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UNITED TECHNOLOGIES & INFORMATION SERVICES, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

UNITED TECHNOLOGIES &
INFORMATION SERVICES, LLC, a
California limited liability company;

Plaintiff,

vs.

DATA41 ENTERPRISE SOLUTIONS, INC.,
a California corporation, and Does 1 to 10,
Inclusive,

Defendants.

DATA41 ENTERPRISE SOLUTIONS,
INC.,

Cross-complainant,

v.

UNITED TECHNOLOGIES &
INFORMATION SERVICES, LLC, a
California limited liability company; JAY
MARQUEZ, an individual; and ROES 1
through 10, inclusive,

Cross-defendants.

Case No. 30-2020-01161472-CU-BC-CJC

Assigned For All Purposes To:

Judge: Hon. Gregory H. Lewis
Dept: C26

**UNITED TECHNOLOGIES &
INFORMATION SERVICES, LLC'S
ANSWER TO CROSS-COMPLAINT OF
DATA41 ENTERPRISE SOLUTIONS,
INC.**

Complaint Filed: September 22, 2020
Trial Date: None Set

1 Cross-Defendant, UNITED TECHNOLOGIES & INFORMATION SERVICES, LLC
2 (“UTIS” or “Cross-Defendant”) for its Answer to the Cross-Complaint on file by DATA41
3 ENTERPRISE SOLUTIONS, INC. (“Data41” or “Cross-Complainant”) in this action, severing
4 itself from any and all other cross-defendants and answering alone, hereby admits, deny and allege
5 as follows:

6 **GENERAL DENIAL:**

7
8 Pursuant to Code of Civil Procedure § 431.30, UTIS hereby files a general denial to said
9 Cross-Complaint, and, answering each and all of the allegations contained therein, generally and
10 specifically denies, in the conjunctive and disjunctive, each and every allegation contained in said
11 Cross-Complaint.

12 Further responding to the Cross-Complaint, UTIS denies that by reason of any act of
13 omission, conduct or liability on its part, whether in the manner alleged or otherwise, Data41 was
14 damaged in the manner or amounts alleged, or in any other manner or amounts whatsoever.

15 Neither the Cross-Complaint in its entirety, nor any purported cause of action set forth
16 therein, alleges facts sufficient to constitute a cause of action against UTIS or at all.

17 **This answering Cross-Defendant further alleges by way of an Answer as follows:**

18 Notably, Data41 waited over *eleven* months after the resignation of its former Project
19 Manager, Jay Marquez, to file the present claims. Even now, Data41 does not seek any injunctive
20 relief or delineate a legal basis as to *why* it is entitled to an IT project awarded to UTIS. This is
21 hardly the conduct of a company that seeks to prevent, or mitigate, the loss of a critical business
22 opportunity caused by the alleged “misconduct” of Cross-Defendants.

23 Instead, now faced with the obvious weight of legal authority in favor of employee
24 mobility and open competition in California, Data41’s cross-claims are a tenuous attempt by
25 Data41 to avoid, or renegotiate, its payment obligations for professional services rendered by
26 UTIS under the Subcontractor Agreement, dated June 5, 2018 (the “Agreement”).

27 \\\

28 \\\

1 **AFFIRMATIVE DEFENSES:**

2 UTIS sets forth the following separate and independent affirmative defenses to each and
3 every purported cause of action contained in Data41's Cross-Complaint. In so doing, however,
4 UTIS does not concede that it has the burden of production or proof as to any affirmative defense
5 asserted below. Further, UTIS does not presently know all the factors concerning the conduct of
6 Data41 sufficient to state all affirmative defenses at this time. Accordingly, UTIS will seek leave
7 to amend this Answer, should it later discover facts demonstrating the existence of additional
8 affirmative defenses.

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State Any Cause of Action)**

11 1. The Cross-Complaint, and each purported count asserted against Cross-Defendant
12 therein, fails to state a claim upon which relief can be granted. Data41 has not established and
13 cannot establish the disclosure or use of any Data41 confidential, proprietary, or trade secret
14 information by UTIS. Moreover, Data41 has not established and cannot establish that its so-called
15 confidential, proprietary, or trade secret information is not merely information that is widely
16 known within the industry. Data41 has not established and cannot establish that UTIS was
17 involved in any improper solicitation of Data41 employees or clients, and cannot show how
18 Data41 has incurred damages in any way.

19 **SECOND AFFIRMATIVE DEFENSE**

20 **(Failure to Mitigate)**

21 2. Without admitting it engaged in any of the acts or conduct attributed to it in the
22 Cross-Complaint, answering Cross-Defendant is informed and believes and thereupon alleges that
23 Cross-Complainant is barred from recovery herein, in whole or in part, by reason of failure to
24 mitigate damages.

