 customers. Fidelity’s lead-based approach to supporting its Financial Consultants  
12 distinguishes Fidelity from other full-service brokerages, where individual brokers,  
13 rather than the firm, are responsible for establishing customer relationships.  
14 Fidelity’s success in its lead-based approach is based on the typically long-standing  
15 relationships it enjoys with its customers.

16 **Fidelity’s Trade Secret Customer Information**

17           21. Fidelity’s success with its unique lead-based approach to supporting  
18 Financial Consultants, such as Nordstrom, is directly tied to Fidelity’s trade secret  
19 customer information, which is among Fidelity’s most important assets. Fidelity’s  
20 trade secret customer data includes the names of and contact information for Fidelity  
21 customers, and includes financial information relating to those customers, such as  
22 customer financial statements, investment goals, investment history, assets, income,  
23 and net worth. Although certain information might be publicly available—such as an  
24 individual’s name or published home telephone number—only a limited number of  
25 Fidelity employees know who among the general public are Fidelity customers, and  
26 therefore have a specific need for investment services. Fidelity developed its  
27 customer data through significant investments of time, labor, and capital, as described  
28 above.

1           22. Fidelity maintains its customer data in confidence, both to preserve  
2 Fidelity's competitive advantage in its customer base and to meet customer  
3 expectations that Fidelity will maintain sensitive, personally identifiable information  
4 (including his/her identity as a customer, contact information and financial  
5 information) in confidence. Fidelity derives substantial economic value from  
6 preserving its customer data as a trade secret. Although individual customers are  
7 periodically subject to random solicitations from Fidelity competitors, no competitor  
8 can effectively target a set of Fidelity customers and address their needs without  
9 access to Fidelity's trade secret customer data. In this way, maintaining the  
10 confidentiality of Fidelity's trade secret customer data provides Fidelity with a  
11 significant competitive advantage over its competitors.

12 **Fidelity's Efforts To Preserve The Confidentiality Of Its Customer Data**

13           23. Fidelity vigilantly preserves its trade-secret customer data so that it does  
14 not become available to competitors, who could use the data to divert customers  
15 without the investments of time, labor, and capital that Fidelity made to compile the  
16 information. Fidelity does not provide its trade secret customer data to competitors.  
17 Fidelity maintains its trade secret customer data on password-protected computers,  
18 and only employees whose jobs require access to the customer data are provided with  
19 such access.

20           24. Fidelity maintains and advises its employees of a Global Policy on  
21 Information Protection that is displayed on Fidelity's intranet. A true and correct  
22 copy of Fidelity's Global Policy on Information Protection is attached hereto as  
23 Exhibit 1. Fidelity periodically reminds its employees of this policy and provides  
24 employees with a Quick Reference Card (QRC) explaining how to protect specific  
25 types of Fidelity Confidential Information. A true and correct copy of the QRC for  
26 Fidelity's Global Information Protection Policy is attached hereto as Exhibit 2.

27           25. Fidelity further protects its confidential information by using various  
28 safeguards for its computer system on which the information is stored and through



1 which it is constantly updated. Fidelity maintains its trade secret customer data on  
2 password-protected computers, and only employees whose jobs require access to the  
3 customer data are provided with such access.

4 26. Fidelity also protects trade secret customer data by requiring each  
5 employee to execute a standard Fidelity Employee Agreement in which each  
6 employee agrees not to use or disclose Fidelity Confidential Information, including  
7 Fidelity customer information, outside of Fidelity. Further, Fidelity employees are  
8 not permitted to take, use, or disclose any customer information when they leave  
9 Fidelity.

10 **Nordstrom Acquires Fidelity’s Trade Secret Customer Data And Agrees To**  
11 **Protect It And To Return It At The Termination Of His Employment**

12 27. At the inception of his employment in 2008, and again in 2011, and two  
13 more times in 2013 when he changed positions, Nordstrom signed Employee  
14 Agreements as a condition of his initial and ongoing employment with Fidelity.  
15 Fidelity requires all of its financial representatives to sign similar agreements. True  
16 and correct copies of Nordstrom’s four separate signed Employee Agreements are  
17 attached hereto as Exhibits 3, 4, 5, and 6.

