

IN THE CIRCUIT COURT OF THE
20TH JUDICIAL CIRCUIT IN AND
FOR LEE COUNTY, FLORIDA

CASE NO.: 18-CA-005454
JUDGE: James R. Shenko

ADP, LLC,

Plaintiff/Counter-Defendant,

v.

DAVID SCHWARTZ,

Defendant/Counter-Plaintiff.

**DEFENDANT/COUNTER-PLAINTIFF'S, DAVID SCHWARTZ, ANSWER,
AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

Defendant/Counter-Plaintiff, David Schwartz ("Schwartz"), by and through undersigned counsel, hereby files his Answer, Affirmative Defenses and Counterclaim, and states and avers as follows:

Schwartz denies each and every allegation of Plaintiff's First Amended Complaint not expressly or otherwise admitted below. Schwartz also specifically reserves the right to assert any additional affirmative defenses in matters of avoidance that may be disclosed during the course of investigation and discovery. Schwartz' Answer to each of the specifically enumerated Paragraphs of Plaintiff's First Amended First Amended Complaint is as follows:

1. Schwartz admits that Plaintiff purports to bring an action arising out of various breaches of contract, breach of duty of loyalty, and misappropriation of trade secrets, but denies that Plaintiff is entitled to any damages or relief and further denies the allegations, inferences and legal conclusions contained in Paragraph 1 of the Plaintiff's First Amended Complaint and demands strict

proof of.

Schwartz admits the allegations contained in Paragraph 2 of the Plaintiff's First Amended Complaint.

Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 3 of the Plaintiff's First Amended Complaint and demands strict proof thereof

Schwartz admits the allegations contained in Paragraph 4 of the Plaintiff's First Amended Complaint.

Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 5 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 6 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 7 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 8 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

9. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 9 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

10. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 10 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

11. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 11 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

12. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 12 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

13. With regard to the allegations contained in Paragraph 13 of the Plaintiff's First Amended Complaint, Exhibit "A" attached to Plaintiff's First Amended Complaint speaks for itself. Answering further, Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 13 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

14. With regard to the allegations contained in Paragraph 14 of the Plaintiff's First Amended Complaint, Exhibit "A" attached to Plaintiff's First Amended Complaint speaks for itself. Answering further, Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 14 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

15. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 15 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

With regard to the allegations contained in Paragraph 16 of the Plaintiff's First Amended Complaint, Exhibit "B" attached to Plaintiff's First Amended Complaint speaks for itself. Answering further, Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 16 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

17. With regard to the allegations contained in Paragraph 17 of the Plaintiff's First Amended Complaint, Exhibit "B" attached to Plaintiff's First Amended Complaint speaks for itself. Answering further, Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 17 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

18. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 18 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

19. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 19 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

20. Schwartz denies the allegations, inferences and legal conclusions contained in

Paragraph 20 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

21. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 21 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

22. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 22 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

23. With regard to the allegations contained in Paragraph 23 of the Plaintiff's First Amended Complaint, Exhibit "C" attached to Plaintiff's First Amended Complaint speaks for itself. Answering further, Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 23 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

24. With regard to the allegations contained in Paragraph 24 of the Plaintiff's First Amended Complaint, Exhibit "C" attached to Plaintiff's First Amended Complaint speaks for itself. Answering further, Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 24 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

25. With regard to the allegations contained in Paragraph 25 of the Plaintiff's First Amended Complaint, Exhibit "C" attached to Plaintiff's First Amended Complaint speaks for itself. Answering further, Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 25 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

26. Schwartz admits ADP wrongfully terminated his employment on or about July 18, 2018 in retaliation to Schwartz' objections to ADP's illegal trade practices, policies and/or activities.

27. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 27 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

28. With regard to the allegations contained in Paragraph 28 of the Plaintiff's First Amended Complaint, Exhibit "D" attached to Plaintiff's First Amended Complaint speaks for itself.

