

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

EMPLOY MEDIA, LLC
3029 Prospect Ave. East
Cleveland, Ohio 44115

Plaintiff

vs.

DIRECTEMPLOYERS ASSOCIATION,
INC.
9002 North Purdue Rd., Suite 100
Indianapolis, Indiana 46268

and

DIRECTEMPLOYERS RECRUITMENT
MARKETING SOLUTIONS, INC. d/b/a/
RECRUIT ROOSTER
9002 North Purdue Rd., Suite 100
Indianapolis, Indiana 46268

Defendants.

) CASE NO. _____

) JUDGE _____

) **COMPLAINT FOR MONEY DAMAGES**
) **AND DECLARATORY RELIEF**

) **(Jury Demand Endorsed Herein)**

INTRODUCTORY STATEMENT

1. This case arises from the termination of the long-standing business relationship between Plaintiff Employ Media, LLC (“Employ Media”) and Defendant DirectEmployers Association, Inc. (“DirectEmployers”). Employ Media owns the rights to “.JOBS,” an internet top-level domain (e.g., .com, .gov, .edu, etc.) that offers employers and job applicants an online hub to navigate the hiring and employment process. Pursuant to a 2013 Domain Provisioning and Use Agreement (“Agreement”), Employ Media and DirectEmployers jointly developed the .JOBS Universe, which operated as a centralized, online recruiting platform for businesses. In November 2017, DirectEmployers provided the contractually required 180-days’ notice to Employ Media that it was terminating the Agreement on May 16, 2018. While DirectEmployers certainly had the right to terminate, the Agreement contained

multiple strict termination procedures and obligations designed to preserve, protect, and perpetuate Employ Media's revenue stream from the .JOBS Universe after termination. One of the key provisions designed to protect Employ Media was DirectEmployers' covenant not to solicit Employ Media customers. Employ Media brings this action because DirectEmployers knowingly breached the terms of the Agreement by, *inter alia*, systematically soliciting, inducing, and taking almost all of Employ Media's customers. In short, DirectEmployers breached the Agreement and, in conjunction with its wholly owned subsidiary, intentionally interfered with Employ Media's business relationships, thereby causing Employ Media to sustain significant damages.

PARTIES

2. Plaintiff Employ Media is a limited liability company organized under the laws of Delaware with its principal place of business in Cleveland, Ohio. Employ Media operates the .JOBS top-level domain and maintains a registrar account by which customers may acquire .JOBS domain names.

3. Defendant DirectEmployers is a corporation organized under the laws of Indiana with its principal place of business in Indianapolis, Indiana. DirectEmployers provides its members with online recruiting and marketing solutions and guidance on compliance with the Office of Federal Contract Compliance Programs.

4. On January 3, 2018, DirectEmployers incorporated Defendant DirectEmployers Recruitment Marketing Solutions, Inc. dba Recruit Rooster ("Recruit Rooster"), a wholly owned subsidiary. Recruit Rooster is a corporation organized under the laws of Indiana with its principal place of business in Indianapolis, Indiana. Recruit Rooster is a for-profit entity designed to assist customers with online marketing and recruiting. On information

and belief, Recruit Rooster solicited and now provides services to Employ Media's former .JOBS Universe customers.

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over this case pursuant to 28 U.S.C. § 1332(a) as this case involves parties that are citizens of different states and the amount in controversy exceeds \$75,000.00. In that regard, Plaintiff Employ Media is a limited liability company and its members are citizens of: 1) Ohio; 2) New York; and 3) California. Employ Media's principal place of business is in Cleveland, Ohio; thus, for purposes of diversity jurisdiction, it is a citizen of Delaware, Ohio, New York, and California. Defendants DirectEmployers and Recruit Rooster are incorporated under the laws of Indiana with their principal place of business in Indianapolis, Indiana; thus, DirectEmployers and Recruit Rooster are citizens of Indiana. As a result, there is complete diversity among the Parties.

6. This Court has specific personal jurisdiction over DirectEmployers pursuant to ORC § 2307.382(A)(1), (2), (3), (4) and/or (6) and Fed. R. Civ. P. 4(k)(1) because: DirectEmployers has continuously conducted, engaged in and transacted business, and provided substantial services in Ohio since at least 2012. Furthermore, the impact of DirectEmployers' intentional misconduct and tortious activity occurred in Ohio. DirectEmployers has significant contacts with Ohio and purposely availed itself of the laws of Ohio through its course of conduct and transaction of business. This case arises directly from DirectEmployers' transacting of and extensive business undertakings in Ohio.

7. On information and belief, this Court has specific personal jurisdiction over Recruit Rooster pursuant to ORC § 2307.382(A)(1), (2), (3), (4) and/or (6) and Fed. R. Civ. P. 4(k)(1) because: Recruit Rooster conducted, engaged in and transacted business, and provided services in Ohio since 2018. Further, the impact of Recruit Rooster's tortious activity occurred

in Ohio. Recruit Rooster has significant contacts with Ohio and has purposely availed itself of the laws of Ohio through its course of conduct and transacting of business.

8. Venue is proper pursuant to 28 U.S.C. § 1391 because Defendants are located in, are subject to personal jurisdiction in, and because a substantial part of the events giving rise to Employ Media's claims occurred in the Northern District of Ohio.