18 28. In each of his Employee Agreements, Nordstrom acknowledged the  
19 confidentiality of Fidelity’s records, including Fidelity’s customer lists and customer  
20 information (“Fidelity Confidential Information”), promised that he would not use or  
21 disclose that information for any reason other than performing his duties on behalf of  
22 Fidelity, and promised that he would “upon termination ... return all company  
23 property ... including but not limited to Confidential Information.” Exs. 3-6 at ¶¶ 1-  
24 3.

25 29. Nordstrom also expressly agreed to the issuance of injunctive relief  
26 should he breach the promises he made to Fidelity in his Employee Agreements.  
27 Exs. 3-6 at ¶ 12.

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1           30. As consideration for these Agreements Nordstrom executed, Fidelity  
2 hired and then later continued to employ him, compensated him throughout his  
3 employment, provided him with introductory and continuing on-the-job training, and  
4 provided him with access to confidential customer information. Fidelity assigned  
5 Nordstrom a list of customers to service on behalf of Fidelity and provided  
6 Nordstrom with the above-described leads to enable him to succeed at Fidelity.  
7 Fidelity further provided Nordstrom with support services; paid for facilities,  
8 computer equipment, market reporting services, and all other business expenses; and  
9 registered Nordstrom with the New York Stock Exchange, Financial Industry  
10 Regulatory Authority (“FINRA”), and the American Stock Exchange. Fidelity  
11 provided Nordstrom with sales assistance, research, the benefit of Fidelity  
12 advertising, goodwill and name recognition, access and use of experts in asset  
13 management, tax, estate planning and insurance, and with promotional marketing and  
14 sales support.

15           31. At the time of his departure, Nordstrom was a Financial Consultant at  
16 Fidelity’s Roseville, California investor center. As a Financial Consultant at Fidelity,  
17 Nordstrom was assigned to service and manage Fidelity’s relationship with a group  
18 of Fidelity’s customers, a substantial portion of whom were within Fidelity’s  
19 Premium Services Group, which generally requires clients to have between \$250,000  
20 and \$1 million or more in invested assets at Fidelity. Nordstrom also serviced  
21 multiple Fidelity customers with more than \$1 million in invested assets at Fidelity.

22           32. In order for Nordstrom to service these accounts, he required and was  
23 given access to Fidelity’s Confidential Information pertaining to these customers,  
24 including their identities, contact information and other confidential personal and  
25 financial information. By the time of this separation, Nordstrom had daily access to  
26 and had gained knowledge of Fidelity Confidential Information relating to  
27 approximately 230 households, representing in excess of \$210 million in client assets  
28 under Fidelity management.

1 **Nordstrom Was Reminded When He Resigned Of His Obligations To Preserve**  
2 **The Confidentiality Of Fidelity’s Trade Secret Customer Data**

3 33. Nordstrom resigned from Fidelity on February 16, 2017, by personally  
4 delivering a resignation letter to David Taylor, the Branch Services Manager for the  
5 Roseville investor center.

6 34. Shortly after Nordstrom resigned, Fidelity sent him a letter reminding  
7 him of his obligations to Fidelity. In the letter, Fidelity advised Nordstrom that it  
8 “expect[s] that you returned all Company property ... including Confidential  
9 Information.” The letter further stated:

10 **Confidential Information:** While you were employed by Fidelity, you  
11 became aware of the confidential information regarding Fidelity and its  
12 affiliates. Confidential Information consists of all information pertaining to the  
13 business of Fidelity or any of its affiliates that was not generally known to the  
14 public at the time made known to you. It includes but is not limited to ...  
15 customer, prospect lists.

16 Fidelity also specifically instructed Nordstrom to return any such information  
17 immediately, and reminded him that he may not use or disclose that information.

18 **Nordstrom’s Misappropriation And Use Of Fidelity’s Trade Secret Customer**  
19 **Information To Solicit Fidelity Customers And Disparage Fidelity**

20 35. Following his resignation from Fidelity, Nordstrom immediately started  
21 a new company—IWM—as a registered investment advisor. IWM is located in  
22 Roseville, California and offers brokerage services through LPL, a national brokerage  
23 firm. Both IWM and LPL compete with Fidelity in offering investment planning,  
24 wealth management, and other financial services to customers.

