

# **EXHIBIT F**

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

LOFFT CONSTRUCTION, INC.	)	
Plaintiff,	)	
	)	
v.	)	Case Number: 2015 CA 5203 B
	)	Judge Thomas Motley
GUSTAVO FRECH BARRIERO	)	Civil 2 – Cal 5
and	)	
	)	
JAP HOME SOLUTIONS, INC.	)	

SECOND AMENDED COMPLAINT FOR MONEY DAMAGES  
AND FOR MONEY DUE AND OWING

COMES NOW Lofft Construction, Inc. (“Lofft”), plaintiff, by counsel, and complains against Gustavo Frech Barriero (“Frech”) and JAP Home Solutions, Inc. (“JAP”), defendants for damages, compensatory and punitive, for tortious interference with a business opportunity and prospective advantage, tortious interference with contact, breach of contract of employment, fraud and fraudulent misappropriation of business property, and an award of attorneys’ fees and costs.

JURISDICTION

1.) Jurisdiction of this Court is based on DC Code 11-921, as all incidents occurred in Washington, D.C.

PARTIES

2.) Plaintiff Lofft Construction, Inc., a corporate entity licensed in the District of Columbia, engaged in home improvement projects for clients in the Metropolitan Washington area; it is licensed to do home improvement repairs and improvements and is a holder of a general contractors’ license.

3.) Defendant Gustavo Frech Barriero, an employee of JAP Home Solutions, Inc., was an employee of Lofft from November 2013 to February, 2015, and he is Spanish national, married to a woman who, on information and belief, possesses diplomatic

immunity status under 28 U.S. Code § 1351. Frech has no diplomatic immunity under Vienna Convention on Diplomatic Relations ("VCDR") as he has engaged in a "commercial activity," an exception to the VCDR, for activities described in the allegations made herein.

4.) JAP Home Solutions, Inc., a Virginia corporation since 2014, is another home improvement company whose authority to do business in the District of Columbia began in December 2014; licensed only to do home improvement repairs, it is not a general contractor under the laws of the District of Columbia and could not during the times herein engaged in general contracting.

#### EMPLOYMENT

5.) Lofft hired Frech in November 2013, as an employee, and trained him in customer relations, in estimating of construction costs, in accounting for building expenses, in analysis of the calculation of the company's profit quotient, and the intricacies of the home improvement and general contracting business; in doing so, entrusting him with access to Lofft's goodwill, its computers, its proprietary network, its specialized "estimating" software, its spread sheets, customers, subcontractors and affiliated architects.

6.) Frech was encouraged to secure business for Lofft, to further the interests of the company, to be a loyal employee; as he later admitted, "[t]he whole time I was at Lofft I only looked out for the company's interests, as if it were my own," and he knew at all times during his employment that he owed it loyalty, honesty, fair dealing and a commitment to promote and protect the business and assets of the company.

## 1099 STATUS

7.) In April, 2014, Frech requested, rather than be carried on Lofft's employee payroll, that he be paid directly pursuant IRS' direct reporting provisions on Form 1099; the reason, he stated, was "for tax purposes only."

8.) When Frech requested his employment status be changed to 1099 status, i.e., "for tax purposes only," his statement was a material representation which was false and Frech knew it was false.

9.) Frech intended to induce Lofft to act upon said misrepresentation to change his status, not just "for tax purposes only," but also so he might compete with plaintiff by secretly seeking out business that he could not have been involved in as Plaintiff's employee.

10.) Plaintiff justifiably relied upon Frech's representations and that reliance caused Plaintiff to be injured and to suffer monetary damages.

11.) Lofft agreed to the change if he remained loyal to the company as if he were an employee; Frech agreed and thus he was paid by a 1099 until he left the company.

12.) His employment status changed to 1099 status, "for tax purposes only;" but his statement was false and he knew it was false.

13.) In December, 2014, Lofft handed Frech an agreement which included a covenant not to compete, the non-solicitation of clients and confidentiality; he was asked to sign it. Frech agreed to the terms and conditions of the agreement, but did not sign it but he delayed and deflected execution prior his departure from the company.