9. DirectEmployers expressly agreed to jurisdiction and venue in the Northern District of Ohio pursuant to the Agreement's forum selection clause, which states: "Any legal action brought by either party arising out of or relating to this Agreement shall be filed exclusively in the appropriate federal or state court located in the county or district where the defendant(s) is/are located." DirectEmployers is located in Ohio because, *inter alia*, it has conducted significant, relevant business here and because it has a presence in Ohio.

10. DirectEmployers and Employ Media, through the Agreement, entered into a business venture to create and expand the .JOBS on-line Universe to help employers and job seekers connect with one another. As a result of this venture, DirectEmployers conducted extensive business activities in Ohio. For purposes of personal jurisdiction and venue, DirectEmployers is located in Ohio based on its continuous and systematic transactional and business contacts with Employ Media in Ohio and this district. DirectEmployers' specific contacts with Ohio that support jurisdiction and venue include, but are not limited to, the following:

- a. By responding to Employ Media's request for proposal, DirectEmployers expressly consented to jurisdiction and venue in Ohio courts located in Cuyahoga County, Ohio.

- b. DirectEmployers entered into multiple contracts and amendments with Employ Media in Ohio.
- c. DirectEmployers agreed that Ohio law controls all disputes under the Agreement.
- d. Since at least 2012, employees of DirectEmployers have consistently interacted and communicated with Employ Media's Cleveland offices on business matters related to the Agreement, including day-to-day operations, performance, hiring, customer service and retention, technical issues, sales progress, and training.
- e. Since at least 2012, employees of DirectEmployers made weekly calls to Employ Media to discuss matters related to the Agreement including day-to-day business operations, advancement of the .JOBS Universe, sales reports, and advancements in technology and efficiency. Further, DirectEmployers' head of Digital Strategies regularly communicated with Employ Media to discuss sales team performance, pricing changes, and sales promotions. DirectEmployers' head of technology likewise regularly communicated with Employ Media to discuss cloud computing services and technical issues. DirectEmployers' President and Executive Director routinely communicated with Employ Media to discuss business matters.

- f. On information and belief, DirectEmployers utilizes leased server space in Ohio that is used to provide services to Ohio-based customers.
- g. On information and belief, DirectEmployers' websites, portals, and other virtual spaces are routinely accessed by multiple Ohio customers, which gives DirectEmployers a presence in Ohio.
- h. Representatives of DirectEmployers conducted business in Cleveland on multiple occasions, including: DirectEmployers' Executive Director, Vice President, General Counsel, Vice President of Product Development, and Vice President of Strategic Partnerships came to Cleveland to promote DirectEmployers' RFP response and cement DirectEmployers' relationship with Employ Media; DirectEmployers' former Executive Director, Bill Warren, traveled to Cleveland and conducted business in Employ Media's Cleveland offices in 2012; in 2015, DirectEmployers' Vice President of Product Development visited Employ Media's Cleveland offices to discuss the development of new .JOBS websites; in 2017, DirectEmployers' Executive Director, Vice President of Compliance and Partnerships, Vice President of Digital Strategy, and its outside counsel visited Employ Media's Cleveland offices to discuss the future of the relationship.
- i. Since at least 2012, pursuant to the Agreement, DirectEmployers solicited numerous businesses in Ohio and induced those

businesses to enter into contracts with .JOBS wherein, *inter alia*, .JOBS would provide customers with domains that were powered and run by DirectEmployers. In addition, DirectEmployers solicited, contracted with, and performed such services for multiple Ohio-based customers with offices in the cities of Cleveland, Sagamore Hills, Columbus, Cuyahoga Falls, and Miamisburg. Such services included the powering of the customers' microsities, preparation and maintenance of domains and websites, and the collection and maintenance of job postings. On information and belief, DirectEmployers generated more than \$400,000 in revenue in Ohio from supplying services to Employ Media's Ohio-based customers. DirectEmployers, on numerous occasions, made or forwarded payments to Employ Media in Ohio.

- j. DirectEmployers, on a monthly basis, sent invoices to Ohio for work performed.
- k. From 2009 through 2012, DirectEmployers conducted additional business in Ohio with Employ Media pursuant to prior contracts.
- l. DirectEmployers maintains multiple additional contacts with the State of Ohio, including but not limited to: business relationships with the State of Ohio's Office of Workforce Development, The Ohio State University, Ohio Northern University, and Ohio University.

11. Recruit Rooster directly participated in DirectEmployers' tortious actions of interfering with Employ Media's business relationships and intentionally harmed Employ Media.

FACTUAL BACKGROUND

Embrescia and Fassett Acquire .JOBS and Create Employ Media

12. In 2002, the Internet Corporation for Assigned Names and Numbers ("ICANN"), the non-profit entity that controls domain allocations for the Internet, solicited proposals for new sponsored top-level domains. Top-level domains are the extensions at the end of a website address. Examples include: .com, .edu, .org, and .jobs.

13. Tom Embrescia, a forty-year veteran of the telecommunications, broadcast, and technology industries, and Ray Fassett, a veteran of the online employment and recruiting industry, envisioned submitting a proposal for a top-level domain to connect the international human resources community with an internet market in response to ICANN's request.

14. Mr. Embrescia and Mr. Fassett decided to form Employ Media to submit a proposal for a top-level domain called ".JOBS," which could be used to create an internet-based hub for employers and job applicants to navigate the employment and hiring process.

15. On March 15, 2004, Employ Media submitted its .JOBS proposal to ICANN, which was sponsored by the Society for Human Resource Management, the largest human resources organization in the world.