25 **THIRD AFFIRMATIVE DEFENSE**

26 **(Laches)**

27 3. Without admitting it engaged in any of the acts or conduct attributed to it in the
28 Cross-Complaint, Cross-Defendant is informed and believes, and on that basis alleges, that the

1 Cross-Complaint, and each and every purported cause of action contained therein, are barred by
2 the doctrine of laches, because Data41 delayed an unreasonable length of time in bringing
3 proceedings based on its claims, and Cross-Defendant has suffered prejudice as a result of this
4 delay.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 **(Unclean Hands)**

7 4. Without admitting it engaged in any of the acts or conduct attributed to Cross-
8 Defendant in the Cross-Complaint, Cross-Defendant is informed and believes and thereupon
9 alleges that Data41 is barred from recovery herein, because the hands of Cross-Complainant are
10 unclean.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 **(Ratification)**

13 5. Cross-Complainant has ratified and confirmed the acts and omissions of Cross-
14 Defendant, if any, of which Cross-Complainant now complains, and as a consequence, Cross-
15 Complainant is barred from recovery.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 **(Waiver)**

18 6. Without admitting Cross-Defendant engaged in any of the acts or conduct
19 attributed to it in the Cross-Complaint, this answering Cross-Defendant is informed and believes
20 and thereupon alleges that Cross-Complainant has engaged in conduct that constitutes a waiver of
21 rights regarding the claims alleged in the Cross-Complaint.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 **(Consent)**

24 7. Without admitting Cross-Defendant engaged in any of the acts or conduct
25 attributed to it in the Cross-Complaint, Cross-Defendant is informed and believes and thereupon
26 alleges that Data41, either expressly or impliedly, approved of, ratified, authorized or acquiesced
27 in the conduct of Cross-Defendant. Data 41 is therefore barred from recovery as a result of any
28 conduct on the part of Cross-Defendant, if any, because of Data41's approval, ratification,

1 authorization or acquiescence in that conduct.

2 **EIGHTH AFFIRMATIVE DEFENSE**

3 **(Absence of Deception)**

4 8. Data41's claim for Unfair Competition is barred on the grounds that UTIS's
5 conduct is not likely to mislead the public or unfairly harm Data41.

6 **NINTH AFFIRMATIVE DEFENSE**

7 **(Frivolous Claims)**

8 9. The Cross-Complaint, and each purported cause of action contained therein, is
9 barred to the extent that it was not brought in good faith and is frivolous. Accordingly, Cross-
10 Defendant is entitled to recover its reasonable expenses, including attorney's fees, incurred herein
11 as a matter of law pursuant to the Court's inherent authority and California Code of Civil
12 Procedure § 128.7.

13 **TENTH AFFIRMATIVE DEFENSE**

14 **(Compliance with Statute)**

15 10. The Cross-Complaint, and each purported cause of action contained therein, is
16 barred to the extent the conduct of Cross-Defendant at all times complied with all applicable
17 statutes, regulations and laws.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **(Outside Scope of Authority)**

20 11. The Cross-Complaint, and each purported cause of action stated therein, is barred
21 to the extent the alleged conduct of or statements by the agents of Cross-Defendant upon which
22 Cross-Complainant bases its claims, if they occurred at all, were done or made outside the course
23 and scope of such agents' authority.

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 **(Lack of Specificity)**

26 12. Data41's claims for Unfair Competition, Violation of Penal Code Section 502, and
27 Breach of Duty of Loyalty are barred because Data41 has failed to plead its claims with the
28 requisite particularity. Data41 has set forth no allegations describing with sufficient particularity

1 the statutory scheme purportedly violated by UTIS and has not set forth the facts supporting the
2 elements of the violation. Nor do Data41's allegations describe the alleged fraudulent business or
3 unfair practices with sufficient particularity, and Data41 has not set forth facts supporting the
4 elements of the violation.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 **(Independent Contractor)**

7 13. Data41's claim for Breach of Duty of Loyalty against UTIS fails because at all
8 relevant times herein, UTIS was an independent contractor, not an employee, of Data41.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 **(Invalidity of Contracts)**

11 14. Data41's claims are barred on the grounds that any no-hire and noncompetition
12 agreements are not valid contracts. These no-hire and noncompetition agreements unreasonably
13 and improperly purport to restrict the mobility of employees; in violation of public policy, antitrust
14 laws, and California Business Code §16600. Further, the agreements unreasonably, and
15 improperly, restrict solicitation.