14.) Frech told Lofft officials in January, 2015, he was leaving his job; but as a condition to be paid until early February, he promised he would not compete with Lofft, would not solicit its clients and would respect the confidentiality of its customers, subcontractors and affiliated architects.

15.) As a condition of continuing to be paid, Frech committed to completing all pending work for which he was entrusted.

#### MISAPPROPRIATION

16.) His representations made at this time and for months earlier, were lies and misrepresentations as he had conspired with Defendant JAP, and others, to divert business elsewhere, to use the company's tools of the trade given to him by plaintiff to send that construction work to JAP and others.

17.) Unknown to Lofft's officials, Frech undertook a scheme and plan to use Lofft's goodwill, its proprietary software, its insider business secrets, its subcontractors and its affiliated architects for his own use and that of JAP.

18.) Frech acted with deceit and dishonesty, often representing himself as working for Lofft, or, making no distinction to the contrary; in doing so, he used and misappropriated Lofft's valuable business properties, its goodwill and its assets as if these properties and assets were his own. He took the following actions, *inter alia*, to divert business away from Lofft to JAP and others:

a.) In November, 2015, he covertly diverted a lucrative home improvement job at 1425 T Street, N.W. to JAP by utilizing Lofft's valuable commercial software, its documents, its proprietary information and its subcontractors, without knowledge, permission or authorization by Lofft or its principals.

b.) In November, 2015, he covertly diverted a lucrative commercial building job at 1539 7th Street, N.W., away from Lofft to JAP by utilizing Lofft's valuable commercial software, its documents, its proprietary information and its subcontractors, without knowledge, permission or authorization by Lofft or its principals.

c.) In November (2014) - January, 2015, he covertly prepared an estimation for a lucrative roof improvement at the Spanish Embassy, Washington, D.C., sending from Lofft to JAP, by utilizing Lofft's commercial software, its documents, its proprietary information, its subcontractors, without knowledge, permission or authorization by Lofft or its principals. He interacted, and interfaced with the principals, worked this job up to and beyond his departure in February 2015; all the time, acting contrary to his loyalties to Lofft, and contravening his promises to Lofft and against its commercial interests. Through his wife's contacts at the

Embassy, he improperly manipulated the timeline of the contract, past the time of his employment at Lofft to deprive Lofft of the business.

d.) In December, 2014, he emailed to JAP, Lofft's business accounts; all without Lofft's knowledge or permission, sharing with JAP, his next employer Lofft's clientele and accounts.

e.) In January, 2015, soon after professing loyalty to his employer, he used his position as an employee of Lofft, to covertly divert a commercial improvement job at 1221 Potomac Street, N.W., away from Lofft to JAP by using Lofft's valuable commercial software, its documents, its proprietary information and its subcontractors, without knowledge, permission or authorization by Lofft, or its principals.

f.) On February 5, 2015, two (2) days after he left Lofft's employ, Frech covertly, illegally and improperly accessed Lofft's computer network and transferred, while on the Lofft network, these three (3) packets on proprietary information, to his own Gmail account, to wit: the company's financials, and insider billing information, "profit and loss" statements, accounts receivable, and financial spread sheets which he had secretly manipulated and retained on the network and which he had secretly gained access to; all done without the knowledge or permission of Lofft.

g.) On February 5, 2015, two (2) days after he left Lofft's employ, he covertly, illegally and improperly accessed Lofft's computer and network and transferred to JAP his new employer, these three (3) packets of proprietary information from his own Gmail account, while on the Lofft network, to wit: the company's financials, and insider billing information, "profit and loss" statements, accounts receivable, and financial spread sheets which he had secretly manipulated and retained on the network and which he had secretly gained access to; all done without the knowledge or permission of Lofft.

19.) Frech, intentionally and maliciously, undertook an active, on-going business conspiracy with JAP, and its chief officer, Jesus Anton Perez, to conceal and divert other construction business, on at least a six (6) other occasions, from Lofft to JAP for financial benefit and thus damaging Lofft.