16. ICANN accepted Employ Media's proposal and on April 8, 2005, ICANN granted Employ Media the right to operate the .JOBS sponsored top-level domain.

17. On June 19, 2005, Employ Media began accepting applications for registrations in the .JOBS top-level domain.

History of Employ Media's and DirectEmployers' Relationship

18. In 2005, Mr. Fassett and several of DirectEmployers' executives engaged in discussions to see if DirectEmployers was interested in partnering with Employ Media to promote the .JOBS top-level domain, but no decision was reached.

19. Thereafter, following early .JOBS successes, DirectEmployers reached out to Employ Media on multiple occasions in 2008 and 2009 to discuss a partnership.

20. Employ Media and DirectEmployers initially entered into a Strategic Alliance Agreement in 2009 relating to a collection of .JOBS domains.

21. That contract expired, and in 2010, Employ Media issued a request for proposals to identify a long-term partner to help expand the .JOBS top-level domain.

22. DirectEmployers submitted a proposal in which it represented itself as a non-profit organization that wanted to partner with Employ Media to provide its members with additional services involving the .JOBS top-level domain. DirectEmployers' proposal emphasized repeatedly its status as a non-profit, noting the benefits to Employ Media if the two entities partnered with one another.

23. DirectEmployers also proposed expanding the .JOBS platform by setting up .JOBS websites based on both occupation and geography (such as nursing.jobs and newyork.jobs), not just company names, to funnel applicants into narrower, filtered groups of open positions.

24. Employ Media selected DirectEmployers' proposal and the Parties executed the 2010 Domain Provisioning and Use Agreement, which launched the .JOBS Universe.

25. Initially, the .JOBS Universe allowed employers to list their open positions for free and Employ Media collected revenue from advertisements and fees paid to ensure that open positions were given preferential placement on .JOBS websites.

26. Within just a few months, over 90,000 employers listed jobs with the .JOBS Universe. These jobs were constantly updated and appeared on appropriate city and occupation .JOBS websites.

27. Several competing online recruiting platforms complained to ICANN about Employ Media's use of .JOBS domains that did not include company names, primarily the industry and geography .JOBS sites.

28. Although ICANN approved Employ Media's use of industry, geography, and non-company-name .JOBS domains in 2010, it reversed course and sent Employ Media a Notice of Breach on February 27, 2011.

29. Employ Media challenged the Notice and invested millions of dollars arbitrating the dispute with ICANN. DirectEmployers knew of Employ Media's efforts to challenge the Notice and publicly supported Employ Media's position against ICANN.

30. Employ Media succeeded in the arbitration when ICANN withdrew its Notice of Breach. As a result, Employ Media and DirectEmployers continued using industry and geography .JOBS sites.

The 2013 Agreement

31. Employ Media and DirectEmployers replaced their 2010 contract with the Domain Provisioning and Use Agreement effective January 1, 2013. A true and accurate copy of the Agreement is attached as Exhibit A.

32. The Agreement envisioned a more expansive .JOBS Universe to meet the needs of a growing number of sophisticated corporate customers who sought personalization of their online recruiting and employment websites. This addition of personalization and customization allowed employers to tailor their hiring and recruiting experience to make the process easier to navigate for prospective employees.

33. Pursuant to the Agreement, Employ Media and DirectEmployers agreed that DirectEmployers would leverage its software and internet systems experience to power the Universe, while Employ Media would provide the .JOBS domains and pay DirectEmployers' costs for powering the Universe.

34. Employ Media registered thousands of .JOBS domains, which increased traffic within the .JOBS Universe. As the number of sites increased, search engines directed more traffic to the .JOBS Universe. More traffic within the .JOBS Universe meant more connectivity among job seekers and employers and increased value attributed to the .JOBS Universe.

35. DirectEmployers also agreed to create a unit known as the Digital Strategies Team ("DST"). The DST promoted, sold, customized and serviced .JOBS domains. DST members actively solicited companies to acquire .JOBS domains and services, including website development and customization, and the continuous maintenance and updating of the customer's website. The DST ran the day-to-day operations of the Universe and communicated

with Employ Media regarding customer requests, sales growth, and the potential for new products that would enhance the Universe and the partnership between Employ Media and DirectEmployers.

36. Since DirectEmployers operated as a non-profit and the .JOBS Universe was an additional benefit to its members, the Parties agreed that all Universe revenue would go to Employ Media and Employ Media would then reimburse DirectEmployers for certain costs associated with the Universe, including cloud hosting services through Amazon Web Services, marketing expenses, and salaries and commissions for DST members.

37. The Parties were permitted to terminate the Agreement for convenience with 180-days' notice. (Agreement § 3(b).)

The 2015 Amendment

38. In 2015, Employ Media and DirectEmployers amended the Agreement (the "2015 Amendment"). A true and accurate copy of the 2015 Amendment is attached as Exhibit B.

39. As part of the 2015 Amendment, Employ Media and DirectEmployers negotiated an expanded termination procedure that protected Employ Media's relationships with its existing customers, defined as "Employ Media-invoiced customers," in an effort to preserve Employ Media's revenue stream from the Universe.

40. Further, under the 2015 Amendment, in addition to reimbursement for actual costs, DirectEmployers received ten percent of the gross revenue generated from the Universe to reimburse DirectEmployers for what it believed were additional costs incurred to power the Universe.