16 **FIFTEENTH AFFIRMATIVE DEFENSE**

17 **(Improper Restraint on Competition & Employee Mobility)**

18 15. The Cross-Complaint and each purported count asserted against Cross-Defendant,
19 constitute and/or arise from an improper effort to restrain competition and employee mobility, in
20 violation of public policy and California Business Code §16600. Because the effect of each count
21 asserted against Defendants is to restrain competition and employee mobility, in violation of
22 public policy and California Business Code §16600, UTIS cannot be held liable under any of the
23 purported counts asserted against it.

24 **SIXTEENTH AFFIRMATIVE DEFENSE**

25 **(Privilege of Competition)**

26 16. Data 41's Cross-Complaint and each purported count asserted against UTIS, is
27 barred because UTIS is privileged to compete against Data41 under California law.
28

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 **(No Harm)**

3 17. The Cross-Complaint, and each purported cause of action contained therein, is
4 barred to the extent Data41 cannot show harm as a result of UTIS's alleged actions.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 **(Preemption)**

7 18. Data41's causes of action are preempted by, inter alia, the California Uniform
8 Trade Secrets Act and Business & Professions Code Section 16600.

9 **NINETEENTH AFFIRMATIVE DEFENSE**

10 **(Unjust Enrichment)**

11 19. Cross-Complainant's claims are barred, in whole or in part, because any such
12 recovery would be a windfall resulting in unjust enrichment to Data41. Data41 has knowingly and
13 substantially benefitted from the hard work and skill of UTIS, and has not compensated UTIS for
14 professional services rendered by UTIS under the terms of the Agreement, and therefore Data41 is
15 barred from recovery under any of the causes of action asserted against Cross-Defendant because
16 any such recovery would result in Data41's unjust enrichment.

17 **TWENTIETH AFFIRMATIVE DEFENSE**

18 **(Offset)**

19 20. Without admitting Cross-Defendant engaged in any of the acts or conduct
20 attributed to it in the Cross-Complaint, Cross-Defendant is entitled to set off from any recovery
21 Data41 may claim against it, the amounts for which Data41 is liable to Cross-Defendant, and
22 accordingly Data41's claims are barred, in whole or in part by UTIS's right of set-off or offset.

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 **(Failure to Establish Causation)**

25 21. Without admitting Cross-Defendant engaged in any of the acts or conduct
26 attributed to it in the Cross-Complaint, Data41 cannot recover the damages sought herein because
27 there is no causal relationship between the alleged wrongdoing and the injuries, if any, allegedly
28 suffered by Data41.

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 **(At-Will Employment)**

3 22. Without admitting this answering Cross-Defendant engaged in any of the acts or
4 conduct attributed to it in the Cross-Complaint, to the extent that Data41 alleges that UTIS
5 solicited Mr. Marquez to leave Data41's employ, UTIS is informed and believes, and on that basis
6 alleges, that at all times relevant herein, Mr. Marquez was an "at-will" employee of Data41, and free to
7 terminate his employment at any time, with or without cause, and with or without notice.

8 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

9 **(Equitable Estoppel)**

10 23. Without admitting Cross-Defendant engaged in any of the acts or conduct
11 attributed to it in the Cross-Complaint, Cross-Defendant alleges that each and every cause of
12 action contained in the Cross-Complaint is barred by reason of acts, omissions, representations
13 and courses of conduct by Data41 by which Cross-Defendant was led to rely to their detriment,
14 thereby barring, under the doctrine of equitable estoppel, any causes of action asserted by the
15 Cross-Complainant. Further, because Data41 had knowledge of UTIS's work practices and prior
16 relationships and failed to take reasonable steps to enforce different practices, Data41's claims are
17 barred by estoppel.

18 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

19 **(Superseding or Intervening Cause)**

20 24. The injuries and damages sustained by Data41, if any, were proximately caused by
21 the intervening and superseding actions of others, which intervening and superseding actions bar
22 and/or diminish Data41's recovery, if any, against this answering Cross-Defendant.

23 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

24 **(No Damages)**

25 25. Cross-Defendant alleges that Data41 fails to state a cause of action against this
26 answering Cross-Defendant because it fails to plead any damages with sufficient particularity, and
27 no damages exist, or were suffered, by Data41 as a result of Cross-Defendant's alleged conduct.
28

1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 **(Justification)**

3 26. This answering Cross-Defendant alleges that Data41 fails to state a cause of action
4 against Cross-Defendant because Cross-Defendant's conduct with regard to the matters alleged in
5 the Cross-Complaint, to the extent it occurred, was justified under the law.

