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DIRECT LIST LLC and ERAN SALU

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN DIEGO

10 DIRECT LIST LLC, a North Carolina  
limited liability company; and ERAN  
11 SALU, an individual,

12 Plaintiffs,

13 v.

14 VISTAGE INTERNATIONAL, INC., a  
Delaware corporation; VISTAGE  
15 WORLDWIDE, INC., a Delaware  
corporation, and DOES 1 through 10,  
16 Inclusive,

17 Defendants.

CASE NO.: 37-2017-00035249-CU-FR-CTL

**COMPLAINT FOR:**

1. **FRAUD – INTENTIONAL MISREPRESENTATION**
2. **FRAUD – CONCEALMENT**
3. **FRAUD – PROMISSORY FRAUD**
4. **NEGLIGENT MISREPRESENTATION**
5. **BREACH OF CONTRACT**
6. **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**
7. **TORT OF ANOTHER**
8. **UNFAIR BUSINESS PRACTICES – BUS. & PROF. CODE §§ 17200 ET SEQ.**

**JURY TRIAL DEMANDED**

18  
19  
20 **I.**

21 **INTRODUCTION**

22 1. This action concerns the egregious misrepresentations and omissions of Vistage  
23 International, Inc. and Vistage Worldwide, Inc. (collectively, “Vistage” or the “Vistage  
24 Defendants”), which induced Direct List LLC (“Direct List”) owner Eran Salu (“Mr. Salu”) to  
25 disclose extensive confidential and trade secret information about the workings of Direct List.  
26 These disclosures in Vistage’s supposedly confidential forum enabled the chair of Mr. Salu’s  
27 Vistage group, Phil Kessler, to start a competing business that ultimately destroyed Direct List,  
28 causing it damages in excess of \$5.3 million.

1           2.       The Vistage Defendants hold themselves out as providing a confidential, trusted  
2 forum in which CEOs may safely discuss their most sensitive and private business affairs with  
3 fellow CEOs, led and overseen by the CEO Group Chair.

4           3.       Because CEOs are reluctant to share confidential business issues with others,  
5 Vistage provides all prospective and actual members with repeated assurances that the  
6 information members share in the Vistage setting will be treated with the utmost care and  
7 confidentiality.

8           4.       According to the Vistage website, the very first “Vistage Core Value” is Trust,  
9 which requires that Vistage Chairs “honor confidentiality.”

10          5.       The Vistage website further explains that, “Vistage groups meet once a month to  
11 solve problems, evaluate opportunities and work on an assortment of strategic and operational  
12 issues. *They are confidential forums* of experienced executives who rely on each other for  
13 wisdom and counsel.”

14          6.       The Vistage press release dated June 16, 2011, announcing Mr. Kessler’s new  
15 Chief Executive Group in San Diego, represented as follows:

17                                   Phil Kessler Launches New  
18                                   Vistage Group in the San Diego  
19                                   Market

20

21                                   June 16, 2011   Share this   in   g+   Twitter   f   Email

22

23                                   **San Diego, June 16, 2011** Vistage Chair Phil Kessler has  
24                                   recently launched a new Chief Executive group in San Diego.  
25                                   Kesslers new Vistage group will meet monthly to discuss  
26                                   business issues, share expertise, and provide one another  
27                                   confidential help in critical situations. Kessler is one of nearly  
28                                   400 Vistage Chairs who lead local area groups, which total more  
                                  than 15,000 members in 15 countries.

1           7.       In reliance on these and many other repeated assurances of confidentiality, Mr.  
2 Salu shared confidential information with Mr. Kessler, his Vistage CEO Group Chair, regarding  
3 the design and operation of a business that Mr. Salu created called Direct List LLC. Mr. Salu only  
4 shared this information because of the assurances from the Vistage Defendants that the  
5 information would be held in strictest confidence.

6           8.       In violation of those assurances, Vistage, led by CEO Group Chair Phil Kessler,  
7 used Mr. Salu’s confidential information to form two competing business, AVS Leads, and later,  
8 Arrow Marketing Company, L.L.C. (“Arrow Marketing”). Kessler even had the temerity to insert  
9 both of his daughters into the business—one, as its head, and the other, as its registered agent for  
10 service of process. Led by Phil Kessler and others, AVS Leads recruited away all of Direct List’s  
11 key employees, and poached its customers, using confidential information from Direct List.

12          9.       When Mr. Salu became aware that his Vistage CEO Group Chair had used the  
13 information he disclosed in Vistage’s confidential forum to orchestrate the creation of a  
14 competing business, he promptly contacted Vistage, only to be told that it was not their problem  
15 or concern. When Mr. Salu attempted to contact Vistage’s senior corporate management and  
16 counsel, they initially refused to respond, and then eventually ratified Mr. Kessler’s actions.

17          10.       On June 17, 2015, Mr. Kessler confirmed to other members of his CEO Group that  
18 senior management and legal “council” (sic) of Vistage was “fine” with his actions. In the  
19 ratification email he sent to the group, he wrote:





1 19. Jurisdiction is proper because the amount of damages Plaintiffs seek exceeds the  
2 jurisdictional minimum of this Court.

3 20. Venue is proper in San Diego County, because Defendants reside and/or have done  
4 business in San Diego County and because events leading to the filing of this Complaint occurred  
5 in San Diego County.

6 **III.**

7 **FACTUAL BACKGROUND**

8 **A. Mr. Salu's and Direct Lists' Relationship with Vistage**

9 21. Plaintiff Direct List is a direct marketing company with over 30 years of  
10 experience in lead generation, email marketing, direct mail, and data processing within the B2B  
11 Marketing, B2C Marketing, Real Estate Marketing, and High School Reunions industries.