25 **Nordstrom Immediately Sent Mailings To Fidelity’s Customers**

26 36. The day after Nordstrom resigned from Fidelity and joined IWM and  
27 LPL, Nordstrom sent a letter to Fidelity customers in which he announced his new  
28 employment and provided his contact information.

1 37. Nordstrom, however, did not stop at an announcement. Fidelity also  
2 began receiving reports that Nordstrom was contacting Fidelity customers by  
3 telephone.

4 38. The only way Nordstrom could have had knowledge of these customers  
5 and their contact information is by using confidential and trade secret information  
6 that he misappropriated from Fidelity during his employment. The reports flowing in  
7 from Fidelity's customers, therefore, strongly suggested that Nordstrom had in his  
8 possession and was using Fidelity's confidential and trade secret customer  
9 information to solicit Fidelity's customers on behalf of his new firm, IWM.

10 Fidelity's Efforts To Resolve This Situation Without Court Intervention

11 39. After learning of these customer reports, Fidelity sent a letter to  
12 Nordstrom on February 23, 2017, indicating that Fidelity had reason to believe he  
13 was contacting and soliciting Fidelity customers, and asking that he cease and desist  
14 from this conduct immediately. Fidelity also reminded him that he was and is not  
15 permitted to use or disclose Fidelity customer information, including names,  
16 addresses, email addresses, telephone numbers and account information (which  
17 would include portfolio worth, asset distribution, risk tolerance, and investment  
18 strategy and goals). In addition, Fidelity formally requested that Nordstrom return to  
19 Fidelity all such confidential and trade secret information in his possession.

20 40. Nordstrom failed to return any material.

21 41. Notwithstanding Fidelity's letters directing Nordstrom to stop his  
22 unlawful activities, Fidelity continued to receive reports from clients indicating that,  
23 after sending his announcement letter to Fidelity customers, Nordstrom had  
24 continued to use Fidelity Confidential Information to contact Fidelity customers by  
25 telephone and was using that Confidential Information to solicit them to move their  
26 accounts and business relationships to him at IWM. In more than one instance,  
27 detailed more below, Nordstrom left a follow-up voicemail with a customer in which

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1 he disparages Fidelity in an effort to persuade the customer to move his/her assets  
2 from Fidelity to him at his new company.

3 42. These reports strongly suggested that Defendants have in their  
4 possession and are using Fidelity's trade secret customer information.

5 43. On February 21, 2017, Fidelity customer BB<sup>2</sup> reported that he had  
6 received a letter from Nordstrom. On March 10, 2017, BB further reported that  
7 Nordstrom called him to solicit his business.

8 44. On March 8, 2017, Fidelity customer KB reported that "Nordstrom had  
9 called and left a "bad voicemail" about the "problems at Fidelity" and asked KB to  
10 give Nordstrom a call to discuss. The customer was very concerned about the  
11 message because he had never heard anything bad about Fidelity. The customer  
12 indicated to Fidelity that he may call Nordstrom back to hear more about it.

13 45. On March 9, 2017, Fidelity customer LR reported that she received a  
14 letter from Nordstrom and that he also had called her since leaving Fidelity. LR  
15 further reported that, during the call, Nordstrom falsely told her that the Department  
16 of Labor would leave her out to dry with no service from Fidelity unless she chose to  
17 have her money "managed" (Nordstrom's new company offers a managed money  
18 service, as does Fidelity). In fact, this is not accurate and highly misleading. Fidelity  
19 is more than able to service its clients whether or not the Department of Labor's  
20 proposed regulation, which imposes a fiduciary standard on the servicing of  
21 retirement assets, becomes effective.

22 46. On March 10, 2017, Fidelity customer KK reported a similar  
23 conversation with Nordstrom. Fidelity had to explain to KK why Mr. Nordstrom was  
24 incorrect.

