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MORTON; husband and wife,
Plaintiffs,

v.

ROBERT PROCTOR; SANDRA
GALLAGHER; SIX MINUTES, LLC;
INTERNATIONAL EDUCATION
SYSTEMS, INC.; AND LIFE SUCCESS
PRODUCTIONS, LLC,
Defendants.

No. CV2011-021906

PRELIMINARY INJUNCTION

(Assigned to the Honorable John Rea)

And related counterclaims

This cause came before the Court on Counterclaimants Six Minutes, LLC’s (“Six Minutes”) and Robert Proctor’s (“Proctor” and together with Six Minutes, “Counterclaimants”) (1) Verified Counterclaim, (2) Application for Temporary Restraining Order and Preliminary Injunction, (3) the accompanying Declaration of Sandra Gallagher, (4) the exhibits attached thereto, and (5) an evidentiary hearing on the parties’ respective requests for preliminary injunctive relief. Having considered the Attorneys for Defendants

1 foregoing documents, the arguments of counsel and the evidence presented at the January
2 18 and 27, 2012 hearings, the Court finds and orders as follows.

3 **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

4 The Court makes the following findings and rulings:

5 Pursuant to Rule 65, Ariz. R. Civ. P., and other applicable law, a party seeking a
6 preliminary injunction must show (1) a strong likelihood of success on the merits, (2) the
7 possibility of irreparable harm if the relief is not granted, (3) the balance of hardships
8 favors the party seeking injunctive relief, and (4) public policy favors granting the
9 injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990); *Burton v.*
10 *Celentano*, 134 Ariz. 594, 595, 658 P.2d 247, 248 (App. 1982).

11 Applying this standard, Arizona courts utilize a “sliding scale” under which the
12 moving party may establish either “(1) probable success on the merits and the possibility
13 of irreparable injury; or (2) the presence of serious questions and that the balance of
14 hardships tips sharply in favor of the moving party.” *Ariz. Assoc. of Providers for*
15 *Persons with Disabilities v. State*, 223 Ariz. 6, 12, 219 P.3d 216, 222, (App. 2009) (citing
16 *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 411, 132 P.3d 1187, 1191
17 (2006) (internal citations omitted). Under the sliding scale, the greater the irreparable
18 harm, the lesser a showing of a strong likelihood of success on the merits must be and vice
19 versa. *See Smith*, 212 Ariz. at 411, 132 P.3d at 1191.

20 Six Minutes and/or Proctor have asserted the following claims for relief in this
21 action: (1) fraudulent concealment; (2) conspiracy to commit fraudulent concealment; (3)
22 breach of fiduciary duty; (4) aiding and abetting breach of fiduciary duty; (5) conversion;
23 (5) misappropriation of trade secrets; (6) intentional interference with contractual
24 relations; (7) breach of contract; (8) unfair competition; and (9) invasion of privacy.
25 These causes of action are supported by Counterclaimants’ Verified Counterclaim, the
26 Declaration of Sandra Gallagher, and the evidence of record adduced during the parties’

1 January 18 and 27, 2012 hearings.

2 Plaintiff Harrison Morton and Defendant Robert Proctor formed Six Minutes, LLC,
3 in 2008 under the laws of Nevada. Robert Proctor is an internationally known
4 motivational and self-help speaker. Harrison Morton had a business plan involving daily
5 programs distributed by email and over the internet that would take advantage of Mr.
6 Proctor's reputation and talents.

7 Six Minutes, LLC, originally had three members – Harrison Morton, Robert
8 Proctor, and Tiffany Baron. The three individuals were also the original Managers under
9 the Operating Agreement. Tiffany Baron left the corporation, and her shares were
10 distributed to the remaining two members. It is undisputed that Mr. Proctor has at least a
11 51% membership interest, making him the Majority in Interest, as that term is used in the
12 Operating Agreement.

13 For some time the parties operated profitably together. Mr. Proctor prepared,
14 produced, and appeared in the product sold by Six Minutes. Mr. Morton was in charge of
15 marketing, distribution, and the day to day activities of the company. The parties made
16 lots of money.

17 However, Mr. Proctor began to be dissatisfied with his arrangement with Mr.
18 Morton. He believed that Mr. Morton would not respond to communications and failed to
19 provide financial information. Mr. Morton moved the offices of Six Minutes to Hawaii.
20 He began using Six Minutes to promote his wife's work and used Six Minutes staff and
21 resources to do so, despite express disapproval by Mr. Proctor.

22 Mr. Proctor, acting as Chairman of International Education System, Inc., which is
23 actually the Majority in Interest of Six Minutes, called a meeting in November 2011. Mr.
24 Morton was removed as a Manager. IES became the sole Managing Member and Mr.
25 Proctor became the sole Manager. Mr. Proctor was appointed President and CEO and
26 Sandra Gallagher was appointed Secretary and CFO. Thus, although Mr. Morton

1 remained a Member, the November meeting purported to remove him completely from
2 the governance and operation of Six Minutes.

