UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOY MEDIA, LLC, Plaintiff, vs. DIRECTEMPLOYERS ASSOCIATION, INC., et al., Defendants.	)	CASE NO. 1:19-cv-00487-CAB JUDGE CHRISTOPHER A. BOYKO **DEFENDANTS DIRECTEMPLOYERS ASSOCIATION, INC.'S AND DIRECTEMPLOYERS RECRUITMENT MARKETING SOLUTIONS, INC.'S ANSWER TO THE COMPLAINT AND DIRECTEMPLOYERS ASSOCIATION, INC.'S COUNTERCLAIMS**

Defendants' DirectEmployers Association, Inc. ("DE") and DirectEmployers Recruitment Marketing Solutions, Inc. d/b/a Recruit Rooster ("RR") (collectively "Defendants") respectfully submit this Answer to the Complaint of Plaintiff Employ Media, LLC ("Plaintiff") and hereby states as follows:

INTRODUCTORY STATEMENT

1. Answering paragraph 1 of the Complaint, DE denies that the 2013 Domain Provisioning and use Agreement (the "2013 Agreement") contained multiple strict termination procedures and obligations designed to preserve, protect, and perpetuate Plaintiff's revenue stream from the .JOBS universe after termination of the 2013 Agreement. DE further denies that the 2013 Agreement contained a covenant for DE not to solicit Plaintiff's customers following DE's notice of terminating the 2013 Agreement. To the extent paragraph 1 sets forth legal conclusions that DE breached the terms of the 2013 Agreement and, along with RR, intentionally interfered with Plaintiff's business relationships, no answer is required by Defendants though Defendants deny such legal conclusions. DE admits all other factual allegations contained in

paragraph 1. Other than the legal conclusion RR denies above, RR neither admits nor denies the factual allegations contained in paragraph 1, as such allegations do not relate to RR.

PARTIES

2. Defendants admit the factual allegations contained in paragraph 2 of the Complaint.

3. DE admits the factual allegations contained in paragraph 3 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 3, as such allegations do not relate to RR.

4. Answering paragraph 4 of the Complaint, Defendants deny RR solicited Plaintiff's former .JOBS universe customers. Defendants admit all other factual allegations contained in paragraph 4.

JURISDICTION AND VENUE

5. Answering paragraph 5 of the Complaint, to the extent paragraph 5 sets forth legal conclusions as to there being complete diversity among the Parties, no answer is required. Defendants admit all other factual allegations contained in paragraph 5.

6. Answering paragraph 6 of the Complaint, to the extent paragraph 6 sets forth legal conclusions as to DE allegedly engaging in intentional misconduct and tortious activity, no answer is required though DE denies such legal conclusions. DE admits all other factual allegations contained in paragraph 6. RR neither admits nor denies the factual allegations contained in paragraph 6, as such allegations do not relate to RR.

7. Answering paragraph 7 of the Complaint, to the extent paragraph 7 sets forth legal conclusions as to RR allegedly engaging in tortious activity, no answer is required though RR denies such legal conclusions. RR admits all other factual allegations contained in paragraph 6.

DE neither admits nor denies the factual allegations contained in paragraph 6, as such allegations do not relate to DE.

8. Answering paragraph 8 of the Complaint, Defendants deny they are located in the Northern District of Ohio. Defendants further deny that a substantial part of the events giving rise to plaintiff's claims occurred in the Northern District of Ohio. To the extent paragraph 8 sets forth legal conclusions as to whether venue is proper, no answer is required.

9. DE denies the allegations contained in paragraph 9 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 9, as such allegations do not relate to RR.

10. Answering paragraph 10 of the Complaint, DE denies it is located in Ohio. DE admits all other factual allegations contained in paragraph 10. RR neither admits nor denies the factual allegations contained in paragraph 10, as such allegations do not relate to RR.

11. DE denies the allegations contained in paragraph 10a of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 10a, as such allegations do not relate to RR.

12. Answering paragraph 10b of the Complaint, DE admits it entered into multiple contracts and amendments with Plaintiff, which is located in Ohio. RR neither admits nor denies the factual allegations contained in paragraph 10b, as such allegations do not relate to RR.

13. DE admits the factual allegations contained in paragraph 10c of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 10c, as such allegations do not relate to RR.

14. DE admits the factual allegations contained in paragraph 10d of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 10d, as such allegations do not relate to RR.

15. Answering paragraph 10e, DE admits its employees made calls from Indiana to Plaintiff related to the Agreement, including day-to-day business operations, advancement of the .JOBS Universe, sales reports, and advancements in technology and efficiency. DE admits its head of Digital Strategies communicated from Indiana with Plaintiff. DE admits its head of technology communicated from Indiana with Plaintiff. DE admits its President and Executive Director routinely communicated from Indiana with Plaintiff. DE denies all other factual allegations contained in paragraph 10e. RR neither admits nor denies the factual allegations contained in paragraph 10e, as such allegations do not relate to RR.

16. DE admits the factual allegations contained in paragraph 10f of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 10f, as such allegations do not relate to RR.

17. Answering paragraph 10g, to the extent paragraph 10g sets forth legal conclusions as to DE's presence in Ohio, no answer is required. DE admits all other factual allegations contained in paragraph 10g of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 10g, as such allegations do not relate to RR.

18. Answering paragraph 10h contained in the Complaint, DE denies its General Counsel has been to Cleveland on multiple occasions to conduct business with EM. DE is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding EM's reference to a Vice-President of Strategic Partnerships, and therefore denies this fact. DE admits the factual allegations contained in paragraph 10h of the Complaint. RR neither

admits nor denies the factual allegations contained in paragraph 10h, as such allegations do not relate to RR.

19. Answering paragraph 10i of the Complaint, DE denies it solicited, contracted with, and performed services for multiple Ohio-based customers due to the Agreement alone. DE further denies it generated more than $400,000 in revenue in Ohio solely from supplying services to Plaintiff's Ohio-based customers. DE admits all other factual allegations contained in paragraph 10i. RR neither admits nor denies the factual allegations contained in paragraph 10i, as such allegations do not relate to RR.

20. DE admits the factual allegations contained in paragraph 10j of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 10j, as such allegations do not relate to RR.

21. Answering paragraph 10k of the Complaint, DE admits it conducted additional business from Indiana with Plaintiff, located in Ohio, pursuant to prior contracts. RR neither admits nor denies the factual allegations contained in paragraph 10k, as such allegations do not relate to RR.

22. Answering paragraph 10l of the Complaint, DE denies it does business with Ohio State University, Ohio Northern University, or Ohio University in the state of Ohio. DE admits it does business from Indiana with the State of Ohio's Office of Workforce Development. RR neither admits nor denies the factual allegations contained in paragraph 10l, as such allegations do not relate to RR.

23. Answering paragraph 11 of the Complaint, RR denies it intentionally harmed Plaintiff. DE denies it undertook tortious actions in reference to Plaintiff's business relationships. To the extent paragraph 11 sets forth legal conclusions, no answer is required.

FACTUAL BACKGROUND

Embrescia and Fassett Acquire .JOBS and Create Employ Media

24. Defendants admit the factual allegations in paragraph 12 of the Complaint.

25. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint, and therefore denies them.

26. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, and therefore denies them.

27. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint, and therefore denies them.

28. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint as to the date Plaintiff was granted the right to operate the .JOBS sponsored top-level domain, and therefore denies them. Defendants admit all other factual allegations in paragraph 16 of the Complaint.

29. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint, and therefore denies them.

History of Employ Media's and DirectEmployers' Relationship

30. DE admits the factual allegations in paragraph 18 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 18, as such allegations do not relate to RR.

31. DE admits the factual allegations in paragraph 19 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 19, as such allegations do not relate to RR.

32. DE admits the factual allegations in paragraph 20 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 20, as such allegations do not relate to RR.

33. DE admits the factual allegations in paragraph 21 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 21, as such allegations do not relate to RR.

34. DE admits the factual allegations in paragraph 22 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 22, as such allegations do not relate to RR.

35. DE admits the factual allegations in paragraph 23 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 23, as such allegations do not relate to RR.

36. DE admits the factual allegations in paragraph 24 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 24, as such allegations do not relate to RR.

37. DE admits the factual allegations in paragraph 25 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 25, as such allegations do not relate to RR.

38. Answering paragraph 26, Defendants deny over 90,000 employers list jobs with the .JOBS universe. Defendants are without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 26 of the Complaint, and therefore denies them.

39. DE admits the factual allegations in paragraph 27 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 27, as such allegations do not relate to RR.

40. DE admits the factual allegations in paragraph 28 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 28, as such allegations do not relate to RR.

41. Answering paragraph 29 of the Complaint, DE admits it knew of Plaintiff's efforts to challenge ICANN's Notice of Breach and supported Plaintiff's position against ICANN. Defendants are without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 29 of the Complaint, and therefore denies them.

42. Answering paragraph 30 of the Complaint, Defendants admit ICANN withdrew its Notice of Breach and DE continued using industry and geography .JOBS sites. To the extent paragraph 30 sets for the legal conclusions as to Plaintiff's success at arbitration, no answer is required.

The 2013 Agreement

43. DE admits the factual allegations contained in paragraph 31 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 31, as such allegations do not relate to RR.

44. DE admits the factual allegations contained in paragraph 32 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 32, as such allegations do not relate to RR.

45. Answering paragraph 33 of the Complaint, DE denies EM paid DE's costs for powering the Universe. DE admits all other factual allegations contained in paragraph 33. RR neither admits nor denies the factual allegations contained in paragraph 33, as such allegations do not relate to RR.

46. DE admits the factual allegations contained in paragraph 34 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 34, as such allegations do not relate to RR.

47. Answering paragraph 35 of the Complaint, DE denies the DST customized .JOBS domains; rather, the DST developed custom websites that it would then recommend .JOBS domains for these websites to sit on. DE admits all other factual allegations contained in paragraph 35 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 35, as such allegations do not relate to RR.

48. Answering paragraph 36 of the Complaint, DE denies the reason the universe revenue would go to Plaintiff and Plaintiff would reimburse DE for costs was because DE operated as a non-profit and the .JOBS universe was an additional benefit to its members. DE further denies that Plaintiff has reimbursed DE for all salaries and commissions for DST

members, or other certain costs associated with the .JOBS Universe. DE admits all other factual allegations contained in paragraph 36. RR neither admits nor denies the factual allegations contained in paragraph 36, as such allegations do not relate to RR.