25 47. On March 9, 2017, Fidelity customer FJ reported that Nordstrom had  
26 called her and left a message about Fidelity and soliciting her business. In his  
27

28 \_\_\_\_\_  
<sup>2</sup> Fidelity will refer to its customers by their initials to protect client confidentiality.

1 voicemail, Nordstrom disparages Fidelity and solicits the customer (FJ) to call him  
2 back to discuss how his company does not have the same issues as Fidelity.

3 48. Upon information and belief, Nordstrom is and has been making false  
4 statements to Fidelity customers about the status of regulations and services Fidelity  
5 offers to scare them into moving their accounts from Fidelity to Nordstrom at IWM.  
6 Fidelity's investigation into Nordstrom's conduct is ongoing, but what Fidelity has  
7 learned so far leads Fidelity to believe that the above reports are only the tip of the  
8 iceberg, and that Nordstrom is still in possession of Fidelity confidential trade secret  
9 customer information and is actively misusing that information to unfairly compete  
10 with Fidelity by disparaging Fidelity's services and soliciting Fidelity customers.

11 49. At this point, Nordstrom's conduct has resulted in the loss of at least one  
12 customer and in multiple customers expressing concern about Fidelity based upon the  
13 disparaging comments made by Nordstrom.

14 50. It now appears clear that Defendants have used, and continue to use,  
15 Fidelity's trade secret customer information to unfairly compete with Fidelity, to  
16 solicit Fidelity customers on behalf of his new firm, and to disparage Fidelity.

17 51. The reports received by Fidelity indicate that Defendants fully intend to  
18 continue using Fidelity's trade secret client information to solicit Fidelity clients and  
19 disparage Fidelity in violation of Federal and California law. Fidelity made good  
20 faith efforts to resolve the situation without resorting to litigation, but Defendants  
21 continued to call Fidelity customers to disparage Fidelity and solicit the customers'  
22 business after receiving the cease and desist letter.

23 52. The only way Defendants could have known these particular individuals  
24 were customers of Fidelity, and how to best contact them, is by exploiting the  
25 ongoing access Nordstrom was given to Fidelity's confidential and trade secret  
26 information, and using his knowledge of that confidential information about  
27 Fidelity's clients to identify and target Fidelity clients for his own benefit and the  
28 benefit of a Fidelity competitor.

1           53. In sum, Fidelity only recently learned that Nordstrom has solicited  
2 Fidelity’s customers to transfer their business from Fidelity to IWM. In particular,  
3 Fidelity reasonably believes, based on the above-detailed customer reports, that  
4 Nordstrom has taken and misused Fidelity’s confidential and trade secret customer  
5 information in an effort to solicit Fidelity customers. Additionally, for the reasons  
6 stated above, Fidelity is concerned that Nordstrom has not returned and/or deleted all  
7 Fidelity confidential and trade secret customer information.

8 **The Threat Of Immediate And Irreparable Harm Fidelity Faces From**  
9 **Defendants’ Conduct**

10           54. Defendants’ conduct has irreparably harmed Fidelity and will continue  
11 to irreparably harm Fidelity if not stopped immediately. Indeed, Defendants’ conduct  
12 has and will continue to irreparably harm Fidelity’s relationships with its customers,  
13 such as by losing goodwill, losing future business or referrals, as well as losing trust  
14 and confidence in securing inherently-private information, which cannot be  
15 calculated with precision and cannot be adequately compensated.

16           55. Fidelity’s customer information, including the identity of Fidelity  
17 customers, is also required to be kept confidential under the Gramm-Leach-Bliley  
18 Act and its implementing regulations. The statute declares, “[i]t is the policy of the  
19 Congress that each financial institution has an affirmative and continuing obligation  
20 to respect the privacy of its customers and to protect the security and confidentiality  
21 of those customers’ nonpublic personal information.” 15 U.S.C. § 6801(a) (2012).  
22 The implementing regulation, known as Regulation S-P, prohibits the disclosure of  
23 so-called “nonpublic personal information” to third parties without consent. 17  
24 C.F.R. § 248.10 (2017). Nonpublic personal information is defined to include  
25 customer lists from financial institutions, *even if those lists contain only names of*  
26 *Fidelity customers* because the identity of an individual as being a customer of a  
27 particular financial institution is specifically protected by the federal regulations. 17  
28 C.F.R. § 248.3(t)(1) (2017); 17 C.F.R. § 248.3(u)(2)(i)(D) (2017). Indeed, these

1 regulations also protect a customer's account information. 17 C.F.R. § 248.3(t)(1);  
2 17 C.F.R. § 248.3(u)(1).

