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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

11 KEVIN WILSON, an individual,

12 Plaintiff,

13 v.

14 RSMP LIMITED, a British Corporation; and
15 ELIZABETH WILLIAMS, an individual, and
16 DOES 1 - 100,

17 Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY
RELIEF AND FRAUD**

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20 Plaintiff Kevin Wilson ("Plaintiff" or "Wilson"), and for causes of action alleges as
21 follows:

22 **PARTIES**

- 23 1. Plaintiff is, and at all times set forth herein was, a resident of South Pasadena,
24 California.
- 25 2. Defendant RSMP Limited ("Company") is a foreign corporation, incorporated
26 and registered in England, and doing business as Sedari.
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1 3. Defendant Elizabeth Williams (“Dr. Williams”) is a resident of Brussels,
2 Belgium.

3 4. Defendant Does 1 through 100 are sued herein by their fictitious names for the
4 reasons that their true names are unknown. Plaintiff will seek leave to amend this complaint to
5 allege such true names when the same are ascertained. Plaintiff believes and thereon alleges that
6 these fictitiously named defendants are responsible as agents, principals, alter egos, or otherwise
7 for the acts alleged herein.

8 **JURISDICTION**

9 5. This Court has jurisdiction because the controversy involves the application of a
10 covenant not to compete against a California resident. California has a public policy protecting
11 its citizens' right to compete and will exercise jurisdiction over any such claim, invalidating any
12 such provision in a contract, and also invalidating any provision seeking to apply the law of a
13 different jurisdiction which would abrogate that policy.

14 6. California has jurisdiction over the fraud cause of action because the injury
15 occurred here in California.

16 **VENUE**

17 7. Venue is proper in this judicial district because the agreement at issue (described
18 below) was performed in Los Angeles County. The harm to the plaintiff also occurred in Los
19 Angeles County and the ongoing dispute over provisions of contracts effects Plaintiff's rights in
20 Los Angeles County.

21 **STATEMENT OF FACTS**

22 23 8. Plaintiff is an individual who was employed by Defendant purportedly as a Staff
24 Consultant and as the Chief Financial Officer of the Company. The Staff Consultant Agreement
25 is attached hereto as Exhibit A and incorporated herein by reference. Paragraph 5 is the
26 covenant not to compete. Paragraph 6 is the overbroad confidentiality clause.

27 9. Plaintiff also invested €50,000 in the Company and intended to invest an
28 additional €50,000 for less than 4% of the ordinary shares and less than 20% of the preference

1 shares. The Investment Agreement is attached hereto as Exhibit B and incorporated herein by
2 reference. Paragraph 10 is the covenant not to compete. Paragraph 11 is the overbroad
3 confidentiality clause.

4 10. Dr. Williams on her own time and with her own resources worked to recruit a
5 team of professional executives to be founding staff, directors, investors and supporters of her
6 business concept, which eventually became the Company. Dr. Williams' goal was to convert her
7 lucrative consulting practice (reportedly yielding 200k to 300k per year) into an organization that
8 can help many more clients and help them for a much longer period.

9 11. The Company was formed to serve the needs of clients wishing to apply for,
10 obtain, and operate a Top Level Domain Registry. The market potential for such services has
11 expanded with the June 2011 decision of the Board of ICANN to open up a round for new TLD
12 applications in early 2012

13 12. In the Spring of 2011, Dr. Williams contacted the Plaintiff and said she required
14 certain financial skills to help her raise investor funds and to launch the Company. The Plaintiff
15 described it as "his left brain expertise to complement her right brain leadership", she responded
16 with "precisely". Initially, the primary skills requested were financial spreadsheet modeling,
17 accounting, and industry familiarity.

18 13. The Plaintiff and Dr. Williams agreed to work together to create the financial
19 spreadsheet model which Dr. Williams eventually used in some form for the investor solicitation
20 efforts. Dr. Williams provided to the Plaintiff during many phone call conversations narrative
21 descriptions of proposed client revenue structures as well as the names and expected amounts for
22 staff and other activities that would require financial resources. The Plaintiff prepared a number
23 of spreadsheets based upon those discussions with numerous iterations and discussions. All of
24 those discussions were performed while the Plaintiff worked in his office in California and Dr.
25 Williams worked in her office in England or while she was on trips to various places around the
26 world including Brussels, France, Norway, Ireland, and Singapore.