49. DE admits the factual allegations contained in paragraph 37 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 37, as such allegations do not relate to RR.

The 2015 Amendment

50. DE admits the factual allegations contained in paragraph 38 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 38, as such allegations do not relate to RR.

51. Answering paragraph 39 of the Complaint, DE denies the expanded termination procedure was for the purpose of protecting Plaintiff's relationships with its existing customers for all time in an effort to preserve Plaintiff's revenue stream from the Universe. DE admits all other factual allegations contained in paragraph 39. RR neither admits nor denies the factual allegations contained in paragraph 39, as such allegations do not relate to RR.

52. Answering paragraph 40 of the Complaint, DE denies EM reimbursed DE for actual costs associated with the .JOBS Universe. DE admits all other factual allegations contained in paragraph 40 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 40, as such allegations do not relate to RR.

53. Answering paragraph 41 of the Complaint, DE admits Bill Warren departed from DE in late 2016. DE further admits that upon Bill Warren's departure, DE installed new management. DE denies all other allegations contained in paragraph 41. RR neither admits nor denies the factual allegations contained in paragraph 41, as such allegations do not relate to RR.

54. DE denies the allegations contained in paragraph 42 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 42, as such allegations do not relate to RR.

55. DE denies the allegations contained in paragraph 43 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 43, as such allegations do not relate to RR.

56. Answering paragraph 44 of the Complaint, DE admits Plaintiff rejected DE's demand to alter the terms of the 2013 Agreement. DE denies all other allegations in paragraph 44. RR neither admits nor denies the factual allegations contained in paragraph 44, as such allegations do not relate to RR.

57. Answering paragraph 45 of the Complaint, DE denies it notified EM it was terminating the Agreement on November 18, 2017. DE admits all other factual allegations contained in paragraph 45 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 45, as such allegations do not relate to RR.

Termination Process

58. Answering paragraph 46 of the Complaint, DE admits Section 3(b) of the 2013 Agreement includes language that "[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." RR neither admits nor denies the factual allegations contained in paragraph 46, as such allegations do not relate to RR.

59. Answering paragraph 47 of the Complaint, DE denies that the entire 2013 Agreement was to remain in full force and effect following DE's notice of termination. DE

admits all other factual allegations contained in paragraph 47. RR neither admits nor denies the factual allegations contained in paragraph 47, as such allegations do not relate to RR.

60. Answering paragraph 48 of the Complaint, DE is without knowledge or information sufficient to form a belief as to what options Plaintiff had and the nature of such options, and therefore denies them. DE admits all other factual allegations contained in paragraph 48 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 48, as such allegations do not relate to RR.

61. Answering paragraph 49 of the Complaint, DE denies the parties were to maintain the status quo as Plaintiff set up a separate Universe. DE admits Section 3(d)(ii) of the 2013 Agreement includes language that, "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." DE denies all other allegations contained in paragraph 49. RR neither admits nor denies the factual allegations contained in paragraph 49, as such allegations do not relate to RR.

62. Answering paragraph 50 of the Complaint, DE admits Section 6(z) of the 2015 Amendment includes, in part, the language Plaintiff cites. RR neither admits nor denies the factual allegations contained in paragraph 50, as such allegations do not relate to RR.

63. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint, and therefore denies them.

64. Answering paragraph 52 of the Complaint, DE admits Section 6(t) of the 2015 Amendment includes in part the language Plaintiff cites. RR neither admits nor denies the factual allegations contained in paragraph 52, as such allegations do not relate to RR.

65. Answering paragraph 53 of the Complaint, DE admits Section 6(u) of the 2015 Amendment includes in part the language Plaintiff cites. DE denies Plaintiff actually placed any employees with Plaintiff. RR neither admits nor denies the factual allegations contained in paragraph 52, as such allegations do not relate to RR.

66. Answering paragraph 54 of the Complaint, to the extent paragraph 54 sets forth a legal conclusion as to what the 2013 Agreement and 2015 Amendment were to provide Plaintiff, no answer is required though DE denies such legal conclusions. DE denies all other factual allegations contained in paragraph 54. RR neither admits nor denies the factual allegations contained in paragraph 54, as such allegations do not relate to RR.

67. DE admits the factual allegations contained in paragraph 55 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 55, as such allegations do not relate to RR.

DirectEmployers Breaches the Agreement

68. DE admits the factual allegations contained in paragraph 56 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 56, as such allegations do not relate to RR.

69. DE admits the factual allegations contained in paragraph 57 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 57, as such allegations do not relate to RR.

70. Answering paragraph 58 of the Complaint, DE admits Mr. Embrescia wrote DE requesting that DE not notify customers of the eventual termination of their partnership until Plaintiff had time to develop a course of action and until the Parties could agree on a message. DE denies that Plaintiff had not had time to develop a course of action to agree upon a message.

DE denies it was obligated to refrain from notifying customers until the Parties could agree on a message. RR neither admits nor denies the factual allegations contained in paragraph 58, as such allegations do not relate to RR.

71. Answering paragraph 59 of the Complaint, DE admits Mr. Embrescia's November 30, 2017 email includes the language Plaintiff cites. RR neither admits nor denies the factual allegations contained in paragraph 59, as such allegations do not relate to RR.

72. Answering paragraph 60 of the Complaint, to the extent paragraph 60 sets forth legal conclusions as to what was necessary or unnecessary as to the 2013 Agreement, no answer is required. DE admits all other factual allegations in paragraph 60. RR neither admits nor denies the factual allegations contained in paragraph 60, as such allegations do not relate to RR.

73. Answering paragraph 61 of the Complaint, to the extent paragraph 61 sets forth legal conclusions as to what the 2013 Agreement and the 2015 Amendment required, no answer is required. DE denies it did not have authority to unilaterally exercise termination of the 2013 Agreement. DE admits all other factual allegations in paragraph 61. RR neither admits nor denies the factual allegations contained in paragraph 61, as such allegations do not relate to RR.

74. Answering paragraph 62 of the Complaint, DE admits reassigning DST members to other tasks upon Plaintiff's failure to either respond to DE's inquiry about whom to assign, or accept individuals DE interviewed and offered to Plaintiff. DE denies its reassignment diminished the effectiveness of the DST or limit Plaintiff's ability to maintain its customer relationships. DE admits Plaintiff asked DE to stop moving members to other projects, despite Plaintiff's delay in making hiring decisions. DE admits Plaintiff suggested the addition of Daniel Kraciun, Plaintiff's employee, to the DST, which DE rejected. DE admits offering Plaintiff the opportunity to identify individuals to join the DST. To the extent paragraph 62 sets

forth a legal conclusion as to whether such rejection constituted harm to Plaintiff, no answer is required though DE denies such conclusion. RR neither admits nor denies the factual allegations contained in paragraph 62, as such allegations do not relate to RR.

75. Answering paragraph 63 of the Complaint, Defendants deny RR was established to take control of the .JOBS Universe and capture the revenues and profits being earned by Plaintiff. Defendants admit RR was established as a for-profit subsidiary. To the extent paragraph 63 sets forth legal conclusions as to whether a breach or interference occurred, no answer is required though Defendants deny such conclusions.

76. DE admits the factual allegations contained in paragraph 64 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 64, as such allegations do not relate to RR.

77. Answering paragraph 65 of the Complaint, DE denies that its position was not supported by the 2013 Agreement. DE further denies that customer information from DE was necessary for Plaintiff to set up its own version of the .JOBS Universe, given Plaintiff already had such information based on its agreements with such customers. DE admits it refused to provide customer information to Plaintiff which Plaintiff already had, and admits it was not required to produce proprietary customer information pursuant to the 2013 Agreement. RR neither admits nor denies the factual allegations contained in paragraph 65, as such allegations do not relate to RR.

78. Answering paragraph 66 of the Complaint, Defendants deny Plaintiff's consent or knowledge was required in contacting customers regarding the termination of the 2013 Agreement. Defendants further deny they failed to provide Plaintiff necessary information from which to begin the transition, and RR denies it was obligated to provide any information to

Plaintiff. Defendants admit contacting and notifying customers of the 2013 Agreement termination.

79. Answering paragraph 67 of the Complaint, to the extent paragraph 67 sets forth legal conclusions regarding whether DE was in breach, no answer is required through DE denies such conclusion. DE admits that the language Plaintiff cites is included, in part, in the January 19, 2018 email. DE denies that it planned on competing with Plaintiff, as Plaintiff "is just not relevant to the services DE offers." RR neither admits nor denies the factual allegations contained in paragraph 67, as such allegations do not relate to RR.

80. Answering paragraph 68 of the Complaint, DE admits the language Plaintiff cites is included, in part, in the 2015 Amendment. DE denies all other allegations in paragraph 68. RR denies it solicited Plaintiff customers, and RR denies it offers services that compete with Plaintiff.

81. Defendants deny the allegations contained in paragraph 69 of the Complaint.

82. Answering paragraph 70 of the Complaint, DE denies it advised customers they could face service interruptions if they did not elect DE as their site provider and remained with Plaintiff. DE denies it solicited a Plaintiff-invoiced customer. DE admits all other factual allegations in paragraph 70. RR neither admits nor denies the factual allegations contained in paragraph 70, as such allegations do not relate to RR.

83. DE denies the allegations contained in paragraph 71 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 71, as such allegations do not relate to RR.

84. DE denies the allegations contained in paragraph 72 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 72, as such allegations do not relate to RR.

85. Answering paragraph 73 of the Complaint, DE denies it made communications with the intent of harming Plaintiff's business and anticipated revenue stream. DE further denies it required Plaintiff's knowledge or consent to make such communications. DE admits it made communications Plaintiff cites in the Complaint months before the effective date of termination of the 2013 Agreement. RR neither admits nor denies the factual allegations contained in paragraph 73, as such allegations do not relate to RR.

86. Answering paragraph 74 of the Complaint, to the extent paragraph 74 sets forth legal conclusions regarding the propriety of DE's actions, no answer is required though Defendants deny such conclusions. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding when Plaintiff noticed a decline, or if there was a decline, contained in paragraph 74 of the Complaint, and therefore deny them.