12 22. Defendant Vistage is a peer-to-peer membership organization for CEOs, business  
13 owners, and executives of small- to mid-size businesses. Vistage holds itself out to the public as a  
14 forum for private, confidential discussions among business leaders, led by highly experienced,  
15 well-vetted (by Vistage) "expert executive coaches" called Vistage Chairs ("Chairs"). Vistage's  
16 website states that "[s]ince 1957, Vistage has been bringing together successful CEOs, executives  
17 and business owners into private peer advisory groups guided by expert executive coaches,  
18 known as Vistage Chairs."

19 23. Vistage's website states that its peer advisory, business mentoring, and corporate  
20 coaching programs are "all led by Vistage Chairs," and touts that "our coaching Chairs have been  
21 at the heart of what makes the Vistage experience so powerful for so many members."

22 24. Vistage's website explains the in-depth application process involved with  
23 becoming a Chair, as well as the "rigorous on-boarding program" and "rigorous development  
24 program" required of each business coach "before they join the Vistage community." The website  
25 also states that "Vistage will provide [its Chairs] with a suite of proven tools, techniques and  
26 resources to get your peer advisory group off the ground and keep it aloft."

27 ///

28 ///

1           25. Vistage touts “Trust” as one of its “Core Values.” Vistage’s website includes  
2 “insights” from Chairs about what the trust value means for them, and these insights include  
3 “establish openness and vulnerability,” “be dependable,” and “honor confidentiality.”

4           26. Vistage represents that “[Vistage groups are] purpose-built so that members can  
5 help each other to solve their most pressing business concerns through a process we call peer  
6 advisory.” Vistage further represents that “[t]he role of a Vistage Chair is to ensure that every bit  
7 of their group’s experience and wisdom is applied in a training meeting... [Chairs] are totally  
8 committed to the success of group members... [and] take on the role with the express purpose of  
9 helping others build great businesses.”

10           27. Vistage’s Terms of Use stress the importance of member confidentiality.  
11 Specifically, the Terms of Use state that “All members of the Vistage community (including  
12 Vistage members, chairs, speakers, Vistage employees and certain partners or service providers)  
13 who access any Member Site agree to abide by the duties and obligations set out in Vistage’s  
14 Confidentiality Pledge and Standards.”

15           28. In or around January 2007, while he was living in North Carolina, Mr. Salu  
16 became interested in joining Vistage. However, Mr. Salu was highly concerned about whether  
17 the information shared in the Vistage forums would be kept confidential.

18           29. Before joining Vistage, Mr. Salu read Vistage’s website, including its  
19 representations regarding confidentiality, of which there were many. In January 2007, the  
20 Vistage website contained the following representations:

21           (a) The Vistage website advertised what it called the “Vistage Advantage.” As  
22 explained on the website, “Vistage provides a setting for successful leaders from diverse,  
23 non-competing industries to gather once a month in *confidential*, problem-solving  
24 meetings with up to 16 chief executives, presidents or business owners, professionally  
25 facilitated by a Vistage Group Chair.”

26           (b) The Vistage website explained that the Vistage chair’s responsibilities  
27 including acting as a “*trusted confidante*, personal advisor, mentor and executive coach. .  
28 . . .”

1 (c) It indicated that “On a day-to-day basis, a Chair is responsible for: Leading  
2 *confidential, monthly group* meetings, where members assist each other in solving  
3 business problems[;] Coaching, mentoring, and *acting as a confidante for each member*  
4 in monthly, two hour one-to-ones, for the purpose of discovering the most significant  
5 business and personal issues . . . .”

6 (d) Regarding its chairs, Vistage indicated, “We look for strong  
7 communicators, great listeners and born problem solvers who can hold their own in a  
8 room full of chief executives and *confidentially guide them* toward success.”

9 30. In order to obtain more information, Mr. Salu filled out a form on Vistage’s  
10 website with his personal information. Shortly after, he received a phone call from a Vistage  
11 representative, who expounded on the benefits of joining the organization. On that phone call,  
12 Mr. Salu informed the Vistage representative that his biggest concern was whether Vistage would  
13 maintain as confidential the information shared in Vistage’s forums. The Vistage representative  
14 informed Mr. Salu that Vistage would absolutely keep the information shared in Vistage’s forums  
15 confidential, that Vistage could never stay in business if it did not ensure confidentiality, and that  
16 Mr. Salu should feel assured that the information shared in Vistage’s forums would be maintained  
17 as confidential.

18 31. In reliance on the oral representations from the Vistage representative, as well as  
19 the representations on Vistage’s website, Mr. Salu joined Vistage. Mr. Salu filled out a Vistage  
20 Membership contract, which was accepted and countersigned by Vistage.<sup>1</sup> The importance of  
21 confidentiality was spelled out again in the “membership terms and conditions agreement”  
22 section of the contract, which read in part: “Membership commitments: Upon acceptance as a  
23 member, You agree to: . . . Maintain strict confidentiality of all Vistage group discussions.”

24 32. Beginning in 2007, Mr. Salu began meeting with a Vistage private peer advisory  
25 group in North Carolina approximately one time per month for several years. Mr. Salu, either  
26

27 <sup>1</sup> Under the “Company Details” section of the contract, Mr. Salu listed “Business Leader  
28 Holdings, Inc.,” which was a media business Mr. Salu indirectly owned and operated at that time.  
Following a business reorganization in 2012 or 2013, Direct List assumed most of the operations  
and activities previously performed by Business Leader Holdings, Inc.

1 individually or through Direct List or another of his companies, paid \$1,300 monthly for his  
2 Vistage membership.

3 33. After joining Vistage, Vistage's representatives repeatedly gave written and verbal  
4 assurances that the peer advisory group meetings would be strictly confidential, meaning that  
5 neither the Chair of the group, nor any of its members, would be at liberty to disclose any  
6 discussions that took place during group meetings with any third parties.

7 34. Indeed, during the group meetings, the Chair and the members routinely  
8 acknowledged that they were "sworn to confidentiality" concerning what occurred during the  
9 meeting. These representations of confidentiality and privacy directly aligned with the assurances  
10 made on Vistage's website and in Vistage member materials.