6 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

7 **(Safe Harbor Provision)**

8 27. Cross-Complainant's cause of action for Violation of Penal Code Section 502 fails
9 because Penal Code § 502(h)(2) relieves Cross-Defendant from liability under § 502(c)(3) because
10 the Cross-Complaint does not allege an "injury" as defined in § 502(b)(10). The failure to plead an
11 "injury" is also fatal to a § 502(c)(2) claim. Under a plain reading of § 502(i), any alleged conduct
12 that does not cause an "injury" cannot be prosecuted under § 502(c)(2). This is because the
13 activity exempted from prosecution under §502(i) is any activity that does not cause such an
14 "injury."

15 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

16 **(No Attempt to Deceive or Wrongful Control)**

17 28. Cross Complainant's claim for Violation of Penal Code Section 502 is barred
18 because the Cross-Complaint alleges no fact that can remotely be construed as an act "to defraud,
19 deceive, or extort", therefore, liability is precluded. Moreover, Cross-Complainant does not allege
20 that UTIS accessed Data41's network or laptop(s) to wrongfully control or obtain property or data.

21 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

22 **(Corporate Entity Status)**

23 29. Cross Complainant's claim for Violation of Penal Code Section 502 is barred
24 because this answering Cross-Defendant is a California limited liability company ("LLC"), and
25 not a "person" as required by said statute.

1 **THIRTIETH AFFIRMATIVE DEFENSE**

2 **(Independent Cause)**

3 30. Any damages allegedly suffered by Data41, if any, result from causes independent
4 of any purported acts or omissions on the part of this answering Cross-Defendant, thereby
5 eliminating or reducing any alleged liability of Cross-Defendant.

6 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

7 **(Statute of Limitations)**

8 31. Cross-Defendant is informed and believes and thereon alleges that Cross-
9 Complainant's claims are barred by the applicable statutes of limitations, including Code of Civil
10 Procedure sections 337 and 339.

11 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

12 **(No Reciprocal Subcontracting Agreement)**

13 32. The Cross-Complaint, and each purported cause of action contained therein, is
14 barred because there is no "reciprocal subcontracting arrangement" between UTIS and Data41 as
15 referenced in the Cross-Complaint. The only contract between UTIS and Data41 is the
16 Subcontractor Agreement, dated June 5, 2018, which contains no such arrangement.

17 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

18 **(Essential Lawful Part of Business Operations)**

19 33. UTIS alleges the Cross-Complaint, and each purported cause of action contained
20 therein, is barred because the alleged conduct, if true, would be an essential lawful part of UTIS's
21 business operations and/or consistent with industry practice.

22 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

23 **(Lack of Standing)**

24 34. As a thirty-fourth and separate affirmative defense to each and every cause of
25 action stated in Data41's Cross-Complaint, UTIS alleges that Data41 lacks standing to bring its
26 claims as to all or a portion of the claims alleged in the Cross-Complaint.

1 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

2 **(Reservation of Rights)**

3 35. This answering Cross-Defendant alleges that it presently has insufficient
4 knowledge or information on which to form a belief as to whether it may have additional, as yet
5 unstated, defenses available. Cross-Defendant hereby reserves the right to assert additional
6 defenses in the event discovery indicates they would be appropriate.

7
8 **PRAYER**

9 WHEREFORE, this Cross-Defendant prays as follows:

- 10 1. That Cross-Complainant take nothing by way of its Cross-Complaint;
11 2. That the Cross-Complaint be dismissed with prejudice;
12 3. That Answering Cross-Defendant be awarded judgment in this action; and
13 4. That Cross-Defendant be awarded attorneys' fees and costs of suit incurred in this
14 action; and,
15 5. For such other and further relief as the Court may deem proper.

16 Dated: December 1, 2020

CHOWDHARY LAW, APC

17
18
19 By: 

Manbir S. Chowdhary
Attorneys for Plaintiff and Cross-Defendant,
UNITED TECHNOLOGIES &
INFORMATION SERVICES, LLC

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF ORANGE) ss.

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action; my business address is Chowdhary Law, APC, 5 Park Plaza,
6 Suite 200, Irvine, California.

7 On **December 1, 2020**, I served a copy ☒ / original ☐ of the foregoing document(s)
8 described as **UNITED TECHNOLOGIES & INFORMATION SERVICES, LLC'S ANSWER**
9 **TO CROSS-COMPLAINT OF DATA41 ENTERPRISE SOLUTIONS, INC** on the interested
parties in this action as follows:

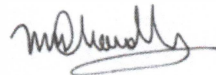
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Complainant, **Data41 Enterprise Solutions,**
Inc.

14 ☒ **BY ELECTRONIC FILING & SERVICE:** I served a true copy of each document to
15 e-mail addresses on the attached service list via OneLegal electronic service.

16 I declare under penalty of perjury under the laws of the State of California that the above
17 is true and correct.

18 Executed on **December 1, 2020** at Irvine, California.

19 

20 _____
21 Manbir Chowdhary
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