87. Answering paragraph 75 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore deny them.

88. Answering paragraph 76 of the Complaint, DE denies it solicited Plaintiff's customers. DE further denies it "refused" to engage in mediation and that DE "forced" Plaintiff to wait until September to mediate the dispute. DE admits all other factual allegations contained in paragraph 76. RR neither admits nor denies the factual allegations contained in paragraph 76, as such allegations do not relate to RR.

89. Answering paragraph 77 of the Complaint, Defendants deny they solicited Plaintiff's customers in violation of the 2013 Agreement and the 2015 Amendment.

90. DE denies the allegations contained in paragraph 78 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 78, as such allegations do not relate to RR.

91. Answering paragraph 79 of the Complaint, DE admits Section 6(t) of the 2015 Amendment includes in part the language Plaintiff cites. DE denies Section 6(t) of the 2015 Amendment references a requirement to turn over "other information necessary." RR neither admits nor denies the factual allegations contained in paragraph 79, as such allegations do not relate to RR.

92. DE admits the factual allegations contained in paragraph 80 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 80, as such allegations do not relate to RR.

93. Answering paragraph 81 of the Complaint, to the extent paragraph 81 sets forth legal conclusions as to the propriety of DE's activities, no answer is required though DE denies such conclusions. DE denies Plaintiff could do nothing given that customer information was already in Plaintiff's possession. DE admits all other factual allegations contained in paragraph 81. RR neither admits nor denies the factual allegations contained in paragraph 81, as such allegations do not relate to RR.

94. DE denies the allegations contained in paragraph 82 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 82, as such allegations do not relate to RR.

95. Answering paragraph 83 of the Complaint, DE denies the remaining EM customers had already signed contracts with DE, but rather customers in mid-subscription signed election forms. DE admits all other factual allegations contained in paragraph 83 of the

Complaint. RR neither admits nor denies the factual allegations contained in paragraph 83, as such allegations do not relate to RR.

96. Answering paragraph 84 of the Complaint, DE denies it denied EM access to customer information on the basis that the customers would not be EM customers after their current contracts expire. DE admits all other factual allegations contained in paragraph 84 of the Complaint, even though Plaintiff had customer information from their contracts with customers. RR neither admits nor denies the factual allegations contained in paragraph 84, as such allegations do not relate to RR.

97. Answering paragraph 85 of the Complaint, DE denies it refused to produce customer information so Plaintiff could not communicate with customers or service their accounts. RR neither admits nor denies the factual allegations contained in paragraph 84, as such allegations do not relate to RR.

98. Answering paragraph 86 of the Complaint, DE admits Plaintiff did not provide services when the Transition Period ended. DE denies all other allegations contained in paragraph 86. RR neither admits nor denies the factual allegations contained in paragraph 86, as such allegations do not relate to RR.

99. Answering paragraph 87 of the Complaint, DE denies it improperly solicited Plaintiff's customers. DE further denies that if a customer elected to contract with DE that Plaintiff could not service their accounts during and after the Transition Period. DE admits all other factual allegations in paragraph 87. RR neither admits nor denies the factual allegations contained in paragraph 87, as such allegations do not relate to RR.

100. DE admits the factual allegations contained in paragraph 88 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 88, as such allegations do not relate to RR.

101. DE denies the allegations contained in paragraph 89 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 89, as such allegations do not relate to RR.

COUNT I: BREACH OF CONTRACT (AGAINST DIRECTEMPLOYERS)

102. Answering paragraph 90 of the Complaint, Defendants restate and incorporate their responses to paragraphs 1 through 89 as if fully set forth herein.

103. DE admits the factual allegations contained in paragraph 91 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 91, as such allegations do not relate to RR.

104. DE admits the factual allegations contained in paragraph 92 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 92, as such allegations do not relate to RR.

105. Answering paragraph 93 of the Complaint, to the extent paragraph 93 sets forth a legal conclusion as to the legal enforceability of the agreements, no answer is required.

106. DE denies the allegations contained in paragraph 94 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 94, as such allegations do not relate to RR.

107. DE admits the factual allegations contained in paragraph 95 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 95, as such allegations do not relate to RR.

108. Answering paragraph 96 of the Complaint, DE denies it was required to operate the DST as before the Notice Period. DE admits all other factual allegations contained in paragraph 96 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 96, as such allegations do not relate to RR.

109. Answering paragraph 97 of the Complaint, DE denies EM paid all of DE's expenses to power the "Universe." DE admits all other factual allegations contained in paragraph 97. RR neither admits nor denies the factual allegations contained in paragraph 97, as such allegations do not relate to RR.

110. Answering paragraph 98 of the Complaint, to the extent paragraph 98 sets forth legal conclusions as to the contracts' requirements, no answer is required. RR neither admits nor denies the factual allegations contained in paragraph 98, as such allegations do not relate to RR.

111. Answering paragraph 98a of the Complaint, DE admits Section 6(t) of the 2015 Amendment includes in part the language Plaintiff cites. RR neither admits nor denies the factual allegations contained in paragraph 98a, as such allegations do not relate to RR.

112. Answering paragraph 98b of the Complaint, DE admits Section 6(u) of the 2015 Amendment includes in part the language Plaintiff cites. RR neither admits nor denies the factual allegations contained in paragraph 98b, as such allegations do not relate to RR.

113. Answering paragraph 98c of the Complaint, DE admits Section 6(z) of the 2015 Amendment includes in part the language Plaintiff cites in relation to the twelve-month period following the conclusion of the transition period. RR neither admits nor denies the factual allegations contained in paragraph 98c, as such allegations do not relate to RR.

114. Answering paragraph 98d of the Complaint, DE admits Section 6(z) of the 2015 Amendment includes in part the language Plaintiff cites in relation to the twelve-month period

following the conclusion of the transition period. RR neither admits nor denies the factual allegations contained in paragraph 98d, as such allegations do not relate to RR.

115. DE denies the allegations contained in paragraph 99 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 99, as such allegations do not relate to RR.

116. Answering paragraph 100 of the Complaint, Defendants admit DE started RR as a for-profit subsidiary. DE denies all other allegations contained in paragraph 100. RR neither admits nor denies all other allegations contained in paragraph 100, as such allegations do not relate to RR.

117. Answering paragraph 101 of the Complaint, to the extent paragraph 101 sets forth legal conclusions regarding whether a breach occurred, no answer is required though DE denies such conclusions. DE denies all other allegations contained in paragraph 101. RR neither admits nor denies all other allegations contained in paragraph 101, as such allegations do not relate to RR.

118. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 of the Complaint, and therefore denies them.

119. DE denies the allegations contained in paragraph 103 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 103, as such allegations do not relate to RR.

120. Answering paragraph 104 of the Complaint, to the extent paragraph 104 sets forth legal conclusions regarding breach and potential damages, no answer is required though DE

denies such conclusions. RR neither admits nor denies the factual allegations contained in paragraph 104, as such allegations do not relate to RR.

121. Answering paragraph 105 of the Complaint, to the extent paragraph 104 sets forth legal conclusions regarding breach and potential damages, no answer is required though DE denies such conclusions. RR neither admits nor denies the factual allegations contained in paragraph 105, as such allegations do not relate to RR.

COUNT II: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS (AGAINST DIRECTEMPLOYERS)

122. Answering paragraph 106 of the Complaint, Defendants restate and incorporate their responses to paragraphs 1 through 105 as if fully set forth herein.

123. DE denies the allegations contained in paragraph 107 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 107, as such allegations do not relate to RR.

124. Answering paragraph 108 of the Complaint, DE denies that Plaintiff's customers were originally solicited by the DST. As to all other allegations contained in paragraph 108, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 108 of the Complaint, and therefore denies them.

125. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 109 of the Complaint as to what Plaintiff anticipated or whether annual renewals were "normal," and therefore denies them.

126. DE denies the allegations contained in paragraph 110 of the Complaint related to the transition period, as Plaintiff alleges. RR neither admits nor denies the factual allegations contained in paragraph 110, as such allegations do not relate to RR.

127. Answering paragraph 110a of the Complaint, DE admits Section 6(z) of the 2015 Amendment includes in part the language Plaintiff cites in relation to the twelve-month period following the conclusion of the transition period. RR neither admits nor denies the factual allegations contained in paragraph 110a, as such allegations do not relate to RR.

128. Answering paragraph 110b of the Complaint, DE admits Section 6(z) of the 2015 Amendment includes in part the language Plaintiff cites in relation to the twelve-month period following the conclusion of the transition period. RR neither admits nor denies the factual allegations contained in paragraph 110b, as such allegations do not relate to RR.

129. Answering paragraph 111 of the Complaint, to the extent paragraph 111 sets forth legal conclusions, no answer is required though DE denies such conclusions. DE denies all other allegations contained in paragraph 111. RR neither admits nor denies the factual allegations contained in paragraph 111, as such allegations do not relate to RR.

130. Answering paragraph 112 of the Complaint, to the extent paragraph 112 sets forth legal conclusions, no answer is required though DE denies such conclusions. DE denies all other allegations contained in paragraph 112. RR neither admits nor denies the factual allegations contained in paragraph 112, as such allegations do not relate to RR.

131. Answering paragraph 113 of the Complaint, to the extent paragraph 113 sets forth legal conclusions, no answer is required though DE denies such conclusions. DE denies all other allegations contained in paragraph 113. RR neither admits nor denies the factual allegations contained in paragraph 113, as such allegations do not relate to RR.

132. Answering paragraph 114 of the Complaint, to the extent paragraph 114 sets forth legal conclusions, no answer is required though DE denies such conclusions. DE denies all other

allegations contained in paragraph 114. RR neither admits nor denies the factual allegations contained in paragraph 114, as such allegations do not relate to RR.

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

133. Answering paragraph 115 of the Complaint, Defendants restate and incorporate their responses to paragraphs 1 through 114 as if fully set forth herein.

134. Answering paragraph 116 of the Complaint, Defendants deny that RR has no separate existence from DE. Defendants further deny RR's actions were in concert with and for the benefit of DE and/or their common management. DE also denies that as of January 3, 2018, the DST consisted of then-current or former DE employees. Defendants admit all other factual allegations contained in paragraph 116 of the Complaint.