27 14. Although the payment terms for the Plaintiff's efforts were not fully defined or
28 documented in a contract, oral representations such as "keep track of your time, and we'll pay

1 you at some point" were made. Williams, individually and on behalf of the Company
2 represented that in consideration for the Plaintiff's efforts, he would be able to join the new
3 venture as an officer, CFO, and/or sweat equity partner.

4 15. During the financial modeling preparation efforts, the Plaintiff expressed a desire
5 to lead the founding financial and accounting structures of the company. In June 2011, Dr.
6 Williams promised Plaintiff that he was to be the CFO and that she was no longer considering
7 any other candidates. From then on, Dr. Williams, in front of clients, on the website, and in team
8 meetings, referred to Plaintiff as the CFO for Sedari.

9 16. In June and in July 2011, Plaintiff asked Dr. Williams if a formal business plan
10 should be prepared. Dr. Williams said there was no need to do so. In early July, Dr. Williams
11 asked Plaintiff if he wanted to consider investing in lieu of a prior potential investor who had
12 dropped out of consideration.

13 17. In early August, Plaintiff requested access to the bank accounts so that he could
14 set up and/or ensure proper controls are in place. Dr. Williams indicated that the accounts were
15 set up with HSBC, but could not provide access or information to the bank information. When
16 confronted with the concern with the difficulty to perform CFO functions without banking
17 information, Dr. Williams said that certain matters needed to be cleaned up before handing them
18 over but that they would be handed over soon thereafter.

19 18. Dr. Williams told Plaintiff that, to allay his concerns, his investment pursuant to
20 the Investment Agreement could be placed into a separate Wells Fargo account in the United
21 States, allowing him to set up proper control for that bank account and providing a US account to
22 pay staff and vendors who use US Dollars..

23 19. Dr. Williams, individually and on behalf of the Company, made the following
24 representations:

25 a. on July 7 and 10, 2011, Dr. Williams provided copies of two invoices were to
26 Plaintiff and represented that those were clients of Sedari;

1 b. in the third week of July, in front of a group of people, Dr. Williams announced
2 that Cloud Registry was a client who had engaged Sedari, work was to commence, and had
3 already started to pay their fees;

4 c. in early August, Dr. Williams stated that she was not to be paid by Sedari until
5 after September 1st, 2011 when her separate Afilias agreement would terminate

6 19. Plaintiff then invested €50,000 in the Company and intended to invest an additional
7 €50,000.

8 20. Plaintiff signed the investment agreement on September 7, 2011, committing to
9 the investment. Afilias, Inc made an investment of \$375,000. Plaintiff learned that Williams had
10 not told the board about the Wells Fargo account and when he raised it, she would not confirm
11 that she had made that commitment to the Plaintiff.

12 21. Plaintiff attended a board meeting the next day, in which he was informed that he
13 was not a board member but merely an observer. His investment did not go into a separate
14 account in the U.S. but to the main account in Brussels.

15 22. On September 12, in accordance with his commitment, he wired the first funds.
16 The next day, he received his salary and reimbursement of the expenses advanced (which
17 expenses were approximately €30,000 also advanced based on the representations).

18 23. Plaintiff was given some, but never given complete, access to the financial
19 information. The failure to provide information made it impossible to carry out the role as CFO.

20 24. Although he was entitled to become a director under the Investment Agreement,
21 he was relegated to an observer at a board meeting. In addition, the CEO paid personal expenses
22 without proper documentation or authorization. Plaintiff complained repeatedly and brought
23 these problems to the attention of the other investors and members of the Board.

24 25. Finally, none of the representations made by Dr. Williams were true, to wit:

25 a. Invoices were fraudulent, and produced to show a client base that did not
26 exist;

1 b. Cloud Registry was either not a client or, if a client, the receipt of funds were
2 hidden from Wilson's view into the bank accounts

3 c. Dr. Williams took substantial sums from Sedari prior to September 7, 2011 contrary to
4 her contract conditions, Unauthorized or undocumented expense receipts included spa
5 treatments, expensive dinners and cash withdrawals from ATM;
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7 15. On October 21, 2011, Plaintiff hesitated to wire the additional funds because he
8 had now discovered that the promises that he would be CFO and have full access to the finances
9 and representations that he was the CFO were false. He also discovered that the representations
10 about clients, revenue opportunities, bank accounts and expenses were false.

