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Timothy C. Rote

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MAX ZWEIZIG,

Case No. 3:15-cv-2401

Plaintiff,

DEFENDANT ROTE ANSWER

v.

Whistleblower Retaliation (ORS 659A.230, ORS 659A.199); Retaliation for Opposing Unlawful Employment Practices (ORS 659A.030(1)(f)); Aiding and Abetting (ORS 659A.030(1)(g))

TIMOTHY C. ROTE, a citizen of the state of Oregon, **NORTHWEST DIRECT TELESERVICES, INC.**, an Oregon for-profit corporation, **NORTHWEST DIRECT MARKETING OF OREGON, INC.**, an Oregon for-profit corporation, **NORTHWEST DIRECT MARKETING, INC.**, an Oregon for-profit corporation, **NORTHWEST DIRECT OF IOWA, INC.**, an Iowa for-profit corporation, **ROTE ENTERPRISES, LLC**, an Oregon limited liability company, **NORTHWEST DIRECT MARKETING, INC.**, aka Northwest Direct Marketing (Delaware), Inc., a Delaware Corporation, and **DOES 1 through 5**,

DEMAND FOR JURY TRIAL

Defendants.

DEFENDANT ROTE'S ANSWER TO PLAINTIFFS' COMPLAINT

Pursuant to the Federal Rules of Civil Procedure, Defendant, Rote, denies, both generally and specifically, each, every and all of the allegations of Plaintiff, Zweizig, and each and every cause of action contained therein, and the whole thereof; this Answering Defendant further denies that Plaintiff was damaged and/or injured in any sum or sums, or at all, by reason of any negligent act and/or omission to, or any other conduct on the part of this Answering Defendant, or any of his agents and/or employees.

Defendant ROTE submits this answer to the Amended Complaint of plaintiff Max Zweizig. Any allegation not specifically responded to below is DENIED. Rote responds as follows to the numbered paragraphs of the Complaint:

1. In answer to paragraphs 3 and 4 defendant admits to jurisdiction and venue and denies the specific allegations herein.

2. Admit 5 through 8, 19 and 22

3. Defendant denies the allegations contained in paragraph 13, 15, 17 through 19 and 25 through 57 and each and every remaining allegation contained in plaintiff's complaint not otherwise admitted herein.

4. In answer to paragraph 9, admits that Northwest Direct of Eugene, Inc. is a for-profit corporation organized under the laws of the State of Oregon with its principal place of business in Oregon and deny the remained of the allegations.

5. Answering paragraph 10 deny in part. Admit the allegation in paragraph 10 Defendant Northwest Direct of Iowa, Inc. ("NDI") is a for-profit corporation organized

longer in business.

6. Answering paragraph 11 admit but Its sole members is Rote

7. Answering paragraph 12 Defendant Northwest Direct Marketing (Delaware), Inc. ("NDM Delaware"), is a for-profit corporation organized under the laws of the state of Delaware. NDM Delaware is no longer in business.

8. In answer to paragraph 14, defendant admits the operation of teleservices businesses, including call centers owned and operated by other corporations and deny each and every other allegation contained herein.

9. Admit to paragraph 16 as to the application of law and jurisdiction.

10. In answer to paragraph 20, admit that there was a protective order , but deny characterizations as alleged herein.

11. In answer to paragraph, 21, admit that plaintiff's claims were submitted to arbitration and ruled on.

12. In answer to paragraph 23 admit that plaintiff files a lawsuit in the United State District Court against defendants and deny the remaining allegations.

13. In answer to paragraph 24, defendant admits that Rote is the author of the sitting duck Portland blog and deny the remaining allegations herein.

AFFIRMATIVE DEFENSES

FURTHER, AS SEPARATE AFFIRMATIVE DEFENSES to each and every cause of action of the complaint, this Answering Defendant is informed and believes, and on such information and belief alleges as follows:

FIRST AFFIRMATIVE DEFENSE

14. As a First and Separate Affirmative Defense, this Answering Defendant alleges that the First Claim For Relief fails to state facts sufficient to constitute a cause of action against this Answering Defendant in that this Answering Defendant is not personally indebted to Plaintiff in any amount, nor has he had any dealings with Plaintiff in an individual capacity. This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is based on information and belief. This affirmative defense is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery

SECOND AFFIRMATIVE DEFENSE

15. As a Second and Separate Affirmative Defense, this Answering Defendant alleges that the Second Claim For Relief fails to state facts sufficient to constitute a cause of action against this Answering Defendant in that this Answering Defendant is not personally indebted to Plaintiff in any amount, nor has he had any dealings with Plaintiff in an individual capacity. This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is based on information and belief. This affirmative defense is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