135. Defendants deny the allegations contained in paragraph 117 of the Complaint.

136. Answering paragraph 118 of the Complaint, to the extent paragraph 118 sets forth legal conclusions, no answer is required though Defendants deny such conclusions. Defendants deny the allegations contained in paragraph 118 of the Complaint.

137. Defendants admit the factual allegations contained in paragraph 119 of the Complaint.

138. Answering paragraph 120 of the Complaint, to the extent paragraph 120 sets forth legal conclusions, no answer is required though Defendants deny such conclusions. Defendants deny the allegations contained in paragraph 120 of the Complaint.

139. Answering paragraph 121 of the Complaint, to the extent paragraph 121 sets forth legal conclusions, no answer is required though Defendants deny such conclusions. Defendants deny all other allegations contained in paragraph 121 of the Complaint.

140. Answering paragraph 122 of the Complaint, to the extent paragraph 122 sets forth legal conclusions, no answer is required though RR denies such conclusions. RR denies all other allegations contained in paragraph 122. DE neither admits nor denies the factual allegations contained in paragraph 122, as such allegations do not relate to DE.

141. Answering paragraph 123 of the Complaint, to the extent paragraph 123 sets forth legal conclusions, no answer is required though RR denies such conclusions. RR denies all other allegations contained in paragraph 123. DE neither admits nor denies the factual allegations contained in paragraph 123, as such allegations do not relate to DE.

COUNT IV: DECLARATORY JUDGMENT

142. Answering paragraph 124 of the Complaint, Defendants restate and incorporate their responses to paragraphs 1 through 123 as if fully set forth herein.

143. Answering paragraph 125 of the Complaint, to the extent paragraph 125 sets forth legal conclusions, no answer is required though DE denies such conclusions. DE denies all other allegations contained in paragraph 125. RR neither admits nor denies the factual allegations contained in paragraph 125, as such allegations do not relate to RR.

144. Answering paragraph 126 of the Complaint, DE denies DE's conduct is the proximate result of whether Plaintiff is able to access customer websites or has the ability to power the Universe for its customers. DE further denies EM does not have access to customer websites and does not have the ability to power the "Universe" for its customers. DE admits all other factual allegations contained in paragraph 126. RR neither admits nor denies the factual allegations contained in paragraph 126, as such allegations do not relate to RR.

145. Answering paragraph 127 of the Complaint, to the extent paragraph 127 sets forth legal conclusions as to requirements under the agreements, no answer is required though DE

denies such conclusions. DE denies all other allegations contained in paragraph 127. RR neither admits nor denies the factual allegations contained in paragraph 127, as such allegations do not relate to RR.

146. Answering paragraph 128 of the Complaint, DE denies it improperly solicited Plaintiff's customers. DE further denies it ensured that there would be no interruptions to service if customers agreed to transfer their .JOBS domains. DE admits all other factual allegations in paragraph 128. RR neither admits nor denies the factual allegations contained in paragraph 128, as such allegations do not relate to RR.

147. DE denies the allegations contained in paragraph 129 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 129, as such allegations do not relate to RR.

148. DE admits the factual allegations contained in paragraph 130 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 130, as such allegations do not relate to RR.

149. DE denies the allegations contained in paragraph 131 of the Complaint. RR neither admits nor denies the factual allegations contained in paragraph 131, as such allegations do not relate to RR.

150. Answering paragraph 132 of the Complaint, to the extent paragraph 132 sets forth legal conclusions, no answer is required though DE denies such conclusions. DE denies all other allegations contained in paragraph 132. RR neither admits nor denies the factual allegations contained in paragraph 132, as such allegations do not relate to RR.

151. Answering paragraph 133 of the Complaint, Defendants admit Plaintiff seeks a judgment that it is absolved of any costs associated with continuing operation of the Universe for Plaintiff's customers, though Defendants deny Plaintiff is entitled to judgment.

152. Answering paragraph 134 of the Complaint, to the extent paragraph 134 sets forth legal conclusions, no answer is required though Defendants deny such conclusions. Defendants deny all other allegations contained in paragraph 134.

153. Answering Plaintiff's prayer for relief, Defendants deny Plaintiff is entitled to the relief sought.

GENERAL DENIAL

Defendants deny each and every allegation in Plaintiff's Complaint that is not specifically admitted herein.

AFFIRMATIVE AND OTHER DEFENSES

Further answering the Complaint, and as additional defenses thereto, Defendants assert the following affirmative defenses without assuming the burden of proof when such burden would otherwise be on Plaintiff:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Prior Breach by Plaintiff)

2. Plaintiff's breach of contract claim is barred on the ground that as to each and every contract, covenant or warranty alleged therein, Plaintiff committed a prior breach thereof, excusing any duty of further performance by DE.

THIRD AFFIRMATIVE DEFENSE

(Failure to Satisfy Conditions Precedent)

3. Plaintiff's breach of contract claim is barred on the ground that, as to each and every oral, implied, or other contractual relationship alleged therein, Plaintiff failed to fulfill conditions precedent to the enforcement of any said contract. Specifically, in regard to effectuating any transition, Plaintiff failed to provide DE with timely responses to requests related to notifying customers of termination, identifying information Plaintiff required for creating a new .JOBS Universe, failing to identify for hire any individuals for transition to Plaintiff's employ, failing to pay the costs required for continued operation of the Universe, failing to establish how the data and software provided to Plaintiff was insufficient, failing to undertake any reasonable efforts to establish an alternate .JOBS Universe, and failing to use information and resources related to customers, data, budgets, and costs already in Plaintiff's possession.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Perform)

4. Plaintiff's claim for breach of contract is barred on the ground that as to each and every contract, covenant, or warranty alleged therein, DE was excused from performance due to Plaintiff's failure to perform.

SIXTH AFFIRMATIVE DEFENSE

(Ripeness)

5. Plaintiff's breach of contract claim against DE is barred as not yet ripe under the terms of the agreement.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

6. Plaintiff's claims are barred by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

(Excuse)

7. Each and every cause of action alleged in the Complaint is barred in whole or in part because performance under the relevant agreements is excused.

NINTH AFFIRMATIVE DEFENSE

(Lack of Causation)

8. Defendants allege Plaintiff's injuries or damages, if any, were not proximately caused by the acts of Defendants.

TENTH AFFIRMATIVE DEFENSE

(Estoppel)

9. As a separate and distinct affirmative defense, Defendants allege Plaintiff is estopped by its conduct from asserting each of the causes of action upon which Plaintiff seeks relief.

ELEVENTH AFFIRMATIVE DEFENSE

(No Breach)

10. Plaintiff's claim for breach of contract is barred on the ground that as to each and every contract, covenant, or warranty alleged therein, DE performed all of its obligations thereunder.

TWELFTH AFFIRMATIVE DEFENSE

(Substantial Compliance)

11. Plaintiff's claim for breach of contract is barred on the ground that as to each and every contract, covenant, or warranty alleged therein, DE substantially complied with its obligations thereunder.

THIRTEENTH AFFIRMATIVE DEFENSE

(Anticipatory Repudiation)

12. Plaintiff's claim for breach of contract is barred on the ground that as to each and every contract, covenant, or warranty alleged therein, Plaintiff indicated it would not fulfill its obligations thereunder.

FOURTEENTH AFFIRMATIVE DEFENSE

(Not Direct Competitors)

13. Plaintiff's claims for tortious interference with business relations are barred on the ground that Defendants are not direct or indirect competitors.

FIFTEENTH AFFIRMATIVE DEFENSE

(Right to Fair and Lawful Competition)

14. Plaintiff's claims for tortious interference with business relations are barred on the ground that such claims violate Defendants' right to fair and lawful competition.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Existence of Reasonable Business Expectancy)

15. Plaintiff's claims for tortious interference with business relations are barred on the ground that there is no existence of a business expectancy with a reasonable certainty of being realized.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Lack of Intent)

16. Plaintiff's claims for tortious interference with business relations are barred on the ground that Defendants did not intend for their conduct to interfere with the contract or business expectancy.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Conditional Privilege)

17. Plaintiff's claims for tortious interference with business relations are barred on the ground that Defendants conduct was pursuant to a recognized justification or privilege.

NINETEENTH AFFIRMATIVE DEFENSE

(Party to Contract)

18. Plaintiff's claim for tortious interference with business relations against DE is barred on the ground that DE was either a party to the contract allegedly interfered with, or DE's interests were so closely related to the contract that DE was not a "stranger" to the contract.

TWENTIETH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

19. Plaintiff's claims are barred in whole or in part by Plaintiff's failure to mitigate its damages.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Lack of Damages)

20. Plaintiff has not sustained any actual damages or injury caused by Defendants, or attributable to the acts or omissions of Defendants.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Lack of Basis for Punitive Damages)

21. Plaintiff is not entitled to recover punitive damages because these damages are not available remedies for some or all of Plaintiff's claims and/or Defendants' alleged actions were not willful, malicious, and without justification.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Punitive Damages Barred)

22. Plaintiff's claims for punitive damages are barred and/or limited by the Due Process and Equal Protection Clauses of the U.S. Constitution and by analogous provisions of the Ohio Constitution.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Bifurcation of Damage Claims)

23. Plaintiff's claims for damages, including punitive damages, should be bifurcated from Plaintiff's liability claims.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Entitlement to Attorneys' Fees)

24. Plaintiff's claim for attorneys' fees and costs are barred due to the lack of any basis for Plaintiff recovery of attorneys' fees and costs.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Reservation of Rights to Raise Additional Affirmative Defenses)

25. Defendants expressly reserve their right to raise any additional affirmative defenses not set forth above, and as otherwise permitted by law and/or equity based on discovery and further factual investigation in this matter.

WHEREFORE, Defendants respectfully pray for judgment with respect to Plaintiff's Complaint and Defendants' affirmative defenses as follows:

1. A judgment in favor of Defendants denying Plaintiff all relief requested in its Complaint, and dismissing the Complaint with prejudice;
2. A judgment against Plaintiff finding that DE has not, and did not, breach the contract between the parties;
3. A judgment against Plaintiff finding that Defendants have not, and did not, tortuously interfere with Plaintiff's business relations;
4. Denial of Plaintiff's request for declaratory judgment;
5. An award of costs, including attorneys' fees, to Defendants; and
6. Such other and further relief as this Court may deem just and proper.