11 35. Mr. Salu relied on these privacy and confidentiality representations in continuing  
12 his membership in Vistage.

13 36. In 2011, Mr. Salu moved to San Diego, California, where he remained affiliated  
14 with Vistage. After several months, Mr. Salu joined a group chaired by Phil Kessler (the "Vistage  
15 Group" or "Group").

16 37. At all times relevant herein, Mr. Kessler was acting as the agent of Vistage. His  
17 actions were authorized by Vistage, and later ratified by Vistage.

18 38. For the following over three years, during various Vistage Group meetings, Mr.  
19 Salu shared highly confidential and sensitive business information and trade secrets about Direct  
20 List with Mr. Kessler. This information included, but was not limited to, the inner workings of the  
21 Direct List operation, potential and actual customers of Direct List, and details about various  
22 methodologies being used to provide services to clients.

23 39. Throughout Mr. Salu's involvement with the Vistage Group, he was promised that  
24 everything he shared with his Vistage Chair would be maintained as strictly confidential.

25 **Mr. Salu's Confidential Discussions with the Group Lead to Business between Direct**  
26 **List and Vistage**

27 40. In or around 2012, during a series of confidential meetings with his Vistage Group,  
28 Mr. Salu expressed his desire to monetize the data in Direct List's possession, as well as Mr.



1 Salu's existing relationships with magazine subscribers. Mr. Salu shared with the Group that, to  
2 accomplish this goal, he was considering offering list management, email marketing, lead  
3 generation, and direct mail services to clients.

4 41. Many Group members expressed interest in Mr. Salu's proposal, and Mr. Kessler  
5 in particular told Mr. Salu that he would like to use Mr. Salu's lead generation services to help  
6 grow Vistage membership. Mr. Salu understood that Mr. Kessler and Vistage stood to benefit  
7 financially if the leads provided by Mr. Salu resulted in actual new Vistage members, since  
8 Vistage membership dues are split between them.

9 42. In response to Mr. Kessler's request, in or around 2012, Mr. Salu and Direct List  
10 first began providing direct marketing services to Mr. Kessler, in his role as Vistage Chair. These  
11 services included drafting direct marketing correspondence and emailing this correspondence to  
12 many potential Vistage customers, encouraging them to join Vistage.

13 43. Within a few months of using Direct List's services, Mr. Kessler was able to enroll  
14 a number of new Vistage members, thereby benefitting both Mr. Kessler and Vistage.

15 44. Mr. Kessler informed other Vistage Chairs about his success in using Direct List's  
16 services, and within 6 months, over 30 Vistage Chairs had hired Direct List for lead generation  
17 and direct marketing services.

18 45. Soon thereafter, in approximately late 2012, Vistage corporate asked to meet with  
19 Mr. Salu, and the parties discussed Direct List's provision of services to Vistage. Following this  
20 meeting, Direct List began to provide direct marketing to Vistage and its Group Chairs.

21 46. Over the course of the next several years, Vistage and Direct List did increasing  
22 amounts of business together. As part of Direct List's services to Vistage, Direct List developed a  
23 proprietary lead source technology to locate potential customers for Vistage; drafted targeted  
24 messaging to potential Vistage customers; sent one-to-one emails to targets on behalf Vistage;  
25 and developed a Customer Relationship Management ("CRM") methodology uniquely tailored to  
26 Vistage, whereby Vistage would receive all leads directly to Vistage's email inboxes.

27 47. The customized emails drafted by Direct List for Vistage included, at Vistage's  
28 request, a representation that all Vistage group sessions are strictly "confidential."

1           48.     The work for Vistage was performed by Direct List's Direct Marketing Group  
2 team, which at all times relevant to this Complaint, was comprised of the following five  
3 individuals: Edette Herron, Corine Redira, Risit Ratanadiloknaphuket, Cecile Agabao, and Oscar  
4 Vasquez.

5           49.     At all times relevant to this Complaint, Ms. Herron was the General Manager of  
6 the Direct Marketing Group, and served as the primary representative in charge of the Vistage  
7 account.

8           50.     In or around 2014, in the context of confidential Vistage Group meetings, Mr. Salu  
9 told Mr. Kessler that Ms. Herron could benefit from becoming a Vistage member. Mr. Kessler  
10 subsequently placed Ms. Herron in a different Vistage group, and Mr. Salu paid for her  
11 membership. Mr. Kessler was also aware that Ms. Herron was the main point-person for the  
12 services being performed for Vistage, and Mr. Kessler and Ms. Herron maintained a cordial  
13 business relationship.

14           51.     One day in or around late 2013, following a Vistage Group meeting, Mr. Kessler  
15 approached Mr. Salu and asked to be paid 10% of Direct List's profits from the business it was  
16 conducting with Vistage. Mr. Kessler justified this request by suggesting that he had been  
17 responsible for introducing Direct List's services to other Vistage Chairs.

18           52.     In response, Mr. Salu reminded Mr. Kessler of the stated purpose of Vistage and  
19 its Chairs—namely, to help members build their businesses through providing feedback,  
20 guidance, and other support—and replied that Mr. Kessler was not entitled to a share of Direct  
21 List's profits simply for performing his job as a Vistage Chair.

22           53.     Mr. Kessler conceded that he could not expect compensation from Direct List for  
23 action that he took in his role as a Vistage Chair. Mr. Kessler made no further request to Mr. Salu  
24 for a share of Direct List's profits.

25     **C.     Mr. Kessler Uses Mr. Salu's Confidential Information to Form a Competing**  
26     **Business and Poach Direct List's Employees and Customers**

27           54.     In or around February 2015, Mr. Salu informed Mr. Kessler that he would be  
28 moving to Florida in three months, and that he could therefore no longer participate in Mr.

1 Kessler's Vistage Group.

2 55. In May 2015, Mr. Salu moved to Florida. He continued to remotely manage Direct  
3 List, which carried on its business from San Diego.