THIRD AFFIRMATIVE DEFENSE

16. As a Third and Separate Affirmative Defense, this Answering Defendant alleges that the Third Claim Of Relief fails to state facts sufficient to constitute a cause of action against this Answering Defendant in that this Answering Defendant is not personally indebted to Plaintiff in any amount, nor has he had any dealings with Plaintiff in an individual capacity. Further there is no privity of contract between this Answering Defendant in an individual capacity, and Plaintiff. If this Answering Defendant was working as an agent of NDT or the
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other Corporate Defendants , which is not admitted but denied, then this Answering Defendant claims indemnity from said Defendant's. This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is based on information and belief. This affirmative defense is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

FOURTH AFFIRMATIVE DEFENSE

(Arbitration and Award)

17. As a Fourth and Separate Affirmative Defense, this Answering Defendant alleges that plaintiff and defendant NDT have already completed arbitration on the Plaintiff's allegations herein, an award was entered and was reduced to judgment. Plaintiff has not worked for NDT since 2003. This Answering Defendant is not responsible for the unsecured debts, if any, of NDT or the other corporate Defendant's nor are they responsible for the unsecured debts of each other. This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is based on information and belief. This affirmative defense is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

18. As a Fifth and Separate Affirmative Defense, this Answering Defendant alleges that Plaintiff has failed to comply with the provisions of ORS 95.200-95.300, therefore the complaint and Third Claim of Relief contained therein is barred by the statute of limitations. Moreover, that Plaintiff is already asserted the same claim with the same Plaintiff and Defendants and are using this cause of action to resurrect an unsuccessful action already taken. This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense

SIXTH AFFIRMATIVE DEFENSE

(Res Judicata)

19. As a Sixth and Separate Affirmative Defense, this Answering Defendant alleges that Plaintiff has already litigated on the parties to be included on the First and Second Claims, wherein the Defendant was dismissed with prejudice as a party. For Relief, that the sole party identified was NDT and that said claims against all Defendants are barred by Res Judicata and the statute of limitations. Only one Defendant, NDT, was the employer of Plaintiff. This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is based on information and belief. This affirmative defense is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

SEVENTH AFFIRMATIVE DEFENSE

(Re-Litigation Legal Fees)

20. As an Seventh and Separate Affirmative Defense, this Answering Defendant alleges that Plaintiff has failed to comply with the provisions of the underlying employment agreement, petitioned the arbitrator for additional legal fees and was denied and also requested such fees at confirmation of the award and was denied. Plaintiff is again attempting to re-litigate the legal fee issues, to offset the costs of collection by asserting additional claims as well as asserting punitive damages that have no basis in statute or fact and therefore the complaint and each cause of action contained therein is barred by the statute of limitations.
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Moreover, the question of awarding legal fees for perceived retaliation was already decided by the arbitrator and the answer to that is no award of legal fees, as the contract so requires. If the action is deemed to be an employment action it must be brought under the terms of the contract, which precludes legal fees and punitive damages. This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is based on information and belief. This affirmative defense is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

21. As a Eighth and Separate Affirmative Defense, this Answering Defendant alleges that Plaintiff failed to mitigate his damages, if any. To the Defendant's knowledge, Plaintiff has not been engaged as an IT professional in the last 12 years. This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is based on information and belief. This affirmative defense is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

NINTH AFFIRMATIVE DEFENSE

(Due Process)

22. As a Ninth and Separate Affirmative Defense, this Answering Defendant alleges that the alleged acts and omissions of this Answering Defendant & the Plaintiff's demand for Punitive damages as alleged for civil fraud are unconstitutional. An award of punitive damages would violate the Defendants' rights to due process and equal protection under the Constitution of the United States. This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is based on information and belief. This affirmative defense is likely

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TENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

23. As a Tenth and Separate Affirmative Defense, this Answering Defendant alleges that with regard to Plaintiffs' claims Defendant invokes the Doctrine of Unclean Hands as the Defendant alleges that the Plaintiff & Plaintiff counsel acted in a dishonest or fraudulent manner with respect to the dispute at issue in this case, regularly accusing Defendant Rote of fraud and other crimes and using the litigation process itself to both harass and punish Rote financially for refusing to pay the debt of NDT. This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is based on information and belief. This affirmative defense is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

ELEVENTH AFFIRMATIVE DEFENSE

(Reasonable Care)

24. As a Eleventh and Separate Affirmative Defense, this Answering Defendant alleges that the Plaintiff's claims are barred, in whole or in part, because Defendant exercised reasonable care to prevent and correct promptly any alleged discriminatory and/or retaliatory behavior. This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is based on information and belief. This affirmative defense is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

TWELTH AFFIRMATIVE DEFENSE

(Failure to Prevent)

25. As a Twelfth and Separate Affirmative Defense, this Answering Defendant alleges that the Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to take advantage of any preventive or corrective opportunities provided by Defendant to avoid harm or otherwise. . This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is based on information and belief. This affirmative defense is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

THIRTEENTH AFFIRMATIVE DEFENSE

(Absence of Malice)