COUNTERCLAIMS

Defendant/Counterclaim-Plaintiff DirectEmployers Association, Inc. ("DE"), for its Counterclaims against Plaintiff/Counterclaim-Defendant Employ Media, LLC ("EM"), hereby states as follows:

PRELIMINARY STATEMENT

1. This is an action for breach of contract, conversion, and unjust enrichment related to EM's breach of the December 10, 2010 Domain Provisioning and Use Agreement ("the 2010 Agreement," a true and correct copy of which is attached hereto as **Exhibit "1"**), the 2013 Domain Provisioning and Use Agreement between EM and DE dated January 1, 2013 ("the 2013 Agreement," a true and correct copy of which is attached hereto as **Exhibit "2"**), the May 16, 2013 Clarification Letter Agreement (the "2013 Clarification Letter Agreement," a true and correct copy of which is attached hereto as **Exhibit "3"**), and the April 10, 2015 Amendment to the 2013 Agreement ("the 2015 Amendment," a true and correct copy of which is attached hereto as **Exhibit "4"**). These contracts are collectively referred to herein as the "DE/EM Contract."

2. EM has breached its obligations under the DE/EM Contract, resulting in damages to DE as a result of EM's non-performance of several material terms.

3. During the term of the 2013 Agreement and following DE's notice of termination on May 16, 2018, EM received and improperly diverted to EM funds from customers that EM properly should have paid to DE.

4. Furthermore, DE continues, and continues to this day, to "service" and "maintain" EM customers because of EM's either failure or refusal to service the tail-ends of 75 different customer contracts. EM has accordingly been enriched by receipt of advance payment from its

customers for such services, without recompense to DE, which has been left to fill the void EM has created by defaulting on its contract obligations to DE.

PARTIES

5. Defendant/Counterclaim-Plaintiff DE is a non-profit limited liability company organized under the laws of Indiana. DE's headquarters are located at 7602 Woodland Drive, Suite 200 in Indianapolis, Indiana 46278. Established in 2001, DE is a technology company which operates as a non-profit Member-owned and managed business association (an Internal Revenue Code 501(c)(6) organization). DE's Members are a consortium of over 910 companies, most of them from within the Fortune 1000. DE specializes in talent acquisition and helping its Members comply with the regulatory obligations the Office of Federal Contract Compliance Programs ("OFCCP") imposes on covered federal Government contractors and subcontractors. As an Association, DE seeks to bring compliance professionals together to cultivate labor market efficiencies and reduce costs for employers. DE's services assist contractors to comply with the OFCCP's Vietnam Era Veterans' Readjustment Assistance Act, (38 U.S.C. Section 4212 ("Section 4212")) mandatory job listing requirements and the outreach and positive recruitment requirements of both Section 503 of the Rehabilitation Act of 1973 ("Section 503") and Section 4212. DE's innovative Partner Relationship Manager (PRM) aids employers to track, record, and maintain partner outreach efforts with diversity, disability, veteran, female, and other minority organizations. DE also daily delivers over two million jobs its Members have available to state workforce (employment) agencies throughout the country through a data pipeline known as the National Labor Exchange (NLx).

6. Plaintiff/Counterclaim-Defendant EM is a limited liability company organized under the laws of Delaware. On information and belief, EM's principal place of business is 3029

Prospect Avenue in Cleveland, Ohio 44115. EM is the authorized Registry Operator licensed to operate .jobs on the Internet, a sponsored top-level domain. EM's primary business is the sale of domain name registrations ending in .jobs (i.e. dot jobs). In other words, for a company to have an Internet address ending in ".jobs," a company must first purchase a .jobs domain name from EM and have the web address registered into EM's database (except for free domains EM occasionally gives out).

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332(a). DE and EM are citizens of different States; DE is organized under the laws of Indiana and is located in Indiana, whereas EM is organized under the laws of Delaware and is located in Cleveland, Ohio. Furthermore, DE's claims against EM allege damages in excess of $75,000.00, exclusive of interest and costs, as a result of EM's violations of the DE/EM Contract.

8. This Court has personal jurisdiction over EM and venue is proper in this District for two reasons. First, EM has consented to personal jurisdiction and venue by reason of its filing of its Complaint against DE in the U.S. District Court for the Eastern Division of the Northern District of Ohio. Second, based on EM's representations in its Complaint, EM resides in Cleveland, Ohio, which is within the territorial boundaries of this district and venue.

BACKGROUND FACTS

Initial Agreement Between DE and EM

9. In 2010, EM issued a request for proposals to identify a partner to help expand the .jobs top-level domain EM operated on the Internet.

10. DE submitted a proposal in which DE indicated its desire to partner with EM to provide DE's Members with services involving the .jobs top-level domain.

11. Specifically, DE proposed providing second-level .jobs domains to its Members, using occupational names, geographic names, dictionary terms and others (known in the DE/EM Contract as "Proposal Domains"). A "domain" is another way of describing a .jobs internet address.

12. In response to DE's proposal, EM and DE executed the 2010 Agreement. Pursuant to the terms of the 2010 Agreement, EM agreed to authorize and provide proposed .jobs domain addresses to DE customers, after which DE would create and maintain "microsites" at the .jobs domain address DE had acquired on behalf of its customers (most of which came from the ranks of DE's Member companies).

13. Under the 2010 Agreement, DE was to perform five functions:

a. DE was to sell, or "source," .jobs website addresses to customers. EM provided the .jobs website addresses, and DE sold these addresses through the sales staff DE engaged, known as the Digital Strategies Team ("DST"). To the extent DE purchased a .jobs domain for the customer from EM, EM's contribution of the .jobs domain to the resulting microsite was worth approximately $149 on the open market;

b. DE would then sell a recruitment "microsite" (which are websites dedicated to the customer's recruitment needs) and related service and maintenance services described below to customers through the DST for between $5,000.00 and $250,000.00;

c. Once sold, the DST would then build, or "create," the recruitment "microsite" for the customer. To create the "microsites," the DST would analyze an employer's digital recruitment presence and develop custom features to reflect

the overall brand of the employer and feature the employer's various hiring initiatives (one example can be found at https://mohawkindustries.jobs). This required the DST to collaborate and consult with various departments of the customer employer. For "microsites" subject to the 2010 Agreement (and the subsequent agreements between DE and EM), DST built these "microsites" using a .jobs domain address. However, DST would also build "microsites" for customers on non-.jobs website addresses, and thus not subject to the DE/EM Contract;

d. Once created, the DST would also "service" the "microsite," which meant making changes and customizing the pages on the website as necessary; and

e. DE would also perform "maintenance" of the "microsite" through DE's developer and engineer employees, which means keeping the "microsite" active on the Internet and paying out of pocket costs for Amazon World Cloud Services to host the website and make it available to the public to find and visit.

14. The DE-provided "microsite" was the end product the customer purchased to host recruitment activities at the customer's company, and the .jobs domain (Internet address) EM provided was a parasitic tool to that end. Without the microsite, the .jobs domain lacked utility in and of itself, or economic value.

15. In consideration for provision of the proposed domain addresses to DE and the "microsites" DE would construct on the .jobs domains, EM would receive all revenue derived from the .jobs domain addresses, less certain enumerated sales and maintenance costs DE incurred and which the DE/EM contract caused EM to reimburse to DE.

16. Under the 2010 Agreement, DE initially billed, collected, and accepted payments for the "microsites" DST sold. At the end of the month, DE and EM would reconcile the amount collected and if EM owed DE money for the applicable costs associated with the sales and maintenance of the "microsites," DE would then invoice EM. Alternatively, if DE owed EM money related to the revenue generated, EM would invoice DE for the outstanding balance.

The 2013 Agreement

17. Effective as of January 1, 2013, DE and EM replaced the 2010 Agreement with the 2013 Agreement (**Exhibit "2"**).

18. Similar to the 2010 Agreement, EM was to provide .jobs domain addresses to DE Members. Specifically, Section 1 of the 2013 Agreement stated, "EM will provision the Proposal Domains as set forth in Appendix C hereto to [DE] via a registrar mutually agreeable to both parties and with which EM maintains operating control of the registrar accounting containing the Proposal Domains."

19. Similar to the 2010 Agreement, Section 1 of the 2013 Agreement provided that DE would "power the Proposal Domains and create and maintain the Universe so that such functions on the Internet in a commercially reasonable manner commensurate with (1) a world-class online employment-listing site, (2) [DE]'s stated mission, and (3) the .jobs Charter." The Proposal Domains were the .jobs domains upon which the "microsites" that DE created, serviced, and maintained would exist.

20. Shortly after the 2013 Agreement went into effect, issues related to DE invoicing of EM for money owed became untenable. Specifically, because EM would delay payment of DE invoices, invoice reconciliation became unmanageable. Thus, on or about April 11, 2013, EM took over the bookkeeping function related to billing, collecting, and accepting payments

from DE Members that were EM customers, though DE still performed all collection calls related to invoices. EM would then issue payment to DE based on the invoices for costs DE submitted to EM. Besides providing the .jobs domain addresses, this was the only other duty EM performed under the 2013 Agreement.

21. In exchange for providing the .jobs domain addresses and performing bookkeeping functions, EM would receive "[A]ll revenue derived from the Universe, less applicable costs set forth above ('Net Revenue')." (Sec. 2(b) of the 2013 Agreement).

22. The "Universe" in the 2013 Agreement was defined as DE's "Proposal Domains to create a .jobs universe of websites and functionality." (Sixth "Whereas" on page 1 of the 2013 Agreement). DE's Proposal Domains were defined as "second-level .jobs domains" DE provisioned, "including occupational names, geographic names, dictionary terms and others." (Fourth "Whereas" on page 1 of the 2013 Agreement).