4 56. In May 2015, just after Mr. Salu arrived in Florida, Ms. Herron informed Mr. Salu  
5 that she needed to take disability leave for 30 days. This information surprised Mr. Salu, as Ms.  
6 Herron had not previously mentioned any disability or need for leave, but he approved her  
7 request.

8 57. On May 26, 2015, approximately two weeks after Ms. Herron gave notice of her  
9 leave, Ms. Corine Redira, the second-in-charge at Direct List, gave two weeks' notice of her  
10 termination of employment.

11 58. On the same day that Ms. Redira gave notice, a third employee of Direct List,  
12 Oscar Vasquez, gave notice that he was quitting effective that day.

13 59. Stunned at the sudden loss of what had previously been three long-term and  
14 reliable employees, Mr. Salu contacted the remaining two members of the Direct Marketing  
15 Group team—Risit Ratanadiloknaphuket and Cecile Agabao—and asked them whether they  
16 would remain with the company. On the next day, those two employees resigned, leaving the  
17 Direct Marketing Group wholly gutted.

18 60. In or around June 2015, Mr. Salu conducted Internet research and discovered a  
19 competitor company called AVS Leads. Mr. Salu called AVS Leads and, acting on a hunch,  
20 asked to speak with Edette Herron, the Direct List employee who was supposedly out on  
21 disability leave. To Mr. Salu's surprise, he was connected to Ms. Herron. Mr. Salu identified  
22 himself and tried to determine what was going on. Ms. Herron responded with words to the effect  
23 of, "I can't talk to you, I'm on disability, I'm not mentally well," and hung up the phone.

24 61. After conducting additional research, Mr. Salu learned that an individual by the  
25 name of Lauren Kessler was making credit applications on behalf of AVS Leads. Mr. Salu further  
26 learned from Ms. Kessler's LinkedIn page that she was the General Manager of AVS Leads.

27 62. Noting the shared last name between Lauren Kessler and Phil Kessler, Mr. Salu  
28 contacted two members of the Vistage Group, Mike Rodman and Ted Ricassa, and asked them if

1 they knew about any affiliation between Lauren Kessler, Phil Kessler, and AVS Leads.

2 63. Upon information and belief, following a Group meeting, Mr. Ricassa and Mr.  
3 Rodman confronted Mr. Kessler about his apparent affiliation with Lauren Kessler and AVS  
4 Leads, and Mr. Kessler confirmed that Lauren Kessler was his daughter and that she worked for  
5 AVS Leads. Mr. Kessler further conceded that he had introduced his daughter and Ms. Herron to  
6 facilitate the formation of a business intended to directly compete with Direct List.

7 64. According to the California Secretary of State website, AVS Leads was registered  
8 in California (as "AVS LLC") on May 14, 2015, and the agent for service of process for the  
9 company is an individual named Diana Owens.

10 65. Upon information and belief, Diana Owens was born Diana Kessler and, like  
11 Lauren Kessler, she is Phil Kessler's daughter.

12 66. Upon information and belief, the website domain for AVS Leads  
13 (www.avsleads.com) was registered on May 19, 2015. The true name of the registrant has been  
14 concealed, using Go Daddy LLC as a proxy.

15 67. On June 25, 2015, Mr. Kessler sent an email to his Vistage Group (the "Email"), in  
16 which he represented that "his daughter" had been "want[ing] to expand into lead generation."  
17 Mr. Kessler's email conceded that he had made a "major mistake" and recognized that he had  
18 breached the confidentiality obligations of a Vistage Chair.

19 68. Mr. Kessler did not copy Mr. Salu on the email sent to the rest of the Vistage  
20 Group. Mr. Salu learned of the Email when it was sent to him by another member of the Group.

21 69. Upon information and belief, prior to becoming the General Manager of AVS  
22 Leads, Lauren Kessler worked with a laser hair removal company, with little or no experience in  
23 the list business or lead generation business.

24 70. Upon information and belief, prior to her affiliation with AVS Leads, Diana  
25 Owens was a nurse, with no experience in the list business or lead generation business.

26 71. Upon information and belief, Mr. Kessler conspired with his daughters, with Ms.  
27 Herron, and with other Doe Defendants to set up a business, AVS Leads, that would directly and  
28 unfairly compete with Direct List by making use of Direct List's confidential and proprietary

1 information and trade secrets, as well as by poaching all of Direct List’s Direct Marketing Group  
2 employees.

3 72. Upon information and belief, Mr. Kessler and Doe defendants formed AVS Leads  
4 one week before Ms. Herron went on purported disability leave, while she was still an employee  
5 of Direct List.

6 73. Upon information and belief, AVS Leads currently employs all five of the ex-  
7 employees of Direct List’s Direct Marketing Group.

8 74. Upon information and belief, AVS Leads has poached, and is currently doing  
9 business with, all of Direct List’s former clients other than Vistage. Vistage remains Direct List’s  
10 sole remaining client.

11 75. AVS Leads maintains a profile on LinkedIn.com, as well as a website at  
12 avsleds.com. On both of these sites, AVS Leads touts experience and qualifications that are  
13 substantially similar to those of Direct List, stating that “our team of experts have over 35 years in  
14 the list business,” and further represents that its “proprietary lead source technology” is used to  
15 “deliver the most accurate Consumer, Business, and Residential lists” for lead generation.

16 76. Each of Mr. Salu’s employees on the Direct Marketing Group team—including  
17 Ms. Herron, Ms. Agabao, Mr. Vasquez, Ms. Redira, and Mr. Ratanadiloknaphuket—signed an  
18 employment agreement with Direct List, pursuant to which they agreed not to solicit away Direct  
19 List’s employees following their termination.

20 77. The formation and success of AVS Leads was made possible solely through the  
21 misappropriation of Direct List’s confidential business materials. Mr. Kessler orchestrated this  
22 misappropriation by several methods.