41. Following Executive Director Bill Warren's departure from DirectEmployers in late 2016, the organization underwent a series of significant changes, including the installation of new management, whose views diverged materially from those of prior management. Once new management was in place, there was a major shift in focus resulting in the development of a new strategy and approach focused on maximizing the revenue that DirectEmployers received from the Universe.

42. In 2017, for example, DirectEmployers' new management demanded an 800 percent increase in its share of the revenue generated from the Universe.

43. DirectEmployers' demand contravened the entire basis of the Employ Media-DirectEmployers relationship, which was first formed to advance DirectEmployers' non-profit mission while providing Employ Media with the revenue from the Universe.

44. Employ Media rejected DirectEmployers' demand for this precipitous increase, resulting in a claim to eighty percent of all Universe revenue.

45. In response, on November 18, 2017, DirectEmployers notified Employ Media that it was terminating the Agreement pursuant to Section 3(b) of the Agreement, effective May 16, 2018.

Termination Process

46. Pursuant to Section 3(b) of the Agreement, "[e]ither Party may terminate this Agreement for convenience by giving the other party no less than one hundred eighty (180) days written notice thereof."

47. During the 180 days following DirectEmployers' Notice of Termination ("the Notification Period"), the Agreement remained in full force and effect and both Parties were required to honor their contractual obligations to one another and their customers.

48. After receiving DirectEmployers' Notice of Termination, Employ Media had two options: first, it could allow the Agreement to terminate and both Parties could go their separate ways; second, Employ Media could elect to transition all Employ Media-invoiced customers to a new platform operated by Employ Media. On November 20, 2017, Employ Media notified DirectEmployers that it intended to transition its customers to an Employ Media-operated .JOBS platform.

49. By electing to continue the Universe, Employ Media triggered a specific termination procedure designed to preserve, protect, and perpetuate its existing business in the Universe. First, Employ Media and DirectEmployers were required, pursuant to Section 3(d)(ii) of the Agreement, "to operate the Universe for up to one-hundred eighty (180) days, at EM's discretion, after the effective date of termination, with DEA powering the Universe and EM paying DEA's costs as set forth [in the Agreement.]" (The "Transition Period.") In short, during the Transition Period, the Parties were to maintain the status quo as Employ Media set up a separate Universe.

50. Second, at the conclusion of the Transition Period on November 12, 2018, Section 6(z) of the Amendment requires the Parties to enter into a "Best Efforts Period."

In order to protect the revenue EM derives from the Universe, in the event of Termination of the Agreement by DEA under Section 3(b) of the Agreement, **for twelve months after the conclusion of the transition period contemplated in Section 3(d)(ii), DEA will use its best efforts to move EM-invoiced (i.e., EM payment processed) customers ("Customers") to EM and will not work against or promote against EM's servicing and retention of Customers.** (emphasis added)

51. While the Agreement was in effect, Employ Media invoiced as many as 212 customers. By electing to transition its customers to an Employ Media-run .JOBS Universe,

Employ Media expected to move most of its customers to its new platform and continue to service and derive revenue from these customers.

52. Section 6(t) of the Amendment required DirectEmployers to “work together [with Employ Media] to ensure the smooth separation away from DEA-retained sites ... and further operation of the Universe...”

53. Section 6(u) of the Amendment required DirectEmployers “at EM’s request [to] work with EM to facilitate a seamless transition of powering the Universe to EM, and the Parties will work together to identify any resources (such as employees) who would be more optimally placed with EM than DEA[.]”

54. In short, the Agreement and 2015 Amendment were to provide Employ Media with ample opportunity and resources to set up its own version of the Universe so that it could serve its customers.

55. Employ Media referred to Section 6(t) and 6(u) in numerous communications with DirectEmployers in the months before and after the Agreement terminated in May 2018.

DirectEmployers Breaches the Agreement

56. On November 16, 2017, DirectEmployers gave 180-days’ Notice of Termination of the Agreement.

57. On November 20, 2017, less than a week after receiving DirectEmployers’ Notice of Termination, Employ Media notified DirectEmployers that it intended to continue the Universe and transition its customers to an Employ Media-operated .JOBS platform.

58. On November 30, 2017, Mr. Embrescia directed DirectEmployers not to notify customers of the eventual termination of their partnership until Employ Media had time to develop a course of action and until the Parties could agree on a message.

59. In his November 30, 2017 email, Mr. Embrescia stated:

I'm sure you are aware of the damage that would be done from any errant comments, [...] rumors or un-agreed-upon customer messaging. In this regard, while we respect your plans to offer recruitment marketing to your members, we expect that your best efforts will preclude you from affirmatively taking any actions to assist or even inform any current customer as to any other options.

(November 30, 2017 email, attached as Exhibit C.)

60. In November 2017, it was unnecessary for DirectEmployers to notify customers of the termination of the Agreement as the Agreement would remain in effect and unchanged for almost one year after DirectEmployers notified Employ Media of its intent to terminate the Agreement. The Agreement remained in effect until May 16, 2018, and then DirectEmployers was required to continue to operate the Universe during the Transition Period, ending on November 12, 2018.

61. While DirectEmployers assured Employ Media that it would honor the Agreement, it continued to press Employ Media to release a message regarding the eventual termination of the Agreement. At one point, DirectEmployers gave Employ Media a deadline of 5:00 p.m. on December 6, 2017, more than five months before the Agreement's termination date, to submit its proposed language to include in termination messaging. DirectEmployers did not have the authority to exercise unilateral control over the termination of the Agreement. In fact, the Agreement and Amendment required DirectEmployers to cooperate with Employ Media during the termination process.