Answering further, Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 28 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

29. With regard to the allegations contained in Paragraph 29 of the Plaintiff's First Amended Complaint, Composite Exhibit "E" attached to Plaintiff's First Amended Complaint speaks for itself. Answering further, Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 29 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

30. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 30 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

31. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 31 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

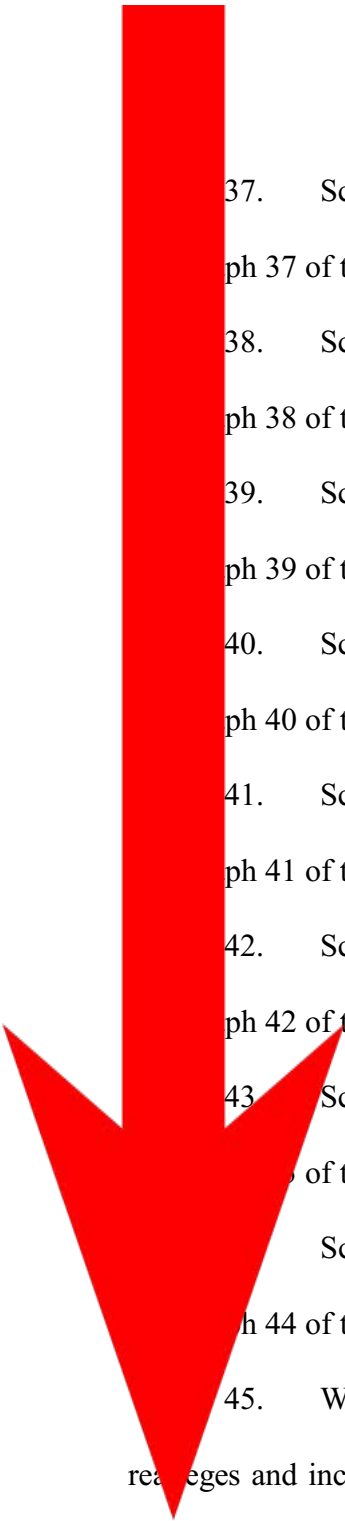
32. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 32 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

33. With regard to the allegations contained in Paragraph 33 of the Plaintiff's First Amended Complaint, Exhibit "F" attached to Plaintiff's First Amended Complaint speaks for itself. Answering further, Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 33 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

34. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 34 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

35. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 35 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

36. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 36 of the Plaintiff's First Amended Complaint and demands strict proof thereof.



37. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 37 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

38. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 38 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

39. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 39 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

40. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 40 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

41. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 41 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

42. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 42 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

43. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 43 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

44. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 44 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

45. With regard to Paragraph 45 of the Plaintiff's Complaint, Defendant restates, reorganizes and incorporates herein each and every response to Plaintiff's Complaint contained in Paragraphs 1-44 above.

46. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 46 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

47. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 47 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

48. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 48 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

49. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 49 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

50. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 50 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

51. Schwartz denies that Plaintiff is entitled to any of the damages or relief sought in the WHEREFORE section of Count I of the Plaintiff's First Amended Complaint, including all sub-paragraphs thereof.

52. With regard to Paragraph 51 of the Plaintiff's Complaint, Defendant restates, realleges and incorporates herein each and every response to Plaintiff's Complaint contained in Paragraph 52 of the Defendant's Answer.

53. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 53 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

54. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 54 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

55. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 55 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

56. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 56 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

57. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 57 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

58. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 58 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

Paragraph 57 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

58. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 58 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

Schwartz denies that Plaintiff is entitled to any of the damages or relief sought in the WHEREFORE clause of Count II of the Plaintiff's First Amended Complaint.

59. With regard to Paragraph 59 of the Plaintiff's Complaint, Defendant restates, realleges and incorporates herein each and every response to Plaintiff's Complaint contained in Paragraphs 1-44 above.

