

CAUSE NO. DC-21 -07558

**COMPU TECH TAX SERVICES,
LLC; KRISHAN ARORA,**

Plaintiffs-Garnishors,

v.

RAJENDRA PATEL,

Defendant-Debtor

BANK OF AMERICA

Garnishee.

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IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

298TH JUDICIAL DISTRICT

**DEFENDANT RAJENDRA PATEL’S ORIGINAL ANSWER, VERIFIED
DENIALS, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

NOW COMES, Defendant Rajendra Patel (“Patel”), who makes and hereby files this Original Answer, Verified Denials, Affirmative Defenses, and Counterclaims against Plaintiffs Krishan Arora (“Arora”) and Compu Tech Tax Service, LLC (“Compu Tech”), and would respectfully show unto the Court the following:

I.

GENERAL DENIAL

1. Subject to such stipulations and admissions as may hereafter be made, Defendant asserts a general denial as authorized by Texas Rule of Civil Procedure 92 and generally denies each and every, all and singular, allegations contained in Plaintiffs’ Petition and demands strict proof thereof.

2. Defendant respectfully requests that Plaintiffs be required to prove the charges and allegations against Defendant by a preponderance of the evidence in accordance with the Constitution and laws of the State of Texas.

3. Defendant reserves the right to amend this pleading, as is the right and privilege afforded to her under the Texas Rules of Civil Procedure and the laws of the State of Texas.

II.

VERIFIED DENIAL

4. Defendant asserts a verified denial that the written instrument(s) upon which Plaintiffs' Petition is founded is without consideration, or that the consideration of the same has failed in whole or in part.

5. Notice of proof of loss, a claim for damage, or other demands for records or information are denied.

III.

AFFIRMATIVE DEFENSES

6. Defendant alleges that Plaintiffs have suffered no compensable damage or injury or, in the alternative, that the actions and omissions of Plaintiffs, their agent(s), representative(s), and consultant(s) and/or other various third parties were the sole proximate cause of the alleged injuries and damages, if any, sustained by Plaintiffs.

7. Defendant alleges that Plaintiffs have failed to take adequate steps to mitigate their damages, if any.

8. Defendant alleges that Plaintiffs have failed to satisfy all conditions precedent to their claims.

9. Defendant alleges waiver of any alleged breach and/or release of any duty owed to Plaintiffs and/or estoppel.

10. Defendant alleges that Defendant owed no fiduciary duties to Plaintiffs.

11. Moreover, Defendant alleges he had no duty to disclose the information that Plaintiffs allege Defendant wrongfully withheld.

12. Defendant alleges the affirmative defense of fraud.

13. Defendant asserts that the transactions or agreements discussed below and any alleged misrepresentations by Defendant were the result of Plaintiffs' fraud.

14. Defendant alleges that Plaintiffs are barred from recovery, in whole or in part, by the doctrine of unclean hands. For example, each of the transactions between Plaintiffs and Defendant were the result of Plaintiffs' fraud and breach of fiduciary duties.

15. Defendant asserts the affirmative defenses of estoppel, equitable estoppel, and quasi-estoppel.

16. Defendant asserts the affirmative defense of justification.

17. Defendant alleges that the amount Plaintiffs allege is owed does not take into account all just and lawful offsets, credits, and payments.

18. Defendant asserts the "business judgment rule." Specifically, all relevant acts or omissions allegedly taken by Defendant were within the honest exercise of his business judgment and discretion.

19. Defendant alleges the affirmative defense of license.

20. Defendant alleges that he is not responsible for any loss caused by Plaintiffs' own failure to perform, intentional misconduct, or other act or omission.

21. Defendant pleads that Plaintiffs' request for exemplary damages is limited by TEX. CIV. PRAC. & REM. CODE § 41.008.

22. Defendant reserves the right to amend and/or supplement these affirmative defenses pursuant to the Texas Rules of Civil Procedure the Court's Docket Control Order.

IV.

ATTORNEYS' FEES AND COSTS

23. Defendant requests the Court to award him costs and reasonable and necessary attorney's fees under the Texas Theft Liability Act. Defendant further seeks to recover his costs and/or reasonable and necessary attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §§ 37.001, et seq., and 38.001, et seq.

V.

RULE 193.7 NOTICE

24. Pursuant to Rule 193.7, Defendant hereby gives notice that any and all documents produced by Defendant may be used against Plaintiffs at any pretrial proceeding or at trial without the necessity of authenticating the documents. This includes, but is not limited to, all Defendant-produced documents provided during the course of discovery. Therefore, Defendant requests that Plaintiffs assert the specific bases for any objection to the authenticity of any such documents within ten (10) days of its production.