62. Beginning in December 2017, DirectEmployers began reassigning DST members to other DirectEmployers' tasks. This immediately diminished the effectiveness of the DST and limited Employ Media's ability to maintain its customer relationships. Employ Media asked DirectEmployers to stop moving DST members to other projects. DirectEmployers offered Employ Media the opportunity to identify individuals it would like to have join the DST. However, when Employ Media suggested the addition of Daniel Kraciun to join the DST, DirectEmployers rejected the request, further harming Employ Media's ability to retain and acquire .JOBS customers.

63. On January 3, 2018, DirectEmployers established Recruit Rooster as a for-profit subsidiary. While it only became known to Employ Media months later, Recruit Rooster was established in part to take control of the .JOBS Universe and capture the revenues and profits being earned by Employ Media. In short, Recruit Rooster was established, *inter alia*, to help DirectEmployers breach the Agreement and interfere in Employ Media's customer relationships.

64. On January 12, 2018, Employ Media and DirectEmployers participated in a telephone call to discuss the impending termination of the Agreement. During this call, Employ Media asked for detailed customer information so that Employ Media could begin the process of reaching out to its customers regarding their .JOBS services. On January 17, 2018, Employ Media sent DirectEmployers an email requesting detailed customer information and other materials necessary to investigate what steps were necessary for Employ Media to create its own .JOBS platform. (January 17, 2018 email, attached as Exhibit D.)

65. DirectEmployers refused to provide customer information to Employ Media, claiming that it was not required to produce this information pursuant to the Agreement

and that such information was proprietary. DirectEmployers' position is not supported by the Agreement, which required DirectEmployers to provide Employ Media with all data necessary for Employ Media to set up its own version of the .JOBS Universe.

66. Without Employ Media's consent or knowledge, and without providing Employ Media with necessary information from which to begin the transition, DirectEmployers and/or Recruit Rooster began contacting and notifying Employ Media's customers of the Agreement's eventual termination.

67. On January 19, 2018, DirectEmployers, in breach of the Agreement, advised Employ Media that it planned to openly compete with Employ Media. Despite the restrictions in the Agreement and Amendment, DirectEmployers' Executive Director stated:

There is nothing in the contract, however, to stop DE from competing with EM, now or later. For that matter, DE intends to compete...

(January 19, 2018 email, attached as Exhibit E.)

68. DirectEmployers' position contradicts Section 6(z) of the 2015 Amendment, which states: "Further, for the avoidance of doubt, DEA may offer competing products to any entity **who is not a[n EM-invoiced] Customer.**" Despite this express prohibition, DirectEmployers and/or Recruit Rooster began soliciting Employ Media-invoiced customers.

69. Despite the strict prohibition against offering competing products to Employ Media's customers, Employ Media learned that as of February 27, 2018, while the Agreement remained in full force and effect, DirectEmployers, in concert with Recruit Rooster, was actively soliciting Employ Media-invoiced customers and inducing them to transfer the management of their .JOBS domains away from Employ Media's managed registrar services, thus depriving Employ Media of future business.

70. In an email dated February 27, 2018, DirectEmployers, after calling and soliciting an Employ Media-invoiced customer, advised the customer that it could “choose to go with DirectEmployers fully to administer and host [its] current sites.” Attached to the email, DirectEmployers included a “Career Site Election Form,” which informed Employ Media-invoiced customers that they had the authority to elect DirectEmployers as their site provider, thus taking revenue from Employ Media. DirectEmployers also attached a document titled “Frequently Asked Questions,” which advised that customers could face service interruptions if they did not elect DirectEmployers as their site provider and remained with Employ Media. (February 27, 2018 email and Attachments, attached as Exhibit F.)

71. DirectEmployers instructed Employ Media’s customers to complete a series of steps so that the customer could transition their websites and domains from Employ Media to DirectEmployers.

72. By transitioning Employ Media’s customers’ websites and domains to DirectEmployers and/or Recruit Rooster, DirectEmployers permanently deprived Employ Media of the revenue that it received pursuant to the Agreement.

73. DirectEmployers made these communications to Employ Media’s customers, without Employ Media’s knowledge or consent, months before the Agreement terminated and with the intent of harming Employ Media’s business and anticipated revenue stream.

74. Early in 2018, Employ Media noticed a decline in customer renewals and new customers as a result of DirectEmployers’ improper solicitation of Employ Media’s customers.

75. By April 2018, Employ Media's Universe revenue for the year was already nearly \$1,000,000 less than it was at the same time in 2017.

76. After Employ Media learned of DirectEmployers' solicitation of Employ Media's customers, it sent DirectEmployers a Notice to Cease and Desist and Demand for Mediation on April 19, 2018. (April 19, 2018 letter, attached as Exhibit G.) The Agreement required the Parties to submit disputes to mediation before filing any action in court. Employ Media asked for mediation to take place within one month. DirectEmployers refused to engage in mediation within one month and DirectEmployers forced Employ Media to wait until September to mediate the dispute. The Parties completed the required mediation on September 22, 2018.

77. Even after Employ Media sent the cease and desist letter, DirectEmployers and/or Recruit Rooster continued to solicit Employ Media's customers.

78. During the same period of time, while it was soliciting Employ Media's customers, DirectEmployers refused to cooperate in the Transition and thwarted Employ Media's efforts to set up its own version of the Universe.