60. Schwartz admits that Count III purports to state a cause of action for specific performance, but otherwise denies the allegations, inferences and legal conclusions contained in Paragraph 60 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

61. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 61 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

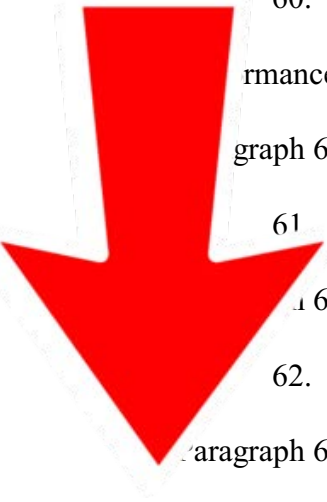
62. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 62 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

63. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 63 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

64. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 64 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

Schwartz denies that Plaintiff is entitled to any of the damages or relief sought in the WHEREFORE clause of Count III of the Plaintiff's First Amended Complaint.

65. With regard to Paragraph 65 of the Plaintiff's Complaint, Defendant restates, realleges and incorporates herein each and every response to Plaintiff's Complaint contained in



phs 1-44 above.

66. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 66 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

67. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 67 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

68. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 68 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

69. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 69 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

70. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 70 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

71. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 71 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

Schwartz denies that Plaintiff is entitled to any of the damages or relief sought in the MORE clause of Count IV of the Plaintiff's First Amended Complaint.

72. With regard to Paragraph 72 of the Plaintiff's Complaint, Defendant restates, repeats and incorporates herein each and every response to Plaintiff's Complaint contained in Paragraphs 1-44 above.

73. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 73 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

74. Schwartz denies the allegations, inferences and legal conclusions contained in Paragraph 74 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

75. Schwartz denies the allegations, inferences and legal conclusions contained in

ph 75 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

76. Schwartz denies the allegations, inferences and legal conclusions contained in ph 76 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

77. Schwartz denies the allegations, inferences and legal conclusions contained in ph 77 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

78. Schwartz denies the allegations, inferences and legal conclusions contained in ph 78 of the Plaintiff's First Amended Complaint and demands strict proof thereof.

Schwartz denies that Plaintiff is entitled to any of the damages or relief sought in the BEFORE clause of Count V of the Plaintiff's First Amended Complaint.

AFFIRMATIVE DEFENSES

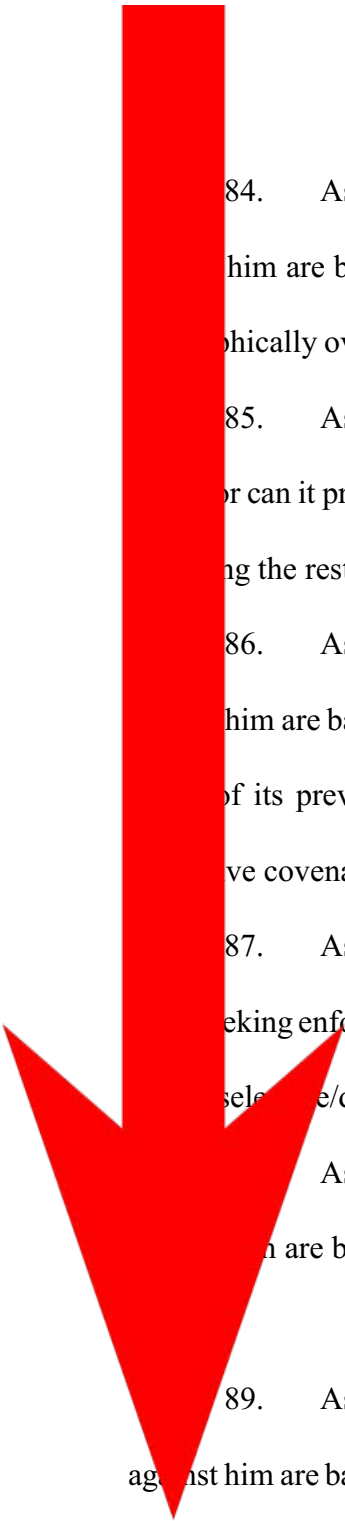
79. As and for its First Affirmative Defense, Defendant states that Plaintiff has failed to cause of action and/or to state a claim upon which relief may be granted.