3 56. Fidelity customers rightfully have an expectation that their confidential  
4 contact and financial information, such as their net worth, risk tolerances, investment  
5 goals, and preferences, will be protected and not misused by departing employees.  
6 Thus, customers understandably are concerned when former Fidelity employees, such  
7 as Nordstrom, have access to their information and are using it to solicit their  
8 business at a new and different brokerage institution.

9 57. In other words, the damage to Fidelity's customer relationships has  
10 already occurred, is ongoing and is incalculable, as Fidelity cannot put a price on the  
11 value of its customer relationships or the damage caused when Defendants took and  
12 improperly misused confidential and trade secret customer information on behalf of a  
13 competitor.

14 58. In short, Defendants have engaged and continue to engage, in the  
15 following unlawful acts:

- 16 (a) Removal, use and/or disclosure of Fidelity trade secret customer  
17 information and misappropriation of the trade secret information  
18 contained in confidential Fidelity business records, including,  
19 specifically, the names, addresses, phone numbers, and other  
20 confidential financial and account information of Fidelity  
21 customers;
- 22 (b) Transmitting verbally, in writing or in any other manner for the  
23 use of Nordstrom and/or any other financial services firm,  
24 customers' contact and financial information contained in  
25 Fidelity's records; and
- 26 (c) Use of Fidelity's trade secret customer information to solicit  
27 and/or preparing to solicit Fidelity's customers to transfer their  
28 accounts from Fidelity to Nordstrom at a competing institution



1 and to disparage Fidelity.

2 59. Faced with Defendants' recent solicitation of Fidelity's customers,  
3 intentional misappropriation of Fidelity's confidential and trade secret customer  
4 information, disparagement of Fidelity and Fidelity's services, and the resultant  
5 irreparable harm to Fidelity's relationship with its customers, Fidelity is left with no  
6 alternative but to seek immediate redress from this Court and FINRA.

7 **FIRST CLAIM FOR RELIEF**

8 **(Misappropriation of Trade Secrets in Violation of the Defend Trade Secrets Act**  
9 **– 18 U.S.C. § 1836 *et seq.*)**

10 60. Fidelity hereby realleges and incorporates by reference the allegations of  
11 paragraphs 1 through 59 of the Complaint, inclusive, as though set forth in full.

12 61. The above-alleged facts constitute actual and threatened  
13 misappropriation of trade secrets by Defendants pursuant to the Federal Defend  
14 Trade Secrets Act ("DTSA"), 18 U.S.C. § 1836 *et seq.*, in one or more of the  
15 following respects.

16 62. Fidelity's above-described trade secrets, including the contact and  
17 confidential financial and account information of Fidelity customers, are subject to  
18 reasonable efforts by Fidelity to maintain their secrecy and/or confidentiality.  
19 Fidelity's customer information is not generally known.

20 63. Such information is also protected as "non-public" information under  
21 federal securities Regulation S-P. 17 C.F.R. § 248.3(t)(1); 17 C.F.R. § 248.3(u).  
22 Accordingly, Fidelity is required by federal statute to ensure that non-public customer  
23 contact, financial, and account information such as that misappropriated by  
24 Defendants is not disclosed to third parties (such as IWM or LPL) without consent.  
25 17 C.F.R. § 248.10.

26 64. Fidelity derives a significant economic benefit from maintaining the  
27 secrecy and confidentiality of the above-described trade secrets.

1 65. Fidelity faces an immediate threat of continuing irreparable harm, for  
2 which Fidelity lacks an adequate remedy at law, from Defendants' ongoing  
3 misappropriation and misuse of Fidelity's trade secret customer information.