79. So that Employ Media could set up its own Universe to service its customers, the Agreement and Amendment required DirectEmployers to turn over materials and information to Employ Media, including: the Software, data, configuration and installation information, DNS site administration, and other information necessary to power, modify, and maintain the .JOBS Universe. (Amendment § 6(t).)

80. Beginning in January 2018, Employ Media requested information on its customers, including: the name of the primary contact, the amount of money paid under each contract, any website issues that the customer reported to DirectEmployers, the number of times

per day that DirectEmployers compiled the customer's open jobs, and other information that Employ Media needed to manage its customers' accounts.

81. DirectEmployers repeatedly refused to provide this information to Employ Media. Without this information, Employ Media could do nothing to counter DirectEmployers' improper activities.

82. After numerous requests for the Software, and numerous excuses from DirectEmployers regarding why it could not deliver the Software, DirectEmployers delivered a portion of the Software in June and July 2018. Without the complete software package and the related tools, Employ Media was unable to set up its own version of the .JOBS Universe.

83. Eventually, in June 2018, DirectEmployers offered customer information for six Employ Media-invoiced customers. In support of its decision to provide this limited amount of information, DirectEmployers informed Employ Media that these six customers were the only customers that elected to continue with Employ Media after their contracts ended. According to DirectEmployers, the remaining Employ Media customers had already signed contracts with DirectEmployers and did not intend to renew with Employ Media.

84. Dissatisfied with DirectEmployers' offer to produce customer information for six companies, Employ Media continued to request customer information for all Employ Media-invoiced customers. DirectEmployers continued to deny Employ Media's access to this information on the basis that these customers would not be Employ Media's customers after their current contracts expire.

85. Although DirectEmployers refused to produce customer information so that Employ Media could communicate with its customers and service their accounts,

DirectEmployers reminded Employ Media that it is obligated to maintain its customers' services after the end of the Transition Period on November 12, 2018.

86. Because of DirectEmployers' actions in withholding customer information and the necessary software to run the Universe, Employ Media did not, and could not, create a duplicate .JOBS Universe and thus, did not provide such a service when the Transition Period ended.

87. As part of its solicitation of Employ Media's customers, DirectEmployers promised the customers that DirectEmployers would continue to service their accounts during and after the Transition Period if the customers elected to contract with DirectEmployers as their career site provider.

88. Despite making the foregoing representation to Employ Media's customers, DirectEmployers warned Employ Media that it must find a way to service its customers or it must pay DirectEmployers for any services it renders to Employ Media's customers during the remainder of the customers' contracts with Employ Media.

89. Thus, during the Notice and Transition Periods, DirectEmployers refused to provide Employ Media with the required information to set up a Universe to serve its customers. At the same time, it blatantly solicited and induced all but six customers to leave Employ Media. In short, DirectEmployers destroyed Employ Media's customer base, which was to provide an ongoing stream of revenue to pay for a new Employ Media-run Universe.

COUNT I: BREACH OF CONTRACT

(AGAINST DIRECTEMPLOYERS)

90. Employ Media incorporates the allegations contained in Paragraphs 1 through 89 of the Complaint as if fully rewritten herein.

91. Employ Media and DirectEmployers entered into the Agreement effective January 1, 2013.

92. Employ Media and DirectEmployers entered into the 2015 Amendment effective April 15, 2015.

93. The Agreement, including the 2015 Amendment, is a legally enforceable contract.

94. Employ Media complied with all terms of the Agreement and 2015 Amendment including but not limited to: supplying domains; paying for cloud-based hosting services for the Universe; and reimbursing DirectEmployers for the costs associated with operating the DST and powering the Universe.

95. Pursuant to the terms of the Agreement, DirectEmployers gave its Notice of Termination to Employ Media on November 16, 2017 such that the Agreement would terminate on May 16, 2018.

96. During the Notice Period, DirectEmployers was required to power the Universe and operate the DST as before.

97. Indeed, during the Notice Period, Employ Media continued to pay DirectEmployers' expenses in powering the Universe and operating the DST so that it would operate the Universe and generate revenue from the Universe for the direct benefit of Employ Media.

98. The plain language and intent of the Agreement and 2015 Amendment is clear and unambiguous – while DirectEmployers was permitted to terminate the Agreement, DirectEmployers was required to help Employ Media set up a duplicate .JOBS Universe and

continue to service Employ Media's invoiced customers. The provisions in the Agreement and the 2015 Amendment evidencing DirectEmployers' contractual duties, include:

- a. "[A]t EM's request, the Parties will work together to ensure the smooth separation away from DEA-retained sites ... and further operation of the Universe whereby DEA staff would assist to the fullest extent commercially reasonable EM and/or EM's designate in transferring to a new EM-controlled cloud hosting provider ... a duplicate of all elements relevant to powering the Universe sites (the "Software"), including but not limited to software, configuration, installation, data, and DNS administration of Network Sites, to facilitate continued powering, modification and maintenance of the Universe[.]" (Amendment § 6(t).)
- b. "[A]t EM's request DEA will work with EM to facilitate a seamless transition of powering the Universe to EM, and the Parties will work together to identify any resources (such as employees) who would be more optimally placed with EM than DEA[.]" (Amendment § 6(u).)
- c. "DEA will use its best efforts to move EM-invoiced [] customers ("Customer") to EM and will not work against or promote against EM's servicing and retention of these customers." (Amendment § 6(z).)
- d. "Further, for the avoidance of doubt, DEA may offer competing recruitment products to any DEA member **that is not a Customer.**" *Id.* (emphasis added).