80. As and for its Second Affirmative Defense, Defendant states that Plaintiff's claims are barred inasmuch as Plaintiff has not and will not suffer any damages as a result of Defendant's alleged conduct at issue in the instant lawsuit.

81. As and for its Third Affirmative Defense, Defendant states that Plaintiff's claims against him are barred inasmuch as Defendant's alleged actions are not the proximate cause of Plaintiff's damages.

82. As and for its Fourth Affirmative Defense, Defendant states that Plaintiff is barred from seeking damages from him in that any damages sustained by Plaintiff were due to the conduct of third parties outside the control of Defendant.

83. As and for its Fifth Affirmative Defense, Defendant states that Plaintiff's claims against him are barred inasmuch as the restrictive covenants fail for lack of consideration.



84. As and for its Sixth Affirmative Defense, Defendant states that Plaintiff's claims against him are barred inasmuch as the restrictive covenants are substantively, temporally and/or geographically overbroad.

85. As and for its Seventh Affirmative Defense, Defendant states that Plaintiff has not shown or can it prove, the existence of one or more legitimate business interests sufficient to justify enforcing the restrictive covenants.

86. As and for its Eighth Affirmative Defense, Defendant states that Plaintiff's claims against him are barred inasmuch as Plaintiff has waived its right to seek relief against Defendant by its failure to object to or its previous inactions and/or selective/discriminatory enforcement in connection with the restrictive covenants.

87. As and for its Ninth Affirmative Defense, Defendant states that Plaintiff is estopped from seeking enforcement of or breach of the restrictive covenants by virtue of its previous inactions and/or selective/discriminatory enforcement in connection with restrictive covenants.

88. As and for its Tenth Affirmative Defense, Defendant states that Plaintiff's claims against him are barred inasmuch as Plaintiff has failed to satisfy all conditions precedent to filing suit.

89. As and for its Eleventh Affirmative Defense, Defendant states that Plaintiff's claims against him are barred inasmuch as Plaintiff has evidenced no facts which would give rise to a claim for damages.

90. As and for its Twelfth Affirmative Defense, Defendant states that Plaintiff's claims against him are barred on the grounds that it has not suffered any damages.

91. As and for its Thirteenth Affirmative Defense, Defendant states that the subject restrictive covenants are unreasonable in time, area and line of business.

98. As and for its Fourteenth Affirmative Defense, Defendant states that the subject restrictive covenants are void, voidable and/or unenforceable because the Plaintiff has no legitimate protectible interest.

99. As and for its Fifteenth Affirmative Defense, Defendant states that the subject restrictive covenants are void, voidable and/or unenforceable because they are not reasonably necessary to protect any alleged legitimate protectible interest of the Plaintiff.

100. As and for its Sixteenth Affirmative Defense, Defendant states that he neither intentionally nor negligently materially breached any of the subject restrictive covenants.