4 66. Unless Defendants are preliminarily and permanently enjoined from the  
5 foregoing conduct, Fidelity will be irreparably harmed by:

- 6 (a) Disclosure of trade secrets, customer lists, and other confidential  
7 information that is solely the property of Fidelity and its customers;  
8 (b) Use of Fidelity's trade secrets to solicit customers on behalf of a  
9 competitor, and to disparage Fidelity and Fidelity's services in an  
10 attempt to convince Fidelity customers to transfer their business to a  
11 competitor;  
12 (c) Loss of confidentiality of clients' records and financial dealings, loss of  
13 confidence and trust of clients, loss of goodwill, and loss of business  
14 reputation; and  
15 (d) Potential future economic loss, which is presently incalculable.

16 67. Defendants' conduct constitutes a willful and malicious  
17 misappropriation of Fidelity's trade secrets.

18 68. Thus, Fidelity is entitled to preliminary injunctive relief, restitution,  
19 compensatory and exemplary damages, and reasonable attorneys' fees pursuant to 18  
20 U.S.C. § 1836.

21 **SECOND CLAIM FOR RELIEF**

22 **(Unfair Competition – Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

23 69. Fidelity hereby realleges and incorporates by reference the allegations of  
24 paragraphs 1 through 68 of the complaint, inclusive, as though set forth in full.

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1           70. Defendants’ actions alleged herein constitute unlawful or unfair business  
2 acts and/or practices and thereby constitute unfair competition under California  
3 Business & Professions Code § 17200 *et seq.*

4           71. Upon information and belief, the practices alleged above are continuing.

5           72. Defendants’ actions in misappropriating Fidelity’s trade secret customer  
6 information constitute a violation of DTSA and violate common law trade secret  
7 protections.

8           73. Defendants’ actions in using Fidelity’s trade secret customer information  
9 to disparage Fidelity and Fidelity’s services to Fidelity customers in an attempt to  
10 convince them to move their business from Fidelity to Defendants also constitutes  
11 unfair competition under California law.

12           74. Defendants’ actions also violate multiple sections of 17 C.F.R. § 248.1  
13 *et seq.*, commonly referred to as “Regulation S-P.” Regulation S-P governs privacy  
14 of consumer financial information. Regulation S-P Rule 10 prohibits the disclosure  
15 of nonpublic personal information to third parties without the consumer’s consent.  
16 17 C.F.R. § 248.10 (2017). “Nonpublic personal information” is defined as: (i)  
17 personally identifiable financial information and (ii) any list, description, or other  
18 grouping of consumers (and publicly available information pertaining to them) that is  
19 derived using any personally identifiable financial information that is not publicly  
20 available information. 17 C.F.R. § 248.3(t)(1) (2017).

21           75. Fidelity is obligated under Regulation S-P to protect its customers’  
22 personal information from unauthorized disclosure.

23           76. Nordstrom’s actions in taking Fidelity customer information with him  
24 when he left Fidelity’s employment, and disclosing that information to IWM without  
25 the customers’ permission in order to solicit Fidelity’s customers on behalf of IWM,  
26 violate Regulation S-P.

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1 77. Fidelity has suffered injury in fact and has lost money and/or property as  
2 a result of Defendants' unfair competition because at least one customer has  
3 transferred his account from Fidelity to Nordstrom at IWM.

4 78. Fidelity requests an order requiring Defendants to disgorge their ill-  
5 gotten gains and/or awarding Fidelity restitution of all monies wrongfully acquired  
6 by Defendants by means of such acts and/or practices of unfair competition.

7 79. Fidelity requests an order restoring any and all monies to Fidelity which  
8 were acquired or obtained by Defendants by means of such unfair competition.

9 80. Fidelity requests an order imposing a trust upon Defendants' ill-gotten  
10 gains and/or monies which were acquired and/or obtained by means of unfair  
11 competition to avoid dissipation, fraudulent transfers or concealment of such monies  
12 by Defendants.

13 81. Fidelity has suffered irreparable harm as a result of Defendants'  
14 activities and will continue to suffer irreparable injury that cannot adequately be  
15 remedied at law unless Defendants are enjoined from engaging in any further such  
16 acts of unfair competition.