99. DirectEmployers refused to provide Employ Media with the programs, information and data necessary for Employ Media to set up its own version of the Universe. This includes, but is not limited to: a complete software package necessary to recreate the Universe; customer contact information; customer contract information; certain software used to gather customers' job postings throughout the day; information on all technical issues affecting each customer's account, and a history of communications with customers.

100. Despite these and other clear and unequivocal duties, DirectEmployers refused to cooperate with Employ Media's efforts to set up its own .JOBS Universe. While hindering Employ Media's efforts, DirectEmployers started a competing for-profit subsidiary, Recruit Rooster, and then systematically solicited Employ Media's customers and induced them to transfer the management of their accounts and recruiting sites from Employ Media to DirectEmployers. DirectEmployers, while being paid by Employ Media, also induced Employ Media's customers not to renew their contracts with Employ Media and instead induced them to sign new service contracts with DirectEmployers.

101. By soliciting Employ Media's customers, DirectEmployers worked directly and unabashedly against Employ Media's interests in the transitioning of its customers to the Employ Media .JOBS platform. DirectEmployers' actions are in breach of the express language of the Agreement, including the 2015 Amendment.

102. During its relationship with DirectEmployers, Employ Media had as many as 212 customers. Employ Media received millions of dollars in revenue each year from its customers.

103. DirectEmployers solicited and induced all but six of Employ Media's customers to transition their services to DirectEmployers.

104. As a proximate result of DirectEmployers' breaches of the Agreement and 2015 Amendment, Employ Media has already lost and will continue to lose millions of dollars in revenue and profit.

105. As a result of the foregoing conduct, DirectEmployers breached the terms of the Agreement and 2015 Amendment, which proximately resulted in direct damages and harm

to Employ Media. The damages sustained by Employ Media are in the millions of dollars, and a precise amount will be proven at trial.

COUNT II: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

(AGAINST DIRECTEMPLOYERS)

106. Employ Media incorporates the allegations in Paragraphs 1 through 105 as if fully rewritten herein.

107. The clear and plain intent of the termination provisions in the Agreement and 2015 Amendment was to permit Employ Media sufficient time and resources by which to transition its customers to a new, Employ Media-operated .JOBS Universe.

108. As of November 16, 2017, Employ Media had 192 customers using the .JOBS Universe. These customers, and others, were all originally solicited by the DST, and each had a signed contract with Employ Media. Each year, Employ Media earned millions of dollars in revenue and profits from these customers.

109. Employ Media's contracts with its customers normally renewed on an annual basis. Based on the structure of the termination provisions, Employ Media anticipated customers renewing their contracts during the Notice and Transition Periods and remaining as customers through the Best Efforts Period and beyond.

110. In order to preserve Employ Media's relationship with its customers, DirectEmployers agreed that it would not solicit Employ Media's customers, or work or promote against Employ Media to induce its customers to abandon their relationships with Employ Media.

- a. "DEA will use its best efforts to move EM-invoiced [] customers ("Customer") to EM and will not work against or promote against EM's servicing and retention of these customers." (Amendment § 6(z).)

- b. “Further, for the avoidance of doubt, DEA may offer competing recruitment products to any DEA member **that is not a Customer.**” *Id.*

111. Despite agreeing to these and other terms, DirectEmployers knowingly, willfully, and intentionally solicited Employ Media’s customers before the termination of the Agreement, and while DirectEmployers was being paid to solicit, service, and generate revenue from the Universe for Employ Media. DirectEmployers intentionally designed its actions to interfere with and disrupt Employ Media’s business relationships with its customers, to deprive Employ Media of renewed contracts, and to cause harm to Employ Media. DirectEmployers was motivated to interfere in Employ Media’s business relations so that DirectEmployers could take and benefit from the profits being earned by Employ Media.

112. As a result of DirectEmployers’ intentional improper conduct, all but six of Employ Media’s customers ended their relationship with Employ Media or decided not to renew their contractual relationship with Employ Media.

113. As a result of DirectEmployers’ intentional interference with Employ Media’s business relationships and prospective business relationships, Employ Media has lost past and future revenue and profits that it reasonably anticipated receiving from its customers. DirectEmployers’ solicitation of Employ Media’s customers will cause Employ Media millions of dollars in damages.

114. DirectEmployers has tortiously interfered with Employ Media’s business relations and prospective business relations; such conduct proximately caused millions of dollars in damages to Employ Media, for which a precise amount will be proven at trial.

COUNT III: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS
(AGAINST RECRUIT ROOSTER)

115. Employ Media incorporates the allegations contained in Paragraphs 1 through 114 as if fully rewritten herein.

116. On information and belief, Recruit Rooster is a wholly owned subsidiary of DirectEmployers and its employees, as of January 3, 2018, were all then-current or former DirectEmployers employees. Recruit Rooster has no separate existence from DirectEmployers and its actions were in concert with and for the benefit of DirectEmployers and/or their common management.

117. The clear and plain intent of the termination provisions in the Agreement and 2015 Amendment was to permit Employ Media sufficient time and resources by which to transition its customers to a new, Employ Media-operated .JOBS Universe.

118. Upon information and belief, Recruit Rooster, in concert with DirectEmployers, knowingly, willfully, and intentionally solicited Employ Media's customers.