20.) For these actions, on information and belief, he was compensated for his actions in diverting this business away from Lofft.

21.) Though tasked with the completion of certain construction jobs, Frech failed to complete the projects, including but not limited to the Milagros Freyre renovation, he

had been entrusted, thus forcing Lofft to finish the jobs at its own increased costs, that Frech failed to finish these jobs resulted in additional expense for Lofft.

CONSPIRACY TO MISAPPROPRIATE BUSINESS  
ASSETS AND INTERFERE WITH PROSPECTIVE ADVANCE

22.) During the time of Frech's employment with Lofft, Frech and JAP conspired together to transfer Lofft's business secrets in the form of digital files and paper records to JAP, by misappropriating those items of files and paper records for his use and not for the use or benefit of the company.

23.) Frech and JAP, without Lofft's knowledge or permission, transferred and exchanged Lofft's insider business files and information to Lofft's monetary detriment; these actions were undertaken by Frech using Lofft's assets, because he did not possess, and did own these assets integral to the business of construction in the District; these assets were valuable and proprietary to Lofft, prepared by and collected by Lofft for years and not for public disclosure or dissemination to others.

24.) Frech prepared construction estimates for JAP using Lofft software, he solicited business for JAP, while employed by Lofft, he used his business contacts to divert construction and home improvement business to JAP while employed by Lofft; resulting in monetary damage to Lofft.

25.) Frech, without Lofft's knowledge or authorization, used Lofft's insider business information of the company's business details to its monetary detriment; which business insider information had been improperly removed, taken from Lofft's network and computers before Frech left employment; to wit: days after leaving Lofft, Frech transferred by email three (3) highly confidential specifics of Lofft's financial data to JAP.

26.) After his employment, Frech, without Lofft's knowledge or authorization, finalized business arrangements with JAP and entered into construction contracts; which business had been developed and pursued during Frech's employment and which he had purposely and improperly diverted to JAP in violation of the terms and conditions of his employment status.

27.) Frech used the company's inside business information of Lofft's business and financial particulars to its monetary detriment which business information had been improperly removed, taken and purloined from Lofft's network and computers.

TORTIOUS INTERFERENCE WITH A BUSINESS OPPORTUNITY  
AND PROSPECTIVE ADVANTAGE (Count 1)

28.) Paragraphs 1 through 27 are incorporated by reference herein.

29.) Lofft expected any business work, or referrals, developed by Frech during his employment would become construction work available to Lofft.

30.) It was commercially reasonable to assume that construction and home improvements jobs from various clients, including but not limited to a roof repair job for the Spanish Embassy (¶ 18(c)) , for which Lofft had previously done work, would become construction work for Lofft, or, that it would have the opportunity to "bid" on that work.

31.) It was commercially reasonable to assume that construction and home improvements jobs from various clients, including but not limited to a commercial improvement job at 1425 T Street, N.W., would become construction work for Lofft or that it would have the opportunity to "bid" on that work.

32.) It was commercially reasonable to assume that construction and home improvements jobs from various clients, including but not limited to a commercial

improvement job at 1539 7<sup>th</sup> Street, N.W., would become construction work for Lofft, or, that it would have the opportunity to "bid" on that work.

33.) It was commercially reasonable to assume that construction and home improvements jobs from various clients, including but not limited to a commercial improvement job at 1221 Potomac Street, N.W., would become construction work for Lofft, or, that it would have the opportunity to "bid" on that work.

34.) It was commercially reasonable to assume that construction and home improvements jobs from various clients, including but not limited all six (6) or so other jobs referred to above, would become construction work for Lofft, or, that it would have the opportunity to "bid" on that work.

35.) Frech actively solicited these jobs, during his employment with Lofft, knew that Lofft expected that all work developed during his employment would be first offered to Lofft so that it might "bid" on the work, that Lofft expected to "bid" on that work; and that Lofft had monetarily and professionally benefitted from an earlier embassy job(s) during the term of his employment; and any work referred by its subcontractors or affiliated architects would be first offered to Lofft so it could work on the jobs or "bid" on the jobs.