26. As a Thirteenth and Separate Affirmative Defense, this Answering Defendant alleges that it has not acted with malice, reckless indifference or fraud toward Plaintiffs and, therefore, Defendant cannot be liable for punitive damages. This affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is based on information and belief. This affirmative defense is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

FOURTEENTH AFFIRMATIVE DEFENSE

(Good Motive)

27. As a Fourteenth and Separate Affirmative Defense, this Answering Defendant alleges that all statements made by the Defendant were made with good motive and were fair comments made as a private citizen exercising his right of free speech, discussing matters of business importance, as a concerned citizen of the community. Plaintiff is not a member of the

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Portland Metro community. This affirmative defense is for the purpose of avoiding any waiver
of the affirmative defense and is based on information and belief. This affirmative defense is
likely to have evidentiary support after a reasonable opportunity for further investigation or
discovery.

FIFTEENTH AFFIRMATIVE DEFENSE

(Issue Preclusion)

28. As a Fifteenth and Separate Affirmative Defense, this Answering Defendant
alleges that the issues before the court have already been resolved with respect to NDT. This
affirmative defense is for the purpose of avoiding any waiver of the affirmative defense and is
based on information and belief. This affirmative defense is likely to have evidentiary support
after a reasonable opportunity for further investigation or discovery.

SIXTEENTH AFFIRMATIVE DEFENSE

29. This Answering Defendant presently has insufficient knowledge and
information upon which to form a belief as to whether he may have additional, and as yet
unstated, affirmative defenses available. As such, this Answering Defendant reserves the right
to seek leave of Court to amend his Answer to assert additional affirmative defenses in the
event that discovery reveals facts which render them appropriate

FIRST COUNTERCLAIM

(Defamation)

30. As a First and Separate Counterclaim, this Answering Defendant alleges that Plaintiff and others defamed him and his affiliates. DEFENDANT believes that PLAINTIFF, PALINTIFF COUNSEL & OR OTHER related parties contacted The Honorable Robert E. Jones Chamber alleging the DEFENDANT intended to harm or may pose a threat to Judge Jones the evening of or at his Life Time Achievement Award ceremony, prompting the U.S. Marshall service to contact DEFENDANTS counsel (IN THIS MATTER) and DEFENDANT ROTE. The information provided the U.S. Marshal service was that Judge Jones was contacted and directed to a blog post written by Defendant, which Plaintiffs represented as a threat to Judge Jones. The intent of the contact with Judge Jones was to influence the litigation already before Judge Stewart, presumably to influence the decision on the summary judgment motion still under advisement. As a result of the contact and statement, Defendant seeks consequential damages of \$1 million and punitive damages of \$5 million. Defendant also seeks leave to join Parties to this lawsuit as Defendant's with respect to this claim.

SECOND COUNTERCLAIM

(Interference)

31. As a Second and Separate Counterclaim, this Answering Defendant alleges that Plaintiff is seeking to sieze and convert property owned by NDM to his own by asserting falsely that the protective order precludes NDT's right to determine the confidentiality to be afforded forensic reports done on its owned computers and hard drives. As a result of this behavior by Plaintiff, Defendant's effort to generate revenue from advertising on the blog have been delayed substantially, resulting in damages of no less than \$500,000.

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THIRD COUNTERCLAIM

(Abuse of Process & Malicious Prosecution)

32. As a Third and Separate Counterclaim, this Answering Defendant alleges that Plaintiff is engaged in harassment in the form of Abuse of Process and Malicious Prosecution, pursuing the claims for the benefit of other non-named Plaintiff's and designed to intimidate and harass Rote as an individual. As a result of this behavior Defendant has been damages in the amount of no less than \$100,000.

FOURTH COUNTERCLAIM

33. This Answering Defendant presently has insufficient knowledge and information upon which to form a belief as to whether he may have other COUNTERCLAIMS. As such, this Answering Defendant reserves the right to seek leave of Court to amend his Answer to assert additional COUNTERCLAIMS in the event that discovery reveals facts which render them appropriate.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for the following relief:

- a. Compensatory damages in the amount of \$1,600,000.00;
- b. Punitive damages in the amount of \$5,000,000.00;
- c. Temporary and permanent injunctive relief and any other equitable relief that

Plaintiff's from further interfering with Defendant's blog, book and future
movie revenue;

- d. Attorneys' fees and expert witness fees as appropriate;
- e. Statutory interest and reasonable costs incurred in pursuing this matter;
- f. Any other relief appropriate under the circumstances.

Dated: January 28, 2016

/s/ Timothy C. Rote

Timothy C. Rote

Defendant

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **Answer, Affirmative Defenses and Counterclaim of Corporate Defendants** on:

Joel Christiansen
Vogele & Christiansen
812 NW 17th Avenue
Portland, OR 97209
Email: joel@oremploymentlawyer.com

by electronic means to each of the foregoing through the Court's electronic case filing system on the date set forth below.

Dated this 28th day of January, 2016.

Timothy C Rote

s/ Timothy C. Rote

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