119. Recruit Rooster, as a wholly owned subsidiary of DirectEmployers and with common management and/or employees, knew of the agreement and that Employ Media intended to transition its invoiced customers to a new, Employ Media-run .JOBS platform.

120. Recruit Rooster intentionally designed its actions in concert with DirectEmployers to interfere with and disrupt Employ Media's business relationships with its customers, to deprive Employ Media of renewed contracts, and to cause harm to Employ Media. Recruit Rooster was motivated to interfere in Employ Media's business relations so that Recruit Rooster could take Employ Media's customers and the profits being earned by Employ Media.

121. As a result of Recruit Rooster's intentional improper conduct, all but six of Employ Media's customers ended their relationship with Employ Media or decided not to renew their contractual relationship with Employ Media.

122. As a result of Recruit Rooster's intentional interference with Employ Media's business relationships, Employ Media has lost past and future revenue and profits that it reasonably anticipated receiving from its customers. Recruit Rooster's solicitation and servicing of Employ Media's customers will cause Employ Media millions of dollars in damages.

123. Recruit Rooster has tortiously interfered with Employ Media's business relations and proximately caused millions of dollars in damages to Employ Media.

COUNT IV: DECLARATORY JUDGMENT

124. Employ Media incorporates the allegations in Paragraphs 1 through 123 as if fully rewritten herein.

125. DirectEmployers' breaches of the Agreement and 2015 Agreement, including its refusal to provide Employ Media with customer information and the Software necessary to set up and operate a duplicate .JOBS Universe, prevented Employ Media from setting up its own .JOBS Universe.

126. Ninety-three of Employ Media's customers have contracts with Employ Media that continue past November 12, 2018, the end of the Transition Period. After November 12, 2018, as a proximate result of DirectEmployers conduct, Employ Media does not have access to customer websites and does not have the ability to power the Universe for its customers.

127. If DirectEmployers had provided Employ Media with the information it was required to provide pursuant to the Agreement and 2015 Amendment, Employ Media would have continued to service its customers.

128. When DirectEmployers solicited Employ Media's customers, it guaranteed them that if they agreed to transfer their .JOBS domains, then DirectEmployers would ensure that the customers did not experience any interruptions to their service after the Agreement and Transition Period end.

129. While Employ Media has ongoing contracts with ninety-three customers, DirectEmployers has induced almost all of these customers to terminate their relationships with Employ Media. Indeed, by March 16, 2019, only six customers may remain with Employ Media.

130. DirectEmployers also demanded payment from Employ Media for servicing customers' accounts after November 12, 2018.

131. In short, DirectEmployers has tied Employ Media's hands and prevented it from setting up its own .JOBS platform to service its customers. DirectEmployers has taken Employ Media's customers and placed Employ Media in a position where it cannot reasonably and economically set up a .JOBS platform for the six or fewer customers that Employ Media will have after March 16, 2019.

132. Based on DirectEmployers' knowing and willful breaches of contract, its refusal to turn over critical information so that Employ Media could setup and operate its own .JOBS platform, and its guarantee to Employ Media's customers that they would not experience any service interruptions, Employ Media seeks a declaratory judgment that DirectEmployers is required to continue to power the Universe for all Employ Media .JOBS Universe customers after the conclusion of the Transition Period on November 12, 2018 so that these customers do not experience any interruption to their services.

133. Employ Media asks this Court for a judgment that it is absolved of any costs associated with continuing operation of the Universe for Employ Media's customers.

134. A ruling on this claim for declaratory judgment is critical to ensuring that Employ Media's customers continue to receive services after the Transition Period.

WHEREFORE, Plaintiff Employ Media, LLC requests judgment against Defendants DirectEmployers Association, Inc. and DirectEmployers Recruitment Marketing Solutions, Inc. dba Recruit Rooster as follows:

- A. As to Count I of the Complaint, judgment in Employ Media's favor and against DirectEmployers, holding that DirectEmployers is liable for breach of the Agreement and 2015 Amendment and owes damages to Employ Media in an amount to be proven at trial;
- B. As to Count II of the Complaint, judgment in Employ Media's favor and against DirectEmployers, holding that DirectEmployers is liable for tortiously interfering with Employ Media's business relations and owes damages to Employ Media in an amount to be proven at trial;
- C. As to Count III of the Complaint, judgment in Employ Media's favor and against Recruit Rooster, holding that Recruit Rooster is liable for tortiously interfering with Employ Media's business relationship and owes damages to Employ Media in an amount to be proven at trial;
- D. As to Count IV of the Complaint, judgment in Employ Media's favor and against DirectEmployers, ordering that DirectEmployers, at its own costs, must continue to power the Universe and continue to serve Employ Media-invoiced customers on the Universe to ensure that they do not

experience any service interruptions during the balance of their contracts with Employ Media;

- E. Punitive damages against DirectEmployers' and Recruit Rooster for their tortious interference with business relations;
- F. All other legal and equitable relief to which Employ Media is entitled; and
- G. Costs and attorneys' fees.

/s/ Michael N. Ungar

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JURY DEMAND

Plaintiff requests a trial by jury on all of its claims against Defendants.

/s/ Michael N. Ungar

Michael N. Ungar, Esq.
*One of the Attorneys for Plaintiff Employ
Media, LLC*

CERTIFICATE OF SERVICE

The undersigned certifies that on this 5th day of March, 2019, a copy of the foregoing document was filed via the Court's electronic filing system. Parties may access this filing through the Court's electronic filing system. In addition, a courtesy copy was served by electronic mail upon:

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