23. The revenue EM would derive from the 2013 Agreement was substantial. Specifically, EM sold .jobs domain addresses in the open marketplace for between $99 and $149 per year. The <u>average</u> amount DE Members spent on the "microsites" ended up being over $25,000.00. As a result of the terms of the 2013 Agreement, the revenue being generated for EM from "microsites" for DE Members was approximately **20,100%** greater than merely selling the .jobs domain address in the open marketplace (not accounting for costs associated with constructing, servicing, and maintaining the "microsites").

24. Section 2(a) of the 2013 Agreement defined applicable costs as: (i) cloud computing costs from service providers; (ii) compensation for sales staff DE engaged to drive revenue from the "microsites" on .jobs domain addresses; and (iii) wholesale domain registration fees. The 2013 Clarification Letter Agreement subsequently clarified "compensation" to mean

"salaries, commissions, and cash bonuses" (but not benefits or overhead expenses) to the sales staff DE engaged. EM did not pay all salaries or any cash bonuses for DST staff during the length of the DE/EM Contract.

25. However, DE also used 2-6 full time developer and engineer employees for the "maintenance" of the "microsites" as part of its duties under the 2013 Agreement.

26. DE and EM agreed that either party could terminate the 2013 Agreement "for convenience by giving the other party no less than one hundred eighty (180) days written notice thereof." (Sec. 3(b) of the 2013 Agreement).

27. In the event of a termination, Section 3(d) set forth in part several requirements:

> "Upon the effective date of termination of this Agreement, (i) both Parties will upon written request from the other party promptly return and deliver to each other any of the other Party's Confidential Information (as defined herein), corporate literature or other materials in their possession; (ii) both Parties will continue to operate the Universe for up to one-hundred eighty (180) days, at EM's discretion, after the effective date of termination, **with [DE] powering the Universe and EM paying [DE]'s costs as set forth herein and invoicing and collecting revenue as set forth herein**; and (iii) [DE] will provide EM with [DE]'s Universe's job feed, under terms at least as favorable ('most favored nation' status) as [DE] provides to other [DE] job feed recipients, for the duration of the term of EM's registry agreement with ICANN for the .jobs gTLD." (Emphasis added).

28. This ability of EM to elect to continue the operation of the .jobs domain addresses for a period of up to one-hundred eighty (180) days after the effective date of termination was called the "Transition Period."

29. During the course of the 2013 Agreement through the end of 2014, DE ran a loss of over $1 million to allow EM to retain a profit on .jobs sales. This loss was a result of the fact that the costs reimbursable to DE under the 2013 Agreement did not effectively cover the entire amount of monies DE spent to create, service, and maintain the "microsites," even while EM collected and pocketed "microsite" service and maintenance fees.

The 2015 Amendment

30. Due to the financial losses DE continued to suffer to perform its duties under the 2013 Agreement, DE and EM executed on or about April 10, 2015 the 2015 Amendment to the 2013 Agreement (**Exhibit "4"**).

31. The 2015 Amendment kept in place the obligations both EM and DE were to provide to each other and the third-party beneficiaries to the DE/EM Contract, the EM customers DE sourced.

32. Per the 2015 Amendment, EM agreed, however, to compensate DE for the salaries and commissions of additional personnel besides just the DST personnel. Specifically, Section 1(a) of the 2015 Amendment provided that EM would compensate DE for certain developers and engineers, and a Marketing Representative. However, at no point during the DE/EM Contract did EM pay for a Marketing Representative.

33. Most importantly, in an effort to relieve DE of some of the financial losses DE was experiencing, Section 3 of the 2015 Amendment stated, "[DE] will earn, and EM will pay to [DE], ten percent (10%) of all cash collections of incoming sales from the Universe, paid upon collection monthly in arrears. EM will provide [DE] with a monthly collection statement by the 10th of each month."

34. In addition, the parties negotiated a provision addressing what was to occur after the Transition Period (should EM invoke the Transition Period to continue the DE/EM Contract for the 180-day Transition Period the contract allowed AFTER DE were to terminate the contract). Specifically, DE was absolved of any obligation under the 2013 Agreement to service and maintain the "microsites," and would not incur further costs regarding EM's service and maintenance of the "microsites," except with regard to certain domains (US.jobs, USA.jobs, and

MY.jobs). The DE/EM Contract left it up to EM to determine how EM would service and maintain the "microsites" for EM customers during the tail-ends of the contracts EM had with such customers, which had pre-paid EM for service and maintenance of their contract with EM.

35. Following execution of the 2015 Amendment, DE continued to suffer financial losses exceeding $500,000.00 every year as a result of the expenses associated with DE's obligations under the 2013 Agreement and the 2015 Amendment. These losses included amounts which EM was obligated to reimburse pursuant to the 2013 Agreement and the 2015 Amendment, and which EM failed to properly reimburse.

DE Notice of Termination

36. On November 17, 2017, DE gave written notice to EM of DE's intent to terminate the contract 180 days hence pursuant to Section 3(b) of the 2013 Agreement ("Either Party may terminate this Agreement for convenience by giving the other party no less than one hundred eighty (180) days written notice thereof").

37. Thus, the effective date of termination of the 2013 Agreement was May 16, 2018.

38. From November 17, 2017 through May 16, 2018, the DE/EM Contract, remained in full force and effect.

39. From November 17, 2017 through May 16, 2018, DE fulfilled its contractual obligations to EM and the customers.

EM Election to Extend Agreement Past the DE/EM Contract Termination Date

40. On April 19, 2018, less than a month before the effective date of termination, EM gave formal written notice through its outside counsel, Mike Ungar, that EM invoked the Transition Period allowed in Section 3(d)(ii) of the 2013 Agreement, thus extending certain

portions of the 2013 Agreement and the 2015 Amendment which EM had the discretion under the DE/EM Contract to extend. Thus, the Transition Period was to end on November 12, 2018.

41. Based on EM's request to implement the Transition Period, Section 3(d)(ii) required DE to continue to service and maintain "microsites" on .jobs domain addresses in exchange for "EM paying [DE]'s costs as set forth herein and invoicing and collecting revenue as set forth herein." This requirement was incorporated in the 2015 Amendment pursuant to Section 6, which states, "The following provisions are added to Section 3(d) in addition to the provisions which already exist in Section 3(d)." Section 9 of the 2015 Amendment further noted that "the terms set forth in the [2013] Agreement and the Clarification letter remain in full force and effect as between us."

The Transition Period

42. From May 17, 2018 through November 12, 2018, DE continued to "service" and "maintain" the "microsites" existing on .jobs domain addresses.

43. During the Transition Period, DE reasonably performed its duties and responsibilities under the DE/EM Contract.

44. At no time during the Transition Period did EM pay DE the "10% of all cash collections of incoming sales from the Universe," as required under Section 3 of the 2015 Amendment.

DE's Continued Servicing and Maintenance of "Microsites" After the Transition Period

45. After conclusion of the Transition Period, EM remained under contract with approximately 75 customers which required continued service and maintenance of their "microsites" through the end of their contract with EM.

46. The termination dates for these agreements between EM and these 75 customers range between November 30, 2018 and October 31, 2020.

47. Until the termination of such agreements, EM remained obligated to service and maintain the "microsites" given that EM had accepted customer monies in full at the beginning of the various contracts EM had entered into with customers and with DE. The termination of the DE/EM Contract did not relieve EM of EM's duty to supply both service and maintenance to EM customers which had properly paid money to EM for such services and maintenance.

48. However, because the DE/EM Contract required EM to fulfill the service and maintenance requirement, even though the DE/EM Contract was terminated and was no longer in effect, EM failed to deliver any services or maintenance to any of EM's 75 customers in violation of the DE/EM Contract. As a result, DE supplied the service and maintenance for EM to EM's customers, which were the beneficiaries of the DE/EM Contract to avoid causing their Internet "microsite" websites to go dark.

COUNT I: BREACH OF CONTRACT

49. DE incorporates the allegations contained in Paragraphs 1 through 48 of the Counterclaim as if fully rewritten herein.

50. DE and EM entered into the 2013 Agreement regarding domain provisioning and use rights effective January 1, 2013.

51. DE and EM agreed to amend the 2013 Agreement pursuant to the 2013 Clarification Letter Agreement dated May 16, 2013.

52. DE and EM further amended the 2013 Agreement pursuant to the 2015 Amendment effective April 15, 2015.

53. The DE/EM Contract is an exchange of written promises between DE and EM.

54. The DE/EM Contract is supported by consideration to both DE and EM.

55. As such, the DE/EM Contract is a legally enforceable contract.

56. DE complied with all terms of the DE/EM Contract. DE sourced and created "microsites," or Proposal Domains, to populate the .jobs Internet address (or domain), and "powered" the "microsites" by servicing and maintaining them for EM customers, most of whom were already DE Members.

57. Following DE's November 17, 2017 written notice of intent to terminate the DE/EM Contract on May 16, 2018, Employ Media exercised its discretion to continue DE's service and maintenance of the .jobs domains for an additional 180-day period after the effective termination date, until November 12, 2018.

58. During the Transition Period, DE continued to service and maintain the "microsites" on the .jobs domains without concern or complaint from EM.

59. During the Transition Period, DE worked with EM to the "fullest extent commercially feasible" to ensure the smooth separation away from DE-retained sites and has provided all software relevant to powering the .jobs domains' "microsites" as required under Section 6(t) of the 2015 Amendment.

60. DE has complied with the requirements in Section 6(z) of the 2015 Amendment since the end of the Transition Period on November 12, 2018.

61. The DE/EM Contract imposes certain contractual obligations on EM which EM breached.

EM's First Contract Breach: EM's Failure to Reimburse DE's Applicable Costs

62. Section 2 of the 2013 Agreement, as amended by Section 3 of the 2013 Clarification Letter Agreement and Section 1 of the 2015 Amendment, required EM to reimburse

DE for applicable costs associated with "powering" the Proposal Domains, or "microsites," and creating and maintaining the .jobs domains. EM was required to reimburse DE for cloud computing costs for the websites DE built on the .jobs domains; the registrar fees DE paid for registration of each "microsite;" and the salaries, commissions, and cash bonuses for personnel on the DST, salaries for two DE developers tasked to continue the development of the "microsites" on the .jobs domains, the salary of a DE Marketing Representative, and such further staff and/or salary increases both parties approved.