23 78. One of Mr. Kessler’s methods involved taking the confidential and proprietary  
24 information he had learned from Mr. Salu in his role as Vistage Chair, acting as agent for Vistage.

25 79. But it went deeper than that. Another of Mr. Kessler’s schemes involved  
26 conspiring with Ms. Herron and other Direct List employees, whom he had met or learned of  
27 through his position as a Vistage Chair, to take additional confidential and proprietary  
28 information from Direct List for use in creating AVS Leads. Using this process, Mr. Kessler was

1 able to entice Ms. Herron and other Direct List employees to log on to Direct List's password-  
2 protected computer systems and access Direct List's programs called "Navision" and the  
3 "admin."

4 80. While they were still employees of Direct List, Ms. Herron and other Direct List  
5 employees accessed Direct List's computer systems, copied and downloaded confidential,  
6 proprietary, and trade secret information, and provided it to Mr. Kessler, Ms. Kessler, Ms.  
7 Owens, and others acting in concert with them. These actions were completely against Direct  
8 List's policies and would have been grounds for immediate termination.

9 81. Upon information and belief, Mr. Kessler, Ms. Kessler, Ms. Owens, and others  
10 acting in concert with them used the confidential, proprietary, and trade secret information taken  
11 from Direct List to advertise their new businesses, AVS Leads and Arrow Marketing, and to  
12 solicit and recruit Direct Lists' customers and vendors.

13 82. In early 2017, Mr. Salu discovered a website for a business called Arrow  
14 Marketing, which advertises as a direct mail marketing business, handling targeted mail, direct  
15 mailing lists, and other services Direct List performed. Upon reviewing the website, Mr. Salu  
16 became suspicious that Arrow Marketing had a connection with AVS Leads because it advertised  
17 that it did business with many of Direct List's former clients.

18 83. The suspicion only increased when Mr. Salu realized that Arrow Marketing's  
19 address on its website and the Secretary of State's website is the same as AVS Leads' address,  
20 and that Arrow Marketing lists Phil Kessler as its agent for service of process.

21 84. Upon information and belief, Mr. Kessler, Ms. Kessler, Ms. Owens, Ms. Heron,  
22 and AVS Leads have conspired with each other and Arrow Marketing to transition the business  
23 operations of AVS Leads to Arrow Marketing. Upon information and belief, Mr. Kessler, Ms.  
24 Kessler, Ms. Owens, Ms. Heron, and AVS Leads have transferred to Arrow Marketing the  
25 confidential information and Trade Secrets obtained by Mr. Kessler and otherwise taken from  
26 Direct List, and Arrow Marketing is now using them to compete in the same business as Direct  
27 List.

28 85. Upon information and belief, Arrow Marketing was formed to avoid detection by

1 Mr. Salu and as an effort to mitigate the results of a potential judgment against Mr. Kessler, Ms.  
2 Kessler, Ms. Owens, Ms. Heron, and AVS Leads.

3 86. As a direct result of the Vistage Defendants' conduct described above, Mr. Salu  
4 and Direct List have suffered damages in an amount to be proven at trial, but not less than \$5.3  
5 million, as a result of the destruction of Direct List's business operations, loss of revenues, loss of  
6 corporate opportunities, loss of goodwill, and other damages.

7 **D. The Federal Action**

8 87. On September 11, 2015, Mr. Salu and Direct List filed a lawsuit in the United  
9 States District Court for the Southern District of California against Vistage International, Inc.,  
10 Phil Kessler, Lauren Kessler, Diana Owens, and Edette Herron, assigned Case No. 15-cv-2025-  
11 WQH-JLB (the "Federal Action").

12 88. The Federal Action included the following claims against Vistage International,  
13 Inc.:

14 (a) Fraud – by Mr. Salu

15 (b) Breach of Fiduciary Duty – by Mr. Salu

16 (c) Unfair Competition under Business and Professions Code §§ 17200 et seq.  
17 – by Mr. Salu and Direct List

18 89. The Federal Action also includes a number of claims for Breach of Fiduciary Duty  
19 against Mr. Kessler, and for Misappropriation of Trade Secrets and Unfair Competition against  
20 Phil Kessler, Lauren Kessler, Diana Owens, and Edette Herron.

21 90. On February 8, 2016, the District Court granted Vistage International, Inc.'s  
22 motion under Federal Rule of Civil Procedure 12(b)(6), and dismissed Mr. Salu's claim for  
23 Breach of Fiduciary Duty *without prejudice*.

24 91. On November 3, 2016, the District Court granted Vistage International, Inc.'s  
25 motion under Federal Rules of Civil Procedure 12(b)(1) and 56. The Court ruled that Mr. Salu  
26 lacked Article III Constitutional standing to pursue the claims against Vistage International for  
27 Fraud and Unfair Competition based on the allegations of the operative complaint. The Court  
28 also ruled that Direct List failed to demonstrate it had standing under the UCL.

1           92.     On November 22, 2016, the District Court issued an order denying Vistage  
2 International’s motion to enter judgment in Vistage’s favor. In the order, the District Court  
3 specifically stated that the claims against Vistage International for fraud and under the UCL were  
4 dismissed *without prejudice*.

5           93.     On June 14, 2017, the Court issued an order allowing Mr. Salu and Direct List to  
6 amend their original complaint. On June 23, 2017, Mr. Salu and Direct List filed a First  
7 Amended Complaint against Phil Kessler, Lauren Kessler, Diana Owens, Edette Herron and  
8 Arrow Marketing (the “FAC”). While the FAC in the Federal Action includes a number of  
9 causes of action, many of the claims revolve around the claim for misappropriation of trade  
10 secrets. Currently, neither Vistage International, Inc. nor Vistage Worldwide, Inc. are parties to  
11 the Federal Action.