3 Mr. Morton was reluctant to relinquish his control. He maintained sole possession
4 of passwords to certain accounts and services necessary for the continued operation and
5 profitability of Six Minutes. He also commenced this action.

6 Mr. Morton argues that the Operating Agreement prevents him from being
7 removed as a Manager except under specific conditions that do not exist here. He seeks a
8 preliminary injunction restraining the defendants from using trade secrets and confidential
9 information of Six Minutes and from infringing on his right to be “Manager and General
10 Manager of Six Minutes, LLC, with the right to manage and administer the business of
11 said LLC in the same manner as formerly he did prior to November 14, 2011.”

12 Mr. Proctor argues that the removal of Mr. Morton was justified. He seeks a
13 preliminary injunction restraining Mr. Morton from interfering with the business of Six
14 Minutes and requiring him to return all property and passwords belonging to Six Minutes.

15 To be entitled to a preliminary injunction, a party must show a strong likelihood of
16 success on the merits, the possibility of irreparable harm if relief is not granted, a balance
17 of hardships favoring the party, and the advancement of the public interest by the grant of
18 the preliminary injunction.

19 Mr. Morton’s position is based on Article 6.5(a) of the Operating Agreement,
20 which states: “Any Manager may be removed from such position at any time, with cause,
21 by a Majority in Interest, provided however, that unless the Managers named above
22 [which includes Mr. Morton] are no longer Members, make a default in their obligations
23 or violate the terms of this Agreement, they shall remain the Managers of the Company.”
24 Mr. Morton contends that none of the specific grounds for removal applicable to him exist
25 in this case.

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1 The Operating Agreement gives the Majority in Interest great power and imposes
2 on the Managers specific responsibilities with the respect to the Majority in Interest.
3 Article 5.2 provides that the presence of the Majority in Interest constitutes a quorum for
4 the transaction of business in a meeting of the Members and the affirmative vote of the
5 Majority in Interest constitutes a valid decision of the Members. Under Article 6.3(c), one
6 of the duties of the Managers is to “carry out and effect all directions of the Members.”

7 Thus, under the terms of the Operating Agreement, Mr. Proctor’s vote becomes the
8 decision of the Members, and the Managers are required to comply. Mr. Morton is a
9 Member and a Manager, but in any decision, Mr. Proctor’s vote governs and Mr. Morton,
10 as a Manager, is obliged to recognize that.

11 Mr. Proctor testified that Mr. Morton failed to communicate with him, failed to
12 respond to specific requests for financial information, and took actions in express
13 disregard of Mr. Proctor’s direction. This was confirmed in the testimony of Mykie Oyler
14 and Debbie Raymond. Ms. Raymond testified that Mr. Morton regularly and improperly
15 used resources and staff of Six Minutes for the personal affairs of himself and his wife.
16 The Court found no persuasive testimony from Mr. Morton to controvert the testimony of
17 Mr. Proctor, Ms. Oyler, and Ms. Raymond.

18 The Court finds that the evidence establishes a strong likelihood that the
19 Defendants will succeed on the merits of the justification for Mr. Morton’s removal as
20 Manager. The Court also finds that the Defendants have shown that Mr. Morton has
21 actively interfered with the operation of Six Minutes and that Mr. Morton’s acts pose an
22 immediate and significant threat to the continued viability of Six Minutes. The balance of
23 hardships favors the Defendants because the injunction requested by Defendants does not
24 deprive Mr. Morton of anything to which he is entitled.

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1 **II. ORDER**

2 **A. IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that a
3 Preliminary Injunction is hereby entered against Harrison “Lanny” Morton, Deena
4 Morton, and Morton Enterprises, LLC (collectively, “Counterdefendants”) and in favor of
5 Six Minutes, LLC, Robert Proctor and International Education Systems, Inc. (collectively,
6 “Counterclaimants”) on the terms set forth herein, which shall continue in effect at a
7 minimum until final resolution of this matter at trial.

8 **B. IT IS HEREBY FURTHER ORDERED, ADJUDGED AND**
9 **DECREED** that Counterdefendants together with all entities, officers, employees, agents,
10 and individuals acting on their behalf or in concert with them and who receive notice of
11 this Preliminary Injunction, are enjoined from acting or purporting to act on behalf of Six
12 Minutes, LLC. Counterdefendants are further enjoined from interfering with the business
13 operations of Six Minutes, LLC. Conduct prohibited under this paragraph shall include:
14 using or disseminating any materials on behalf of or referring to Six Minutes, LLC, its
15 website sixminutes2success.com, Robert Proctor, or Robert Proctor’s likeness; and/or
16 taking any action or communicating with any financial institutions, vendors, service
17 providers, customers, affiliates, or financial partners of Six Minutes, LLC unless
18 otherwise authorized by this Preliminary Injunction, the Court, or agreed upon by the
19 parties.