36.) Frech intentionally, wrongfully and maliciously diverted work, and other jobs, to JAP, using insider financial information, its computers and proprietary software, taken from Lofft, during and after, his employment with the company and using subcontractors and contacts gained through the time of his employment at Lofft.

37.) Lofft's prospective advantage for this work was interfered with, vitiated, and diverted by Frech; his deceitful actions financially and monetarily damaged Lofft.

38.) Lofft was financially and monetarily harmed by this interference and diversion.

39.) After Frech left his employment, he transferred this work and other work jobs to JAP with JAP's active, knowing encouragement and participation.

WHEREFORE, Plaintiff Lofft seeks compensatory and punitive damages in sums as may be determined against Frech and JAP, defendants, and for compensatory damages for work which would have come to it, and for attorneys' fees and costs expended herein.

#### TORTIOUS INTERFERENCE WITH CONTRACT (Count 2)

40.) Paragraphs 1 through 39 are incorporated by reference herein.

41.) Frech had a valid existing contract of employment with Lofft under which he owed a loyalty and responsibility as an employee.

42.) Defendant JAP knew of its contract of employment with Frech.

43.) Defendant urged and induced Frech through its actions to breach that contract of employment and did by its acts induce Frech to breach that contract.

WHEREFORE, Plaintiff Lofft seeks compensatory and punitive damages in sums as may be determined against both Frech and JAP, defendants, and for compensatory damages for work which would have come to it, and for attorneys' fees and costs expended herein.

#### BREACH OF CONTRACT (COUNT 3)

44.) Paragraphs 1 through 43 are incorporated by reference herein.

45.) As set forth in ¶ 26 above, Frech committed to Lofft officials, as a condition of being paid through February 3, 21015, that he would complete certain construction jobs before he left his employment;

46.) Frech was tasked with completing certain construction jobs after he announced he would leave his employment with the company, but Frech failed to

complete those projects, including but not limited to the Milagros Freyre renovation project with which he had been entrusted and designated its project manager.

47.) After Frech left the employment, these jobs remained uncompleted and unfinished as a direct cause of Frech not adhering to his agreement with Lofft.

48.) Lofft was compelled to finish the jobs at its own increased costs when Frech failed to complete.

49.) Lofft was required to reassign other employees from other work jobs to complete the jobs left uncompleted by Frech at the time of his departure on February 3, 2015.

50.) Lofft seeks damages for all moneys expended in completing the jobs not finished by Frech by the time of his departure including, but not limited to the Milagros Freyre renovation, for which he had been compensated for and for which he had committed to complete prior to February 3, 2015 when he departed the company.

WHEREFORE, Plaintiff Lofft seeks compensatory damages in sums as may be determined against Frech for compensatory damages for commissions due him, and for attorneys' fees and costs expended herein.

FRAUD AND FRAUDULENT MISAPPROPRIATION  
OF BUSINESS ASSETS (COUNT 4)

51.) Paragraphs 1 through 50 are incorporated by reference herein.

52.) When Frech's requested that his employment status be changed to 1099 status, "for tax purposes only," his statement was a material representation which was false and Frech knew it was false.

53.) His statement was made with the intent to deceive Lofft officials who relied upon it and their reliance was reasonable and understandable under the circumstances at hand in April 2014 as the company was unaware that Frech was conducting business

“on the side,” or, with others, and it would not have approved of his dual work status if it had been made aware of it by Frech or otherwise.

54.) Frech’s commitment of loyalty to the company was material and false and contrived, and aided and abetted by others; Frech know it was false at the time he made it.

55.) Lofft officials relied on Frech’s statement of professed loyalty to the company; its reliance was reasonable and understandable under the circumstances at hand in April 2014 and as carried through until February 3, 2015.

56.) As asserted above in ¶ 13, in December, 2014, after Lofft handed Frech the proposed employment agreement which included a covenant not to compete, non-solicitation of clients and confidentiality, Frech, rather than signing it, professed his loyalty to the company, orally agreeing to the terms and conditions of the agreement.