VI.

PRAYER

25. **WHEREFORE, PREMISES CONSIDERED,** Defendant respectfully requests the above answer be submitted to the Court and Jury by this Defendant and, upon final hearing of this matter, Defendant prays that Plaintiffs take nothing; that this Defendant be allowed to recover the costs and reasonable attorney fees that have been incurred by reason of the charges and allegations of Plaintiffs; that the Court enter a judgment declaring the rights of the parties; and that the Court grant Defendant such other and further relief, both special and general, at law and in equity, to which Defendant may himself to be justly entitled.

VII.

COUNTERCLAIMS

COMES NOW, Counter-Plaintiff **RAJENDRA PATEL, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF COMPU TECH TAX SERVICE LLC**, to file these Counterclaims against Counter-Defendants **KRISHAN ARORA** and **COMPU TECH TAX SERVICE LLC**, and would respectfully show unto the Court the following:

A. DISCOVERY AND DAMAGES

26. Counter-Plaintiff intends to conduct discovery under level 2 of Rule 190 of the Texas Civil Rules of Civil Procedure. Counter-Plaintiff seeks monetary relief over \$250,000 but not more than \$1,000,000 and non-monetary relief.

B. PARTIES

27. Counter-Plaintiff Rajendra Patel brings these counterclaims in his individual capacity and derivatively on behalf of Compu Tech Tax Service LLC, a domestic limited liability company, as a 50% managing member of Compu Tech Tax Service LLC.

28. Counter-Defendant Krishan Arora is an individual who resides in Irving, Texas, and may be served at 8700 Broken Point Drive, Irving, Texas 75063-4800, or wherever he may be found.

29. Counter-Defendant Compu Tech Tax Service LLC is a domestic limited liability company doing business in Dallas County, Texas, which may be served through its registered agent and member, Krishan Arora, at 8787 MacArthur Blvd., Suite 120-A, Irving, Texas, 75063-5406, or wherever he may be found.

C. JURISDICTION AND VENUE

30. Jurisdiction is proper because the amount in controversy exceeds the minimum jurisdictional limits of this Court. Venue is proper pursuant to Texas Civil Practice and Remedies

Code § 15.002 because Dallas County, Texas is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred, the county of defendant's residence, or the count of the defendant's principal office.

D. FACTS

31. Counter-Plaintiff Rajendra Patel ("Patel") has been an Enrolled Agent since 2013. Prior to 2020, Patel primarily provided remote tax/accounting services to foreign individuals and business clients from his office, located at 477 Mono Street, Apt. B, Mammoth Lakes, California 93546.

32. On or about August 25, 2020, Patel received an email regarding a listing to buy a "well-established" tax and accounting practice located in Irving, Texas (operating as Compu Tech Consultants, Inc. and/or Comp Tech Consultants Corporation). *See* Exhibit A: Listing for Tax Practice. Specifically, the listing explained that the owner of the practice, Counter-Defendant Arora, was "looking to stay in the practice but sell 50% of the business as a partnership, then phase out the remainder over a few years." *Id.* Further, Patel was informed that the annual gross revenues for the practice were approximately \$310,000.00 and it was a "turn-key practice . . . with an experienced staff in place . . . that would be the perfect size and opportunity for an individual ready for partnership in a consistently growing and profitable firm." *Id.*

33. Patel responded to the listing for Arora's tax and accounting practice to express his interest in purchasing the practice described in the listing. *Id.* Patel further informed the listing agent, Accounting Practice Sales (APS), that he would be willing to move his tax/accounting practice from California to Dallas, Texas if he decided to move forward with buying-in to the practice. *Id.*

34. Patel met with Arora in September of 2020, to discuss the listing and negotiate the terms of an agreement for Patel to buy 50% of Arora's tax and accounting practice in Texas. Patel and Arora agreed that Arora would form a new entity in Texas to which Arora would transfer the assets of his then-existing tax and accounting practice (i.e. Compu Tech Consultants, Inc. and/or Comp Tech Consultants Corporation), including the furniture, fixtures, software licenses, intellectual property, trademarks, customer database, merchant accounts, and equipment for the same. Patel would then purchase 50% of the membership units of the newly formed entity.

35. On or about October 9, 2020, Compu Tech Tax Service LLC ("Compu Tech") was formed by Counter-Defendant Krishan Arora ("Arora"). Exhibit B: Cert. of Formation. Arora was listed Compu Tech's registered agent, managing member, and organizer. *Id.* Compu Tech was formed to provide tax services in Texas and for the purpose of receiving the assets associated with Arora's tax and accounting practice in furtherance of the parties' partnership.