20 **C. IT IS HEREBY FURTHER ORDERED, ADJUDGED AND**
21 **DECREED** that Counterdefendants shall return all copies of the Customer Database not
22 maintained by Infusionsoft, whether in hard copy or electronic format, to Six Minutes,
23 LLC within 5 days of the date of this Preliminary Injunction. Counterdefendants, further,
24 are prohibited from using, disseminating, and/or disclosing copies of the Customer
25 Database not maintained by Infusionsoft in any manner whatsoever until at a minimum
26 the full and complete resolution of this matter on the merits.

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2 **D. IT IS HEREBY FURTHER ORDERED, ADJUDGED AND**
3 **DECREED** that Counterdefendants shall immediately provide any and all information
4 requested or necessary to ensure that all vendors, service providers, affiliates, and
5 financial partners—which shall include, but not be limited to, (1) Infusionsoft; (2)
6 PowerPay; (3) Authorize.net; (4) Customer Hub; (5) Intellichat; (6) Tender Support; (7)
7 Viddler, Inc.; (8) Bits on the Run; (9) Omnovia; and (10) the United States Postal
8 Service—recognize Robert Proctor and/or International Education Systems, Inc., as
9 having sole authority to act on behalf of Six Minutes, LLC as its Managing Member or
10 Manager. Counterdefendants shall further take any and all actions necessary to ensure
11 that any and all of Six Minutes, LLC’s accounts with such vendors, service providers,
12 affiliates, and/or financial partners are transferred out of the names of any of the
13 Counterdefendants, and into the names of Six Minutes, LLC, Robert Proctor, and/or
14 International Education Systems, Inc., a Nevada corporation, as directed by Bob Proctor.
15 At the election of Counterclaimants, Counterdefendants shall execute and deliver to
16 counsel for Counterclaimants any and all forms prepared by Counterclaimants to
17 effectuate the purposes of this paragraph. Counterdefendants shall execute and deliver to
18 counsel for Counterclaimants any such forms not later than 2 judicial days after delivery
19 of such forms to Counterdefendants and/or their counsel. Counterdefendants shall take
20 any other steps necessary to effectuate the purposes of this paragraph not later than 2
21 judicial days after the date of this Preliminary Injunction.

22 **E. IT IS HEREBY FURTHER ORDERED, ADJUDGED AND**
23 **DECREED** that Counterdefendants shall immediately provide any and all information
24 requested or necessary to ensure that all vendors, service providers, affiliates, and
25 financial partners—which shall include, but not be limited to, (1) Infusionsoft; (2)
26 PowerPay; (3) Authorize.net; (4) Customer Hub; (5) Intellichat; (6) Tender Support; (7)

1 Viddler, Inc.; (8) Bits on the Run; (9) Omnovia; and (10) the United States Postal
2 Service—unfreeze any and all accounts held, maintained, or utilized by, and/or
3 established for the benefit of Six Minutes, LLC and grant administrative access and all
4 other rights associated with said accounts to Six Minutes, LLC, Robert Proctor, and/or
5 International Education Systems, Inc. At the election of Counterclaimants,
6 Counterdefendants shall execute and deliver to counsel for Counterclaimants any and all
7 forms prepared by Counterclaimants to effectuate the purposes of this paragraph.
8 Counterdefendants shall execute and deliver to counsel for Counterclaimants any such
9 forms not later than 2 judicial days after delivery of such forms to Counterdefendants
10 and/or their counsel. Counterdefendants shall take any other steps necessary to effectuate
11 the purposes of this paragraph not later than 2 judicial days after the date of this
12 Preliminary Injunction.

13 **F. IT IS HEREBY FURTHER ORDERED, ADJUDGED AND**
14 **DECREED** that Counterdefendants shall return all copies of any archived webinar
15 content of Six Minutes, LLC, whether in hard copy or electronic format, to Six Minutes,
16 LLC c/o Robert Proctor within 5 days of the date of this Preliminary Injunction.
17 Counterdefendants are prohibited from using, disseminating, or disclosing any such
18 archived webinar content in any manner whatsoever to a third party or for any purpose
19 beyond that described in this paragraph.

20 **G. IT IS HEREBY FURTHER ORDERED, ADJUDGED AND**
21 **DECREED** that Counterdefendants are prohibited and restrained from attempting to
22 obtain from Omnovia any archived webinar content consisting of Six Minutes, LLC
23 website generated material.

24 **H. IT IS HEREBY FURTHER ORDERED, ADJUDGED AND**
25 **DECREED** that Six Minutes, LLC shall post a bond in the amount of \$500.00 as security
26 for this Preliminary Injunction.

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I. IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Six Minutes, LLC shall provide notice of this Preliminary Injunction to Harrison “Lanny” Morton, Deena Morton and Morton Enterprises, LLC by delivering a copy of the same to their counsel of record.

DATED: March __, 2012 By: _____
The Honorable John Rea
Judge, Maricopa County Superior Court