11 16. On October 24, 2011, the Company terminated him without the notice required
12 under the contract and stated that the termination without notice was for cause, without
13 specification of what the cause might be. A true and correct copy of the letter terminating him is
14 attached hereto as Exhibit C (the "Termination Letter").

15 17. The Termination Letter told Plaintiff that he was required to abide by post-
16 termination obligations of non-competition and trade secrets which are contrary to California law
17 and public policy.

18 **FIRST CAUSE OF ACTION**

19 **(for Declaratory Relief against the Company)**

20 18. Plaintiff incorporates and realleges each and every allegation in paragraphs 1
21 through 17.

22 19. Plaintiff and Defendant entered into an agreement whereby Plaintiff agreed to
23 post-termination clauses. Plaintiff contends that those clauses are not binding because California
24 does not recognize a post-termination covenant not to compete and they are void and
25 unenforceable. A non-competition clause based on ownership, without a transfer thereof, is
26 void. A non-competition clause which requires an owner to respect the duty of loyalty only
27 applies to controlling shareholder.
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1 20. To be binding after termination, a confidentiality clause must be narrowly tailored
2 to identify the trade secrets protected. Any trade secret either under the contract or under the
3 UTSA must be information which is unique to the Company. Plaintiff contends that no such
4 information exists here. Alternatively, should such information exist, Plaintiff either does not
5 possess it nor would he be able to use it. The doctrine of inevitable disclosure does not apply in
6 California to a California resident.

7 21. The Company disagrees and the Termination Letter contends that the clauses are
8 binding.

9 22. An actual dispute has arisen as to the rights and duties of the parties under the Staff
10 Consulting Agreement and the Investment Agreement.

11 23. Plaintiff seeks a judicial determination of its rights under California law. Such a
12 determination is appropriate under these circumstances.

13 **SECOND CAUSE OF ACTION FOR FRAUD**

14 **(Against the Company and Williams)**

15 24. Plaintiff incorporates and realleges each and every allegation in paragraphs 1
16 through 23.

17 25. On September 7, 2011, he signed the Investment Agreement. The Staff Consultant
18 Agreement was in his possession but he did not sign it until October. The Company, by those
19 documents, made the representation that he would be the CFO and would have full access to the
20 finances.

21 26. Williams made representations to him that he would be CFO and have full access
22 to the finances repeatedly. For example, on May 27, 2011, Williams promised in an email that he
23 would be the Chief Financial Officer. At the investor meeting on September 7, 2011, she
24 represented to those present, including Wilson, that he already was a signatory to the bank
25 account but just needed to receive the paperwork.

26 28. In addition, she made a number of other material promises about the finances of
27 the company which are detailed above.
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1 27. On September 13, 2011, in reliance on these promises and representations, Wilson
2 sent €50,000 to the Company. Plaintiff actually and justifiably relied on these promises that he
3 would be the CFO, would have full access to the financial records, and the state of the Company
4 finances including payments out to Dr. Williams, the existence of clients and the receipt of
5 income into the Company.

6 28. After he invested the funds, he discovered that each of the promises and
7 representations were false.

8 28. As a result of these false promises and representations, Plaintiff seeks rescission
9 of the contract and return of his money.

10 29. In the alternative, Plaintiff seeks damages to be proven at the time of trial but
11 believed to be €50,000.

12 30. Defendants acted intentionally with malice, oppression and fraud so as to justify
13 an award of punitive damages.

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16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for a judgment as follows:

18 On the first cause of action:

19 1. For a judicial determination of Plaintiff's rights under California law and a
20 determination that the post-termination clauses are invalid;

21 On the second cause of action:

22 2. Rescission of the contract and return of the €50,000;

23 3. In the alternative, damages according to proof;

24 4. For punitive damages;

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1 On all causes of action:

2 5. For the costs of suit incurred herein.

3 6. For such other and further relief as the Court deems proper.

4 Dated: October 25, 2011

PUMILIA PATEL & ADAMEC, LLP

Jayesh Patel

Justene M. Adamec

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By: 

Justene M. Adamec

Attorney for Plaintiff

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