17 82. Finally, Fidelity is entitled to an award of reasonable attorneys' fees and  
18 costs of suit pursuant to Cal. Bus. & Prof. Code § 17203.

19 **THIRD CLAIM FOR RELIEF**

20 **(Injunctive Relief)**

21 83. Fidelity hereby realleges and incorporates by reference the allegations of  
22 paragraphs 1 through 82 of the complaint, inclusive, as though set forth in full.

23 84. In doing the acts described herein, Defendants have harmed Fidelity by,  
24 among other things, improperly garnering, retaining, disclosing and utilizing  
25 Fidelity's confidential and proprietary information and trade secrets, in violation of  
26 California law, to give Nordstrom a competitive edge over Fidelity, attempting to  
27 poach Fidelity's customer accounts, and diminishing Fidelity's reputation and  
28 goodwill.

1 85. Unless Defendants are temporarily or preliminarily, as well as  
2 permanently, enjoined from the foregoing conduct, Fidelity will be irreparably  
3 harmed by:

- 4 (a) Disclosure of trade secrets, customer lists, and other confidential  
5 information that is solely the property of Fidelity and its clients;  
6 (b) Loss of confidentiality of clients' records and financial dealings, loss of  
7 confidence and trust of clients, loss of goodwill, and loss of business  
8 reputation; and  
9 (c) Potential future economic loss, which is presently incalculable.

10 86. Thus, Fidelity is entitled to preliminary and permanent injunctive relief.

11 **BOND**

12 Fidelity has demonstrated an overwhelming likelihood of success on its claims  
13 and has made a clear showing of ongoing and irreparable harm. The requested  
14 preliminary injunctive relief will not impede or prevent Nordstrom from conducting  
15 business. Rather, the requested preliminary injunctive relief will narrowly enjoin  
16 Defendants from continuing to possess and use Fidelity's trade secret customer  
17 information to solicit Fidelity customers and to disparage Fidelity. Accordingly,  
18 Fidelity respectfully requests that the Court either dispense with the bond  
19 requirement or, alternatively, require a nominal bond. If the Court requires it,  
20 Fidelity is willing to post a bond or cash in lieu of bond in the appropriate amount  
21 upon entry of the preliminary injunction.

22 **PRAAYER FOR RELIEF**

23 WHEREFORE, for relief on each of its causes of action, Fidelity prays that  
24 this Court enter an order and judgment in its favor as follows:

- 25 (a) Entering preliminary and permanent injunctive relief prohibiting  
26 Defendants from continuing to engage in the unlawful behavior set forth  
27 in this Complaint;  
28 (b) Disgorging Defendants' ill-gotten gains;

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- 1 (c) Awarding Fidelity compensatory and exemplary damages, and
- 2 reasonable attorneys' fees pursuant to 18 U.S.C. § 1836;
- 3 (d) Awarding Fidelity restitution, reasonable attorneys' fees and costs of
- 4 suit pursuant to Cal. Bus. & Prof. Code § 17203;
- 5 (e) Directing Fidelity and Nordstrom, pursuant to the Federal Arbitration
- 6 Act, 9 U.S.C. §§ 3-4, to proceed toward an expedited arbitration hearing
- 7 on the merits before a duly appointed panel of arbitrators pursuant to
- 8 Rule 13804 of the FINRA Code of Arbitration Procedure. Fidelity
- 9 reserves its right to seek recovery of damages and attorneys' fees in the
- 10 expedited arbitration proceeding;
- 11 (f) If IWM, which is not a FINRA member, does not consent to arbitrate the
- 12 merits of Fidelity's claims against it in the FINRA arbitration, entering
- 13 an expedited written and deposition discovery schedule in advance of
- 14 the order to show cause date; and
- 15 (g) Granting such other and further relief as the Court deems just and
- 16 proper.

17  
18 Dated: March 20, 2017

Respectfully submitted,

19  
20 LOCKE LORD LLP

21 By: /s/ Nina Huerta

22 Nina Huerta

23 Attorney for Plaintiff

24 FIDELITY BROKERAGE SERVICES LLC