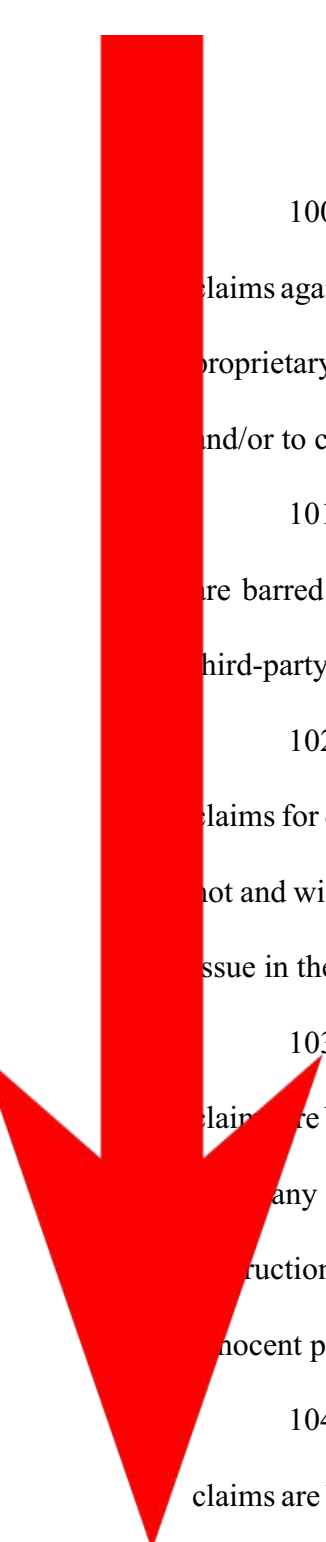
101. As and for its Seventeenth Affirmative Defense, Defendant states that to the extent Plaintiff is seeking temporary injunctive relief, such claim fails because Plaintiff cannot establish a likelihood of success on the merits of its claim.

102. As and for its Eighteenth Affirmative Defense, Defendant states that the subject restrictive covenants are void, voidable and/or unenforceable because of a prior breach by Plaintiff and/or its subsidiaries and/or parents and/or related entities.

103. As and for its Nineteenth Affirmative Defense, Defendant states that the subject restrictive covenants are not enforceable by the named Plaintiff.

104. As and for their Twentieth Affirmative Defense, Defendant states that Plaintiff's claims are barred inasmuch as Plaintiff's alleged proprietary information does not constitute confidential trade secrets as such information is readily obtainable to the public, available from public sources and not the product of any great expense or effort.

105. As and for its Twenty-First Affirmative Defense, Defendant states that Plaintiff's claims against them are barred inasmuch as Plaintiff has not suffered and will not suffer immediate and irreparable injury, loss or damage.



100. As and for its Twenty-Second Affirmative Defense, Defendant states that Plaintiff's claims against them are barred inasmuch as Defendants have not acquired, disclosed and/or used any proprietary information, trade secrets or confidential information to the disadvantage of Plaintiff and/or to cause Plaintiff injury.

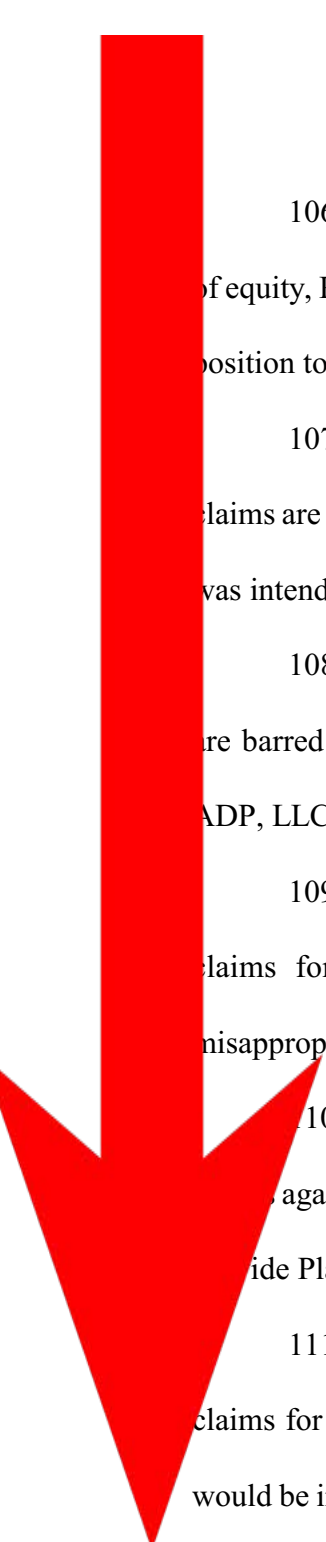
101. As and for its Twenty-Third Affirmative Defense, Defendant states Plaintiff's claims are barred because none of the subject restrictive covenants expressly identify ADP, LLC as a third-party beneficiary.