63. In violation of Section 2 of the 2013 Agreement, EM failed to pay all authorized salaries, commissions, and cash bonuses owed to DE personnel maintaining and operating the "microsites."

64. As a proximate result of EM's violation of Section 2 of the 2013 Agreement, DE has already lost and will continue to lose an amount to be proven at trial, but already in excess of the jurisdictional requirement for this Court.

EM's Second Contract Breach: EM's Non-Payment of the 10% Profit-Share During the Transition Period

65. Section 3 of the 2015 Amendment entitled DE to payment from EM of 10% of all cash collections less applicable costs (i.e. profits) of incoming sales from the .jobs domain addresses, "microsite" sales, and "microsite" service and maintenance fees DE charged customers. Furthermore, during the Transition Period following the effective date of termination of the 2013 Agreement, Section 3(d)(ii) of the 2013 Agreement required EM to pay DE's costs to continue to service and maintenance the customer recruitment "microsites" DE had sold them, and to invoice and collect revenue the customers sent to EM.

66. In violation of these provisions, from May 17, 2018 until November 12, 2018, EM failed to pay DE 10% of all profits DE drove from the sales, service, and maintenance of recruitment "microsites" during the Transition Period.

67. As a proximate result of EM's violation of Section 3 of the 2015 Amendment, EM has not paid DE profits in an amount to be proven at trial.

EM's Third Contract Breach: Conversion of Monies Customers Paid to EM for DE Services Outside the EM Contract

68. Section 2(b) of the 2013 Agreement provided that the consideration EM was to receive for performance of its duties under the 2013 Agreement was revenue (less applicable costs) derived from the .jobs domains DE sourced for customers pursuant to the DE/EM Contract, and for the sales, service, and maintenance of websites DE sold to customers. The 2015 Amendment later revised the consideration to EM to be revenue derived from the .jobs domains, less applicable costs and DE's entitlement to 10% of all profits of incoming sales from the .jobs domains.

69. The 2013 Agreement defined the "Universe" as DE "Proposal Domains to create a .jobs universe of websites and functionality." The 2013 Agreement defined Proposal Domains as "those second-level .jobs domains" DE provisioned, "including occupational names, geographic names, dictionary terms and others." The 2015 Amendment did not alter these definitions.

70. In violation of Section 2(b) of the 2013 Agreement, EM has obtained customer payments that is not revenue derived from the .jobs domains and thus are properly due to DE for DE's services. Such amounts are in excess to which EM is entitled under the DE/EM Contract. These include amounts for: (1) DE's services related to "microsites" that were not part of the

.jobs domains or which were not DE Proposal Domains on .jobs domain addresses; and (2) amounts for DE's services undertaken unrelated to the .jobs domains.

71. As a proximate result of EM's violation of Section 2(b) of the 2013 Agreement, DE has already lost and will continue to lose an amount to be proven at trial, but already in excess of the jurisdictional requirement for this Court.

EM's Fourth Contract Breach: Conversion of Monies Customers Paid to EM for DE Services Outside the DE/EM Contract

72. Section 2(b) of the 2013 Agreement provided that the consideration EM was to receive for performance of its duties under the 2013 Agreement was revenue, less applicable costs, derived from the .jobs domains DE sourced for customers pursuant to the DE/EM Contract, and for the sales, service, and maintenance of websites DE sold to customers. The 2015 Amendment later revised the consideration to EM to be revenue derived from the .jobs domains, less applicable costs and DE's entitlement to 10% of all profits of incoming sales from the .jobs domains.

73. The 2013 Agreement defined the "Universe" as DE "Proposal Domains to create a .jobs universe of websites and functionality." The 2013 Agreement defined Proposal Domains as "those second-level .jobs domains" DE provisioned, "including occupational names, geographic names, dictionary terms and others." The 2015 Amendment did not alter these definitions.

74. In violation of Section 2(b) of the 2013 Agreement, EM has obtained customer payments that is not revenue derived from the .jobs domains and thus are properly due to DE for DE's services. Such amounts are in excess to which EM is entitled under the DE/EM Contract. These include: (1) amounts DE Members owed to DE for annual membership dues; (2) amounts customers intended for payment to DE for services by DE's wholly-owned for-profit subsidiary,

Recruit Rooster, that DE set up to handle the servicing and maintenance of customer "microsites" following notice to EM of the customer's intent to contract with DE; (3) amounts for DE's services related to "microsites" not part of the .jobs domains or which were not DE Proposal Domains on .jobs domain addresses; and (4) amounts for DE's services undertaken unrelated to the .jobs domains.

75. As a proximate result of EM's violation of Section 2(b) of the 2013 Agreement, DE has already lost and will continue to lose an amount estimated to be hundreds of thousands of dollars and to be proven at trial, but already in excess of the jurisdictional requirement for this Court.

EM's Fifth Contract Breach: EM's Failure to Continue to Both Service and Maintenance the "Tail-End" of the Contracts EM had Agreed Through the DE/EM Contract to Service and Maintenance to the End of the Customers' Contracts with EM

76. After conclusion of the Transition Period, which ended at midnight on November 12, 2018, EM remained under contract with approximately 75 customers as to the .jobs domains DE had sold to them on behalf of EM, and as to the "microsites" which DE had sold the customers on behalf of EM and had built, serviced, and maintained through the Transition Period.

77. As to most of the 75 customers EM had collected in advance at the start of the contract the customer's payment for the .jobs domain and the "microsite" construction, service, and maintenance, including payment for service and maintenance to occur AFTER the Transition Period ended.

78. The termination date for these agreements between EM and these 75 customers ranged between November 30, 2018 and October 31, 2020.

79. Until the termination of its agreements with its customers, EM remained obligated to service and maintain the "microsites," even though EM had contracted DE to supply the service and maintenance to and through ONLY November 12, 2018. In short, EM made no provision to service and maintenance its customers after November 12, 2018 even though it took customer payments for these services and for maintenance.

80. However, even though the DE/EM Contract was terminated and was no longer in effect, EM failed or refused to offer either service or maintenance to its customers, for which the customers had pre-paid EM.

81. EM's failure to provide both service and maintenance through the end of EM's contracts with EM's customers breached the DE/EM Contract to service and maintain these customers to the end of their contract with EM, whether through EM, some other third-party service provider, or through DE.

82. As a result of DE continuing to service and maintain the "microsites" through the end of EM's agreements with its customers, DE has continued to incur substantial costs performing the service and maintenance that EM was contractually obligated to perform after the end of the Transition Period pursuant to the DE/EM Contract. These costs include cloud computing; domain registration fees; and salary, commissions, and bonuses for DE personnel to service and maintain the "microsites." EM failed to service or maintenance EM customers in relation to the DE/EM Contract, which required service and maintenance to the end of the EM contracts with its customers.

83. DE incurred substantial costs to perform EM's obligations to service and maintain the "microsites" thus far without reimbursement to DE, even though EM either has already

received or continues to receive the revenue from customers for the service and maintenance of such "microsites."

84. EM's receipt of revenue without payment to DE for DE's extra-contractual performance of services required of EM is unjust.

85. As a proximate result of EM's unjust enrichment, DE has already lost and will continue to lose an amount to be proven at trial, but already in excess of $225,000.00.

COUNT II: CONVERSION

86. DE incorporates the allegations in Paragraphs 1 through 85 of the Counterclaim as if fully rewritten herein.

87. Section 2(b) of the 2013 Agreement provided that the consideration EM was to receive for performance of its duties under the 2013 Agreement was revenue, less applicable costs, derived from the .jobs domains DE sourced for customers pursuant to the DE/EM Contract, and for the sales, service, and maintenance of websites DE sold to customers. The 2015 Amendment later revised the consideration to EM to be revenue derived from the .jobs domains, less applicable costs and DE's entitlement to 10% of all profits of incoming sales from the .jobs domains.

88. The 2013 Agreement defined the "Universe" as DE "Proposal Domains to create a .jobs universe of websites and functionality." The 2013 Agreement defined Proposal Domains as "those second-level .jobs domains" DE provisioned, "including occupational names, geographic names, dictionary terms and others." The 2015 Amendment did not alter these definitions.

89. Contrary to the terms of the DE/EM Contract, EM improperly received revenue from EM customers they either bundled into payments intended to pay both EM and DE, or inadvertently misdirected to EM intended for DE.

90. Revenues customers paid EM that did not "derive from the Universe" are not the property of EM and not subject to the DE/EM Contract, and are properly the property of DE, to which DE has ownership and is entitled to possess. These include five different kinds of customer payments EM inappropriately converted to its use and did not pay over to DE:

a. because of the large overlap of DE Members and EM customers serviced by the DST, some DE Members mistakenly paid to EM their annual DE membership dues or fees for other DE services unrelated to the DE/EM Contract when receiving invoices from EM for annual "microsite" service charges;

b. following the customer's decision to transition from EM to DE's subsidiary Recruit Rooster, some customers accidentally sent payments intended for DE to EM. Initially, upon notice from DE to EM of these mis-directed payments that were actually due to DE through Recruit Rooster's services, EM would voluntarily correct the issue and send payment to DE. However, certain amounts for Recruit Rooster's services remain outstanding and in the possession of EM;

c. recruitment websites the DST built, serviced, and maintained on Internet domains other than a .jobs domain address;

d. recruitment websites the DST built, serviced, and maintained that were on .jobs domains the customer owned before engaging DE, and thus were not a DE Proposal Domain subject to the DE/EM Contract; and

e. services customers paid for that were unrelated to the sourcing, building, servicing, and maintenance of "microsites" at .jobs domains subject to the DE/EM Contract and services DE undertook unrelated to the .jobs domains, such as supplying "static pages" to customers at $1,000 per page and "flexible homepages" to customers at $5,000 per page.

91. Upon learning of these amounts EM received and has improperly refused to pay over to DE, DE requested payment of the amounts to DE as the proper entity entitled to such funds.

92. These amounts in EM's possession are properly the property of DE to which DE has ownership and is entitled to possess. EM has not paid any of such amounts to DE.

93. As such, EM has converted the monies for itself, and retained the amounts for its own ownership, possession, and control. It is inequitable for EM to retain for itself monies to which it is not entitled, and which EM holds only for DE's benefit.