57.) Lofft officials relied on his loyalty pledge to the company and his oral commitment to abide by the covenants in that proposed agreement; its reliance was reasonable and understandable.

58.) Frech’s statement was deceptive and false and the company was unaware that his actions through December and January were replete with the diversion of business away from Lofft and to JAP, and others.

59.) Frech conspired with JAP and others to carry out this fraud by diverting revenues from Lofft to Frech, JAP and others.

60.) Frech’s deceitful and fraudulent actions, as detailed above in ¶¶ 13, 18 (a-g), and 19, are fraud and amount to the fraudulent misappropriation of Lofft’s proprietary assets and commercial business as Frech’s actions were covert, secretive, disloyal and intended to generate revenue for Frech and JAP and others and to deprive revenue to Lofft.

61.) Lofft was financially and monetarily damaged by the fraud and the fraudulent misappropriation of Lofft's proprietary assets and business.

WHEREFORE, Plaintiff Lofft seeks compensatory and punitive damages in sums as may be determined against both Frech and JAP, defendants, and for compensatory damages for work which would have come to it, and for attorneys' fees and costs expended herein.

#### INVASION OF PRIVACY (INTRUSION) (COURT 5)

62.) Paragraphs 1 through 61 are incorporated by reference herein.

63.) Lofft's computer network contained proprietary information integral to the operation of the business including but not limited to its finances, its specialized "estimating" software (e.g. Pro Est, etc.), its specialized financial software (Microsoft Office, its related programs and Quickbooks, an accounting and financial software), proprietary spread sheets, lists of customers, names and addresses of its subcontractors and affiliated architects.

64.) In the operation of its computer network, Lofft has an expectation of privacy making it accessible only to those Lofft employees entrusted with access to it by means of a user name, and by making it password protected.

65.) On or about February 3, 2015, at periods thereafter, after Defendant Frech had left Lofft's employ, at times when he had no right to access Lofft's network, he accessed Lofft's network, using his expired user identification and name and using his password for access; in doing so, while on the Lofft network, he manipulated and operated Lofft's files, folders and specific software (as described in ¶ 63), thereon, and did transfer said files by removing this proprietary information to his own email account, while on the Lofft network, and then by using the Lofft network's access to the internet and world wide web, he did transfer that proprietary information to Defendant

JAP, all the time knowing his actions was illegal, improper and a violation of the privacy of Lofft.

66.) Defendant Frech's actions invaded the privacy of the Lofft network and by doing so, he manipulated and changed its data integrity and its proprietary status; all in violation of Lofft's privacy.

67.) Defendant Frech's actions were offensive to the Lofft's privacy in that his actions manipulated and changed its data integrity and its proprietary status and he removed proprietary information from Lofft's possession and disclosing it to others, namely, Defendant JAP.

68.) Defendant JAP received this information and used it as its own.

69.) Defendant Frech's actions damaged and harmed plaintiff and those damages are compensatory.

WHEREFORE, Plaintiff Lofft seeks compensatory and punitive damages in sums as may be determined against both Frech and JAP, defendants, and for compensatory damages for work which would have come to it, and for attorneys' fees and costs expended herein.

#### TRESPASS (COURT 6)

70.) Paragraphs 1 through 69 are incorporated by reference herein.

71.) Defendant Frech intentionally and without authorization, and after any authorization, accessed Lofft's protected computers, network systems, and its servers.

72.) Defendant has unlawfully gained access, interfered with, and misappropriated Lofft's protected computers, network systems, its servers for Plaintiff's purposes.

73.) Defendants shared that access and/or the fruits of that access and did harm plaintiff.

74.) Defendant Frech actions amounted trespass under District of Columbia law that has harmed and will continue to harm Defendants.

WHEREFORE, Plaintiff Lofft seeks compensatory and punitive damages in sums as may be determined against both Frech and JAP, defendants, and for compensatory damages for work which would have come to it, and for attorneys' fees and costs expended herein.

LOFFT Construction, Inc.  
Plaintiff  
By Counsel



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the above pleading was emailed, first class, postage prepaid, December 28, 2016 to:

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John E. Drury