102. As and for its Twenty-Fourth Affirmative Defense, Defendant states that Plaintiff's claims for damages are barred inasmuch as Plaintiff has not and will not suffer any damages and has not and will not unlawfully lose any customers as a result of any of Defendant's alleged conduct at issue in the instant lawsuit.

103. As and for its Twenty-Fifth Affirmative Defense, Defendant states that Plaintiff's claims are barred inasmuch as Defendants are not engaging in or about to engage in conduct that may put any alleged proprietary information, trade secrets or confidential information in danger of destruction, concealment, waste, removal from the jurisdiction of this Court, or transfer to an innocent purchaser during the pendency of this action.

104. As and for its Twenty-Sixth Affirmative Defense, Defendant states that Plaintiff's claims are barred inasmuch as at no time material hereto has there or will there be a risk of inevitable disclosure of any alleged proprietary information, trade secrets or confidential information on behalf of Defendant.

105. As and for its Twenty-Seventh Affirmative Defense, Defendant states that Plaintiff's claims are barred inasmuch as at no time material hereto has Defendant threatened misappropriation of any alleged trade secrets of Plaintiff.



106. As and for its Twenty-Eighth Affirmative Defense, Defendant states that as a matter of equity, Plaintiff rather than Defendant should assume any alleged loss as Plaintiff was in a better position to protect its interests and avoid the alleged adverse consequences contained herein.

107. As and for its Twenty-Ninth Affirmative Defense, Defendant states that Plaintiff's claims are barred because none of the subject restrictive covenants expressly state that the covenant was intended for the benefit of ADP, LLC.

108. As and for its Thirtieth Affirmative Defense, Defendant states that Plaintiff's claims are barred because none of the subject restrictive covenants expressly authorize enforcement by ADP, LLC.

109. As and for its Thirty-First Affirmative Defense, Defendant states that Plaintiff's claims for damages are barred in whole or in part because none of Defendant's alleged misappropriation was willful or malicious.

110. As and for its Thirty-Second Affirmative Defense, Defendant states that Plaintiff's claims against it are barred because the granting of the relief requested in Plaintiff's Complaint will provide Plaintiff with an improper windfall.

111. As and for its Thirty-Third Affirmative Defense, Defendant states that Plaintiff's claims for prejudgment interest are barred in whole or in part inasmuch as the exaction of same would be inequitable as the award of same would be a windfall to Plaintiff and an unfair burden on Defendant.

112. As and for its Thirty-Fourth Affirmative Defense, Defendant states that Plaintiff's claims are barred by the equitable doctrine of unclean hands.

113. As and for its Thirty-Fifth Affirmative Defense, Defendant states that Plaintiff's claims are barred because the information at issue neither qualifies as a trade secret nor confidential

proprietary information under the circumstances as Plaintiff took no steps designed to reasonably safeguard this information.

Additional Affirmative Defenses

Defendant reserves the right to assert additional affirmative defenses which may be learned or disclosed through the discovery process.

WHEREFORE, having fully answered and responded to the allegations of Plaintiff's Complaint, Defendant respectfully requests that:


- A. Plaintiff's Complaint be dismissed with prejudice in its entirety;
- B. Each and every prayer contained within Plaintiff's Complaint be denied;
- C. Judgment be entered in favor of Defendant;
- D. All costs be awarded to Defendant and against the Plaintiff;
- E. Reasonable attorneys' fees be awarded to Defendant pursuant to §§ 542.335 and 588.01, Fla. Stat. and the subject restrictive covenants; and
- F. Defendant be awarded such other and further relief as this Court may deem just and proper.