94. As a proximate result of EM's willful possession and refusal to pay over to DE monies DE has lawful ownership of, DE has already lost an amount in excess of $300,000.00 to be proven at trial, but in excess of the jurisdictional requirement of this Court.

95. DE further requests, pursuant to the principles of equity and good conscience, that this Court should order EM to provide a full and accurate accounting of monies received and/or retained in connection with payments from EM customers for whom DE provided service and maintenance duties.

96. EM's actions are willful, intentional, malicious, and without justification. Because EM's conduct was willful, malicious, outrageous, wanton, deliberate, and made with

full knowledge of, and in total disregard for DE's rights, punitive damages and attorneys' fees against EM are also warranted.

COUNT III: UNJUST ENRICHMENT

97. DE incorporates the allegations contained in Paragraphs 1 through 96 of the Counterclaim as if fully rewritten herein.

98. In the alternative to DE's claim as to EM's fourth breach of the contract, DE alleges EM has been unjustly enriched by DE's continuing service and maintenance of "microsites" on.jobs domains after the completion of the Transition Period belonging to 75 EM customers which have paid EM for service and maintenance EM has not delivered.

99. Until the termination of EM's tail-end contracts with these remaining 75 EM customers, EM is obligated to service and maintain the customer "microsites." These 75 EM customers have contracts terminating by their own terms between November 30, 2018 and October 31, 2020.

100. EM has, however, left those customers in the lurch by refusing to supply either service or maintenance to them since November 12, 2018. EM has left these 75 customers with the choice of seeing the websites they have pre-paid EM to service and maintain go dark, or to fall back on DE to continue to provide service and maintenance without recompense.

101. As a result of DE continuing to service and maintain the "microsites" through the end of EM's customers' contracts with EM, DE has continued to incur substantial costs to supply the services and maintenance that EM was to perform after the end of the Transition Period pursuant to the DE/EM Contract. These costs include cloud computing services; domain registration fees; and salary, commissions, and bonuses for DE personnel continuing to service and maintain the "microsites" for the 75 EM customers EM abandoned before EM's contracts

with these customers terminated. EM has been unjustly enriched by receiving the benefit of DE's performance without recompense to DE.

102. As such, DE's continued servicing and maintenance of the "microsites" have conferred a benefit upon EM, fulfilling EM's obligations under EM's contracts with customers that do not terminate until between November 30, 2018 and October 31, 2020.

103. EM is aware and has knowledge that DE has continued to service and maintain these "microsites" even though EM ended DE's obligations to do so ended upon the completion of the Transition Period identified in the DE/EM Contract.

104. EM's receipt of customer payments without payment to DE for DE's performance of services and maintenance EM owed to its customers is unjust.

105. As a proximate result of EM's unjust enrichment, DE has already lost and will continue to lose an amount to be proven at trial but already in excess of $225,000.00.

106. EM's actions are willful, intentional, malicious, and without justification. Because EM's conduct was willful, malicious, outrageous, wanton, deliberate, and made with full knowledge of, and in total disregard for DE's rights, punitive damages and attorneys' fees against EM are also warranted.

COUNT IV: DECLARATORY JUDGMENT

107. DE incorporates the allegations contained in Paragraphs 1 through 106 of the Counterclaim as if fully rewritten herein.

108. EM's continued failure or refusal to service the tail-end of EM's contracts with its customers DE had contracted with EM to cause to be serviced and maintained, combined with EM's further refusal to pay DE to fill EM's void to service and maintain the "microsites" for approximately 75 customers that EM was, and is, obligated to perform pursuant to EM's

contracts with DE, will continue to result in substantial loss of money to DE in the future (through October 31, 2020).

109. EM made no provision to service and maintenance these 75 customers after DE's service and maintenance obligations stopped following the Transition Period. DE was not obligated to provide such service or maintenance pursuant to any legal or contractual obligation to EM or EM's customers after November 12, 2018.

110. DE has provided EM with all information and data necessary for EM to perform the service and maintenance functions DE's DST had accomplished for EM during the contract period (through May 16, 2018) and the Transition Period (which EM invoked to extend certain portions of the DE/EM Contract from May 17, 2018 to and through November 12, 2018).

111. Based on EM's continued refusal to compensate DE for DE's performance of services EM was and continues to be obligated to provide to the approximately 75 customers with tail-end contract services and maintenance, DE seeks a declaratory judgment that EM is required to pay DE its entire costs going forward for as long as DE continues to service and maintenance EM customers as to which EM has collected payment in advance, but since November 12, 2018 EM has failed or refused to provide service and/or maintenance to these 75 customers. DE also seeks such further necessary or proper relief as may be appropriate.

112. Furthermore, in violation of Section 2(b) of the 2013 Agreement, EM has obtained customer payments that is not revenue derived from the .jobs domains and thus are properly due to DE for DE's services. Such amounts are in excess to which EM is entitled under the DE/EM Contract. These include: (1) amounts customers owed to DE for annual membership dues; (2) amounts customers intended for payment to DE for services by DE's wholly-owned for-profit subsidiary, Recruit Rooster, that DE set up to handle the servicing and maintenance of

customer "microsites" following notice to EM of the customer's intent to contract with DE; (3) amounts for DE's services related to "microsites" not part of the .jobs domains or which were not DE Proposal Domains on .jobs domain addresses; and (4) amounts for DE's services undertaken unrelated to the .jobs domains.

113. As a result of EM's improper possession of these amounts belonging to DE, DE further seeks a declaratory judgment that EM is required to undergo an accounting as to all payments paid to EM by EM customers which are also DE Members, and/or for which DE provided services and maintenance duties EM assumed was subject to the DE/EM Contract. DE also seeks such further necessary or proper relief as may be appropriate.

114. There exists a substantial and actual justiciable controversy between DE and EM, who have adverse legal interests of sufficient immediacy and reality. The adverse legal rights of DE and EM are directly affected to a specific and substantial degree by the controversy.

115. The controversy is ripe for adjudication.

116. This action would serve a useful purpose to clarify the legal relations at issue and a judgment by this Court would settle the controversy between DE and EM as to the tail-end contract service and maintenance as to which EM has deprived its customers.

117. A ruling on this claim for declaratory judgment is critical to ensure that the approximately 75 customers will continue to receive the service and maintenance of their contracts they have already paid EM to receive through the natural ends of their contracts with EM, and to ensure DE is properly recompensed for its service and maintenance costs standing in for the absent EM.

COUNT V: ACCOUNTING PURSUANT TO CONTRACT

118. DE incorporates the allegations contained in Paragraphs 1 through 117 of the Counterclaim as if fully rewritten herein.

119. Defendant EM has failed to provide DE with monies for EM customer payments made to EM rightfully belonging to DE for DE's services not subject to the DE/EM Contract, as identified above.

120. Section 20 of the 2013 Agreement provides in part, "[DE] or a CPA designee shall have the right, on a commercially reasonable frequency and on reasonable notice to EM, to inspect all EM records relevant to financial statements provided by EM under Section 2 of this Agreement."

121. DE has performed pursuant to the 2013 Agreement.

122. DE is thus entitled to specific performance of the 2013 Agreement in the form of an accounting.

123. As such, DE seeks an accounting from EM for all payments paid to EM by EM customers which are also DE Members, and/or for which DE provided services and maintenance duties EM assumed was subject to the DE/EM Contract.

COUNT VI: CONSTRUCTIVE TRUST AND OTHER EQUITABLE RELIEF

124. DE incorporates the allegations contained in Paragraphs 1 through 121 of the Counterclaim as if fully rewritten herein.

125. Pursuant to the facts alleged above, as a result of EM's denial of compensation owed DE pursuant to the DE/EM Contract, as well as EM's denial of payment to DE of monies improperly possessed by EM and rightfully owned by DE, equity requires that a constructive trust be established over the unjust profits retained by EM.

126. EM should be ordered to disgorge the rightful portion of EM's profits that should have been paid to DE in the form of compensation, reimbursements, and benefits.

127. DE prays for such other equitable relief as this Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, Defendant and Counterclaim-Plaintiff DE requests judgment against Plaintiff and Counterclaim-Defendant EM as follows:

A. As to Count I of the Counterclaim, judgment in DE's favor and against EM, holding that EM is liable for breaches of the DE/EM Contract, and that as a result of EM's breaches EM owes damages to DE in an amount to be proven at trial;

B. As to Count II of the Counterclaim, judgment in DE's favor and against EM, holding that EM is liable for conversion and owes damages to DE in an amount to be proven at trial;

C. As to Count III of the Counterclaim, judgment in DE's favor and against EM, holding that EM is liable for unjust enrichment and owes damages to DE in an amount to be proven at trial;

D. As to Counts II and III of the Counterclaim, that EM be directed to render a just and full accounting of all sums received by EM from EM customers that are also DE Members, or for whom DE performed service and maintenance duties;

E. As to Count IV of the Counterclaim, judgment in DE's favor and against EM, ordering that EM pay DE all its costs to continue to service and maintain the neglected tail-end contracts EM has with its customers until their natural termination dates over the next 18 months;

F. As to Count V of the Counterclaim, judgment in DE's favor and against EM, ordering an accounting from EM for all payments paid to EM by EM customers which are also DE Members, and/or for which DE provided services and maintenance duties EM assumed was subject to the DE/EM Contract.

G. As to Count VI of the Counterclaim, judgment in DE's favor and against EM, ordering a constructive trust be established over the unjust profits retained by EM, requiring EM to disgorge the rightful portion of EM's profits that should have been paid to DE in the form of compensation, reimbursements, and benefits, and providing such other equitable relief as this Court deems appropriate.

H. Punitive damages against EM for its willful, malicious, and intentional conduct to unjustly enrich itself and to also convert monies EM received which customers intended to pay to DE and as to which EM had no legal right;

I. DE's costs and attorneys' fees;

J. Prejudgment interest; and

K. All other legal and equitable relief this Court may deem just and proper.

Respectfully submitted,

/s/ Erica L. Calderas

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2019, a copy of the foregoing *Defendants DirectEmployers Association, Inc.'s and DirectEmployers Recruitment Marketing Solutions, Inc.'s Answer to the Complaint and DirectEmployers Association, Inc.'s Counterclaims* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Erica L. Calderas
One of the Attorneys for Defendants