12     **E.     The Tolling Agreement between Plaintiffs and the Vistage Defendants**

13           94.     Effective May 19, 2017, Mr. Salu, Direct List, the Vistage Defendants, Mr.  
14 Kessler, Lauren Kessler, Diana Owens, AVS Leads, and Arrow Marketing entered into an  
15 Amended Tolling Agreement. The agreement prospectively tolled any claims the signatories had  
16 against each other for nine months after the May 19, 2017 effective date.

17           95.     The Amended Tolling Agreement provided that it could be terminated early by  
18 providing a minimum of 14 days’ notice. At no time have the Vistage Defendants given notice of  
19 termination of the agreement. Therefore, any claims of Mr. Salu or Direct List that may have  
20 otherwise been affected by a statute of limitations are have been tolled under that agreement until  
21 the filing of this action.

22                     **IV.**

23                         **CAUSES OF ACTION**

24                             **FIRST CAUSE OF ACTION**

25                                 **Fraud – Intentional Misrepresentation**

26                                     **(By Direct List and Mr. Salu against All Defendants)**

27           96.     Plaintiffs incorporate every allegation contained in the preceding paragraphs, as  
28 though set forth fully herein.



1            97.     The Vistage Defendants, by and through their agents, including but not limited to  
2 Phil Kessler, made representations to Mr. Salu, individually, and as the owner and agent of Direct  
3 List, that they would ensure the confidentiality of the business information that Plaintiffs shared  
4 as part of their membership in Vistage.

5            98.     Before Mr. Salu and Direct List joined Vistage, the Vistage Defendants' made  
6 intentionally false representations that include, but are not limited to the following:

7                    (a)     The representations made on the Vistage website on or about January 2007,  
8 as set forth in paragraph 29 herein, concerning the confidentiality of Vistage's forums,  
9 such as the representation that Vistage offered "confidential, problem-solving meetings,"  
10 that Vistage chairs were a "trusted confidante, personal advisor, mentor and executive  
11 coach."

12                   (b)     The oral representations made by the Vistage representative to Mr. Salu in  
13 or about January 2007, as set forth in paragraph 30 herein, to the effect that Vistage would  
14 absolutely keep the information shared in Vistage's forums confidential, that Vistage  
15 could never stay in business if it did not ensure confidentiality, and that Mr. Salu should  
16 feel assured that the information shared in Vistage's forums would be maintained as  
17 confidential.

18                   (c)     The content of the Vistage Membership contract, which explicitly stated  
19 that Vistage members were required to "Maintain strict confidentiality of all Vistage  
20 group discussions."

21            99.     The Vistage Defendants also intentionally made false representations to Mr. Salu  
22 and Direct List over the course of Mr. Salu's and Direct List's membership in Vistage, including  
23 but not limited to the following:

24                   (a)     Vistage's publication on its website and elsewhere of its "Core Values,"  
25 which include "Trust."

26                   (b)     Vistage's publication on its website and elsewhere of "insights" from  
27 Chairs about what the trust value means for them, which include "establish openness and  
28 vulnerability," "be dependable," and "honor confidentiality."

1 (c) Vistage's publication on its website and elsewhere of its Terms of Use,  
2 which stress the importance of member confidentiality. Specifically, the Terms of Use  
3 state that "All members of the Vistage community (including Vistage members, chairs,  
4 speakers, Vistage employees and certain partners or service providers) who access any  
5 Member Site agree to abide by the duties and obligations set out in Vistage's  
6 Confidentiality Pledge and Standards."

7 (d) Vistage's representations at Vistage group meetings, made by and through  
8 its Chairs, including Mr. Kessler, that the Chair and group members were "sworn to  
9 confidentiality" and would otherwise keep confidential the information shared during the  
10 group meetings and other Vistage forums.

11 100. These representations of The Vistage Defendants were false.

12 101. Vistage knew that the representations were false when it made them, or made the  
13 representations recklessly and without regard for their truth.

14 102. The Vistage Defendants intended that Mr. Salu and Direct List rely on the  
15 representations.

16 103. Mr. Salu and Direct List reasonably relied on the representations.

17 104. When informed of Mr. Kessler's actions, the Vistage Defendants ratified those  
18 actions and informed Mr. Kessler and his Vistage Group members that what Mr. Kessler had  
19 done was "fine."

20 105. As a direct result of the Vistage Defendants' conduct described above, Mr. Salu  
21 and Direct List have suffered damages in an amount to be proven at trial, but not less than \$5.3  
22 million, as a result of the destruction of Direct List's business operations, loss of revenues, loss of  
23 corporate opportunities, loss of goodwill, and other damages.

24 106. Mr. Salu's and Direct List's reliance on the Vistage Defendants' representations  
25 was a substantial factor in causing the harm. But for the representations made by the Vistage  
26 Defendants, Mr. Salu would never have joined Vistage or shared sensitive information regarding  
27 Direct List with his Vistage Group and Mr. Kessler, nor would Direct List have permitted Mr.  
28 Salu to share the sensitive information.





1           119. The Vistage Defendants' promise was important to Mr. Salu's decision to become  
2 a member of Vistage, and to join the Vistage Group of which Mr. Kessler was a Chair. The  
3 promise was also important to Direct List's decision to permit its confidential information to be  
4 shared with Mr. Salu's Vistage Group.

5           120. The Vistage Defendants did not intend to perform the promise when they made it.

6           121. The Vistage Defendants intended that Mr. Salu and Direct List rely on the promise  
7 in joining Vistage, in continuing Mr. Salu's Vistage membership, and in sharing sensitive  
8 business information concerning Direct List with the Vistage Group and Mr. Kessler.

9           122. Mr. Salu and Direct List reasonably relied on the Vistage Defendants' promise,  
10 which was reiterated by Vistage in its published literature and in its membership agreement, and  
11 was repeated by Mr. Kessler at Group meetings.