DEFENDANT DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE

COUNTERCLAIM AND DEMAND FOR JURY TRIAL

Counter-Plaintiff, David Schwartz (hereinafter referred to as "Schwartz"), by and through undersigned counsel, sues the Counter-Defendant, ADP, LLC (hereinafter referred to as "ADP"), a Delaware limited liability company, and for his cause of action, declares and avers as follows:

- 1. This action seeks declaratory, injunctive, and equitable relief, compensatory damages, costs and attorneys' fees, for the unlawful termination of Plaintiff in retaliation against Plaintiff for objecting to certain activities, practices and policies of Defendant which were in violation of federal,



state and/or local laws, rules and/or regulations applicable to Defendant's business, conduct which is protected by Florida's Whistle-Blower's Protection Act, § 448.101, et seq., Florida Statutes.

2. This action is for damages in excess of Fifteen Thousand Dollars (\$15,000.00), vesting jurisdiction in this Court.


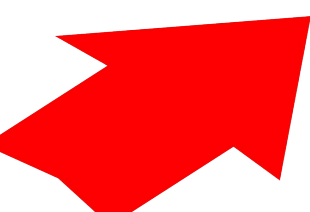
3. At all times material hereto, Schwartz was a U.S. citizen and resident of Lee County, Florida, over the age of eighteen (18) years, and otherwise sui juris.

4. At all times material hereto, ADP was authorized to do, and was doing, business in the state of Florida. ADP operates provides certain business outsourcing and other services to clients, including payroll, tax and benefits administration.


5. At all times material hereto, ADP employed Schwartz as a sales employee until his termination on or about July 18, 2018.

6. At all times material hereto, Schwartz was qualified for the position he held with ADP and performed his job competently.

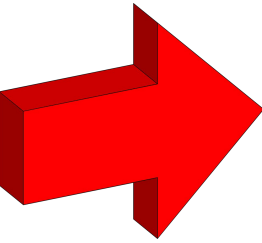
7. ADP claims to have achieved success in the industry by establishing a strong reputation for providing uncompromising, professional customer services to its clientele. However, while functioning as an ADP sales employee, Schwartz voiced his objections to several ADP activities, practices or policies that were in violation of federal, state and/or local laws, rules and/or regulations, including but not limited to the following:

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- A. Forging signatures on Florida Department of Revenue re-employment applications ("SUI app"). These SUI apps are related to the re-employment tax every business has to pay on the first \$7,000.00 of wages earned by employees. ADP sales employees must turn in completed SUI apps, inter alia, to ADP's implementation team, ADP's internal team that puts together all of ADP's new client orders. ADP sales employees

are trained, incentivized and pressured to submit these materials as quickly as possible so that they hit their sales quotas and earn the commissions associated therewith. As a way of expediting the process, and with ADP's full knowledge, the sales employees sign the SUI apps on behalf of the client. This oftentimes results in ADP business payroll clients receiving tax notices from Florida's Department of Revenue, along with assessed penalties and fees;



B. Pressuring and bribing unlicensed sales employees to sell Simple IRAs to their clientele (as opposed to SEP IRAs). ADP trains its sales employees – including those who are unlicensed in connection with the sale of retirement benefits – to push Simple IRAs, over SEP IRAs, on their clients for a simple reason. With SEP IRAs, the employer does not make its contributions until year end, as opposed to SIMPLE IRAs, where the employer and participants are making contributions each payroll period, allowing ADP to hold billions of dollars and generate compounded interest on the money while they hold it;



C. Falsifying social security numbers. When ADP signs on a new business client, ADP takes full level tax liability for the client and therefore sends out W2s to all of the clients' employees at the end of the year. If a social security number is not accurately entered (or falsely entered), an employee's earnings and taxes will be associated with someone else's tax return. However, ADP sales employees are trained, incentivized and pressured to submit these materials as quickly as possible so that they hit their sales quotas and earn the commissions associated therewith (and ADP starts collecting payroll deposits from the client as quickly as possible). Thus, as a way of expediting the process, and with ADP's full knowledge, the sales employees plug in

random social security numbers in order to get the client “up and running” and then will amend the forms after the fact, if possible.