12           123. The Vistage Defendants did not uphold their promise. Instead, they permitted Mr.  
13 Kessler to disclose Mr. Salu's and Direct List's confidential business information and trade  
14 secrets to third parties, and permitted Mr. Kessler to use that information to launch a business that  
15 competes with Direct List.

16           124. When informed of Mr. Kessler's actions, the Vistage Defendants ratified those  
17 actions and informed Mr. Kessler and his Vistage Group members that what Mr. Kessler had  
18 done was "fine."

19           125. As a direct result of the Vistage Defendants' conduct described above, Mr. Salu  
20 and Direct List have suffered damages in an amount to be proven at trial, but not less than \$5.3  
21 million, as a result of the destruction of Direct List's business operations, loss of revenues, loss of  
22 corporate opportunities, loss of goodwill, and other damages.

23           126. Mr. Salu's and Direct List's reliance on The Vistage Defendants' promise was a  
24 substantial factor in causing the harm. But for the representations made by the Vistage  
25 Defendants, Mr. Salu would never have joined Vistage or shared sensitive information regarding  
26 Direct List with his Vistage Group and Mr. Kessler, nor would Direct List have permitted Mr.  
27 Salu to share the sensitive information.

28           127. The Vistage Defendants' conduct was oppressive, fraudulent, and malicious, and

1 constitutes despicable conduct in conscious disregard for Plaintiffs' rights. Therefore, Plaintiffs  
2 are entitled to an award of exemplary or punitive damages under California Civil Code § 3294.

3 **FOURTH CAUSE OF ACTION**

4 **Negligent Misrepresentation**

5 **(By Direct List and Mr. Salu against All Defendants)**

6 128. Plaintiffs incorporate every allegation contained in the preceding paragraphs, as  
7 though set forth fully herein.

8 129. The Vistage Defendants, by and through their agents, including but not limited to  
9 Phil Kessler, made representations to Mr. Salu, individually, and as the owner and agent of Direct  
10 List, that they would ensure the confidentiality of the business information that Plaintiffs shared  
11 as part of their membership in Vistage.

12 130. Although the Vistage Defendants may have honestly believed that the  
13 representations were true, they had no reasonable grounds for believing the representations were  
14 true when they made them.

15 131. The Vistage Defendants intended that Mr. Salu and Direct List rely on the  
16 representations in joining Vistage, in continuing Mr. Salu's and Direct List's Vistage  
17 membership, and in sharing sensitive business information concerning Direct List with the Group.

18 132. Mr. Salu and Direct List reasonably relied on the representations, which were  
19 reiterated by Vistage in its published literature and in its membership agreement, and was  
20 repeated by Mr. Kessler at Group meetings.

21 133. The Vistage Defendants' representations were not true. Instead, they permitted  
22 Mr. Kessler to disclose Mr. Salu's and Direct List's confidential business information and trade  
23 secrets to third parties, and permitted Mr. Kessler to use that information to launch a business that  
24 competes with Direct List.

25 134. When informed of Mr. Kessler's actions, the Vistage Defendants ratified those  
26 actions and informed Mr. Kessler and his Vistage Group members that what Mr. Kessler had  
27 done was "fine."

28 135. As a direct result of the Vistage Defendants' conduct described above, Mr. Salu

1 and Direct List have suffered damages in an amount to be proven at trial, but not less than \$5.3  
2 million, as a result of the destruction of Direct List's business operations, loss of revenues, loss of  
3 corporate opportunities, loss of goodwill, and other damages.

4 136. Mr. Salu's and Direct List's reliance on the Vistage Defendants' representations  
5 was a substantial factor in causing the harm. But for the representations made by the Vistage  
6 Defendants, Mr. Salu would never have joined Vistage or shared sensitive information regarding  
7 Direct List with his Vistage Group and Mr. Kessler, nor would Direct List have permitted Mr.  
8 Salu to share the sensitive information.

9 137. The Vistage Defendants' conduct was oppressive, fraudulent, and malicious, and  
10 constitutes despicable conduct in conscious disregard for Plaintiffs' rights. Therefore, Plaintiffs  
11 are entitled to an award of exemplary or punitive damages under California Civil Code § 3294.

## 12 **FIFTH CAUSE OF ACTION**

### 13 **Breach of Contract**

14 **(By Direct List and Mr. Salu against All Defendants)**

15 138. Plaintiffs incorporate every allegation contained in the preceding paragraphs, as  
16 though set forth fully herein.

17 139. On or about January 1, 2007, Mr. Salu and the Vistage Defendants entered into a  
18 contract that was partially written and partially oral.

19 140. The written terms of the contract consisted of the Vistage membership application,  
20 supplemented by the Vistage website, Vistage's Terms of Use, Vistage's Core Values, and other  
21 documents that detailed Vistage's promise of confidentiality.

22 141. The written terms of the contract were supplemented by oral representations made  
23 by representatives of Vistage, that Vistage promised confidentiality to its members.

24 142. The contract between Mr. Salu and Vistage could be cancelled at any time with  
25 ninety (90) days' notice. If not cancelled, the contract was renewable on a month-by-month basis  
26 by payment of the monthly membership dues.

27 143. Direct List was an intended beneficiary of the contract between Mr. Salu and  
28 Vistage.

1           144. Mr. Salu and Direct List did all or substantially all of the significant things that the  
2 contract required them to do, or were excused from doing them.

3           145. The Vistage Defendants materially breached the parties' contract by the following  
4 acts:

5                   (a) Failing to maintain the confidentiality of information shared in the Vistage  
6 Forums, including Vistage group discussions.

7                   (b) Failing to implement appropriate policies and procedures to maintain the  
8 confidentiality of information shared in the Vistage Forums.

9                   (c) Allowing Mr. Kessler, Vistage's agent, to disclose Direct List's  
10 confidential business and trade secret information to third parties.

11                   (d) Allowing Mr. Kessler, Vistage's agent, to launch a business that competed  
12 with Direct List.

13                   (e) Allowing Mr. Kessler, Vistage's agent, to use his position as Vistage Chair  
14 to conspire with Ms. Herron and other Direct List employees, whom he had met or learned  
15 of through his position as a Vistage Chair, to take additional confidential and proprietary  
16 information from Direct List for use in creating the competing business.

17                   (f) Failing to intervene when it was made aware of Mr. Kessler's actions, and  
18 instead ratifying his conduct.

19           146. When informed of Mr. Kessler's actions, the Vistage Defendants ratified those  
20 actions and informed Mr. Kessler and his Vistage Group members that what Mr. Kessler had  
21 done was "fine."

22           147. As a direct result of the Vistage Defendants' conduct described above, Mr. Salu  
23 and Direct List have suffered damages in an amount to be proven at trial, but not less than \$5.3  
24 million, as a result of the destruction of Direct List's business operations, loss of revenues, loss of  
25 corporate opportunities, loss of goodwill, and other damages.

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1 **SIXTH CAUSE OF ACTION**

2 **Breach of the Covenant of Good Faith and Fair Dealing**

3 **(By Direct List and Mr. Salu against All Defendants)**

4 148. Plaintiffs incorporate every allegation contained in the preceding paragraphs, as  
5 though set forth fully herein.

6 149. Mr. Salu's contract with Vistage, of which Direct List was an intended beneficiary,  
7 had an implied covenant of good faith and fair dealing. The implied covenant of good faith and  
8 fair dealing required Vistage to refrain from doing anything that would impair, destroy, or injure  
9 the rights of Mr. Salu and Direct List to receive the benefits of the contract.

10 150. The Vistage Defendants breached the contract when Phil Kessler, Vistage's agent,  
11 deliberately and in bad faith used the confidential information disclosed by Mr. Salu and Direct  
12 List in the Vistage forums, as well as his relationship with employees of Direct List, some of  
13 whom were also participating in Vistage, to disclose Direct List's confidential business and trade  
14 secret information to third parties and start a business that competed with Direct List.

15 151. When informed of Mr. Kessler's actions, the Vistage Defendants ratified those  
16 actions and informed Mr. Kessler and his Vistage Group members that what Mr. Kessler had  
17 done was "fine."

18 152. The Vistage Defendants' bad faith breach of the covenant of good faith and fair  
19 dealing has destroyed Plaintiffs' ability to receive the benefit of the bargain under the contract.  
20 Rather than furthering the contract's purpose of helping Mr. Salu improve Direct List, the Vistage  
21 Defendants destroyed the company.

22 153. As a direct result of the Vistage Defendants' conduct described above, Mr. Salu  
23 and Direct List have suffered damages in an amount to be proven at trial, but not less than \$5.3  
24 million, as a result of the destruction of Direct List's business operations, loss of revenues, loss of  
25 corporate opportunities, loss of goodwill, and other damages.

26 154. The Vistage Defendants' conduct was oppressive, fraudulent, and malicious, and  
27 constitutes despicable conduct in conscious disregard for Plaintiffs' rights. Therefore, Plaintiffs  
28 are entitled to an award of exemplary or punitive damages under California Civil Code § 3294.

1 **SEVENTH CAUSE OF ACTION**

2 **Tort of Another**

3 **(By Direct List and Mr. Salu against All Defendants)**

4 155. Plaintiffs incorporate every allegation contained in the preceding paragraphs, as  
5 though set forth fully herein.

6 156. As a result of the Vistage Defendants' tortious conduct described herein, Plaintiffs  
7 have been forced to protect their interests by bringing the Federal Action against Phil Kessler,  
8 Lauren Kessler, Diana Owens, Edette Herron, and Arrow Marketing, wherein they seek  
9 injunctive relief to prevent the Kessler Defendants from continuing to use their trade secrets and  
10 confidential information.

11 157. In prosecuting the Federal Action, Plaintiffs have incurred attorneys' fees, costs,  
12 and other expenses. Under the tort of another doctrine, Plaintiffs are entitled to recover those  
13 expenditures incurred in connection with the Federal Action from the Vistage Defendants.

14 **EIGHTH CAUSE OF ACTION**

15 **Unfair Business Practices, Bus. & Prof. Code §§ 17200 et seq.**

16 **(By Direct List and Mr. Salu against All Defendants)**

17 158. Plaintiffs incorporate every allegation contained in the preceding paragraphs, as  
18 though set forth fully herein.

19 159. The acts of the Vistage Defendants alleged herein, including but not limited to  
20 Vistage's representations and advertisements that Vistage provided a confidential forum, made  
21 orally, on its website, in the contract, and otherwise, constitute unlawful, unfair, and fraudulent  
22 business practices in violation of Cal. Bus. & Prof. Code §§ 17200 et seq.

23 160. By reason of the foregoing acts, the Vistage Defendants have been improperly and  
24 unjustly enriched at the expense of Mr. Salu and Direct List in an amount to be proven at trial, but  
25 not less than the amount paid by or on behalf of Mr. Salu, Direct List, or any other company  
26 making payments on their behalf, to participate in Vistage.

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28 ///

V.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For general, specific, compensatory, incidental, and consequential damages according to proof at trial, but in an amount not less than \$5,300,000;
2. For disgorgement and restitution of all profits and gains obtained by the unlawful, unfair, and fraudulent acts and omissions alleged herein according to proof at trial.
3. For punitive and exemplary damages according to proof;
4. For pre- and post-judgment interest, as allowed by law;
5. For an award of costs of suit incurred in this action;
6. For an award of attorneys' fees incurred in this action;
7. For an award of Plaintiffs' attorneys' fees, costs, and other expenditures incurred in connection with the Federal Action; and
8. For such other and further relief as the Court may deem proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand trial of all issues by jury.

DATED: September 21, 2017

DUCKOR SPRADLING METZGER & WYNNE

By: 

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ANNE K. WILSON  
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DIRECT LIST LLC and ERAN SALU