8. Rather than attempt to cure the illegality of these activities, practices and policies, ADP simply ignored Schwartz’ objections and turned the proverbial blind eye to the above-described illegal and fraudulent conduct.

9. Moreover, ADP retaliated against Schwartz because of Schwartz’s objections by terminating his employment on or about July 18, 2018.

10. Since the time of his termination, and despite a duly diligent effort to do so, Schwartz has been unable to find substantially equivalent employment.

COUNT I - VIOLATION OF FLORIDA’S WHISTLE-BLOWER’S PROTECTION ACT

11. Schwartz realleges and reavers as if fully set forth herein paragraphs 1 through 10.

12. Schwartz is an employee, and ADP is an employer, within the meaning of § 448.101(2) and (3), Florida Statutes, respectively.

13. Schwartz, by and through his above-described acts and conduct, was acting consistent with his duties as a sales employee, as well as with federal, state and/or local laws, rules and regulations. Schwartz’ above-described acts and conduct constituted objections to ADP’s activities, practices and/or policies which were in violation of federal, state and/or local laws, rules and/or regulations, and were thus within the scope of activities delineated in and protected by § 448.102(3), Florida Statutes.

14. ADP retaliated against Schwartz for objecting to ADP’s activities, practices and/or policies which were in violation of federal, state and/or local laws, rules and/or regulations, including but not limited to terminating Schwartz’ employment.

15. As a direct result of Schwartz’ above-described activities, ADP engaged in the

above-described retaliatory acts and conduct in violation of Florida's Whistle-Blower's Protection Act, § 448.102(1) and (3), Florida Statutes.

16. ADP engaged in retaliatory acts and conduct against Schwartz with malice and reckless indifference to Schwartz's rights under Florida's Whistle-Blower's Protection Act.

17. Schwartz has suffered direct pecuniary losses as a result of ADP's above-described violations of Florida's Whistle-Blower's Protection Act, including lost wages and commissions, stock options and retirement benefits.

18. Schwartz has suffered, is now suffering, and will continue to suffer emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non-pecuniary losses as a direct result of ADP's violation of Florida Whistle-Blower's Protection Act.

19. Schwartz will suffer future pecuniary losses as a direct result of ADP's violation of Florida's Whistle-Blower's Protection Act, including lost wages and commissions, stock options and retirement benefits.

WHEREFORE, Plaintiff, David Schwartz, prays that this Honorable Court:

- A. Declare Defendant's conduct to be in violation of Plaintiff's rights under Florida's Whistle-Blower's Protection Act;
- B. Award compensation for all lost wages, benefits and other remuneration;
- C. Award compensatory damages to Plaintiff;
- D. Award Plaintiff costs and attorney's fees, pursuant to § 448.104, Fla. Stat.;
- E. Grant such other and further relief as may be deemed just and proper in the premises.

PADULA BENNARDO LEVINE, LLP
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By: s/Daniel R. Levine
Daniel R. Levine, Esq.
Florida Bar No. 0057861
Primary E-Mail: DRL@PBL-Law.com
Tertiary E-Mail: AK@PBL-Law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 29, 2019, I electronically filed the foregoing document with the Clerk of the Court via the ePortal system. I also certify that the foregoing document is being served this day via transmission generated by the ePortal system to the email address(es) of: Joelle H. Dvir, Esq., Mario M. Ruiz, Esq., and Timothy J. Lowe, Esq., Counsel for Plaintiff, McDonald Hopkins, LLC, 200 S. Biscayne Blvd., Suite 2600, Miami, FL 33131, E-Mail: jdvir@mcdonaldhopkins.com, mruiz@mcdonaldhopkins.com and tlowe@mcdonaldhopkins.com.

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