36. On or about October 22, 2020, Arora and Patel signed a Membership Unit Transfer Agreement regarding Arora's desire to sell Patel 50% of his tax and accounting practice in Texas. Exhibit C: Membership Unit Transfer Agreement. Per the Agreement, Patel would receive 500 membership units in Compu Tech, free and clear of all liens, claims, charges, restrictions, equities or encumbrances of any kind, in exchange for Patel's payment of \$395,000 to the company. *Id.* §§ 1.01-1.02. The payments were to be made as follows:

- a. Upon the execution of the Agreement, Patel would pay Compu Tech \$31,000 as Earnest Money;
- b. At the Closing on October 31, 2020, Patel would pay the amount of \$164,000 by cashier's check or wire transfer; and
- c. At the Closing on October 31, 2020, Patel would execute and deliver a promissory note payable to Compu Tech for the principal amount of \$200,000 payable to Compu Tech, plus interest at 5 percent per annum

payable in 36 equal monthly payments of principal and interest in the amount of \$5,994.18, with the first installment due on or before January 28, 2021.

Ex. C § 1.02.

37. The Membership Agreement also contained the following provisions and representations:

- a. Sect. 4.01: Seller will cause the Company give to Buyer and to its agents and representatives (including, but not limited to, accountants and lawyers) full and complete access during normal working hours to any and all of the properties, assets, books, records and other documents of the Company to enable Buyer to make such examination of the business, properties, assets, books, records, and other documents of the Company as Buyer may determine, and Seller will furnish, and will cause the Company to furnish, to Buyer such information and copies of such documents and records as Buyer shall reasonably request.
- b. Sect. 5.02: The obligation of Buyer to purchase the Subject Units is subject to the fulfillment of the following conditions:
 - i. There shall not be any material error, misstatement or omission in the representations and warranties made by Seller in this Agreement; all representations and warranties by Seller contained in this Agreement or in any written statement delivered by Seller to Buyer pursuant to this Agreement shall be true in all material respects at and as of the Closing as though such representations and warranties were made at and as of said time;
 - ii. Seller shall have performed and complied with all the terms, provisions and conditions of this Agreement to be performed and complied with by Seller at or before the Closing; and
 - iii. Seller shall have acquired the assets for the accounting and tax preparation practice of Compu Tech Consultants Inc. which include the furniture, fixtures, software licenses, intellectual property, trademarks, customer database and equipment of the accounting practice as more fully described and listed in Exhibit A.

- c. Sect. 6.01: If Seller fails to comply with this Agreement, Seller shall be in default, and Purchaser may terminate this contract and receive the Earnest Money thereby releasing both parties from this contract.
- d. Sect. 7.02: Both the buyer and other member of the Company, Krishan Arora, as equal owners shall spend equal amounts of time and effort on the Company's business practice. Both Buyer and Mr. Arora shall devote their time and effort at the location of the Company during normal working hours for the tax preparation business with the understanding that the hours during tax season, January through May of each year, will require their presence at least 5 days a week for extended hours each day to serve clients and perform the duties of the Company's business.

Ex. C.

38. Finally, the Membership Agreement contained the following list of assets that were to be acquired by Compu Tech from Arora's prior tax and accounting business(es) (Compu Tech Consultants, Inc. and/or Comp Tech Consultants Corporation):

<u>LIST OF ASSETS :</u>	<u>100%</u>
CLIENT LIST	\$ 20,000.00
OFFICE FURNITURE & FIXTURES , AND EQUIPMENT (EXCLUDING VEHICLE) PRACTICE SOFTWARE	\$ 50,000.00
AGREEMENT NOT TO COMPETE	\$ 70,000.00
GOODWILL	\$650,000.00
<u>GRAND TOTAL</u>	<u>\$790,000.00</u>



Ex. C.

39. Patel subsequently made the initial payments to Compu Tech and Arora in accordance with the Agreement, and the parties signed a Pledge Agreement and Promissory Note for the remaining payments as indicated above on or about October 31, 2020. Exhibit D: Pledge

Agreement; Exhibit E: Promissory Note. Arora also issued Patel a Membership Certificate memorializing Patel's acquisition of 500 Units or 50% ownership interest in Compu Tech. Exhibit F: Certificate of Membership Units. A Certificate of Correction for Compu Tech was filed with the Texas Secretary of State to add Patel as a member of the company. Exhibit G: Certificate of Correction.

40. Patel and Arora, however, began having disagreements regarding the management and operations of Compu Tech from the beginning. For example, Patel and Arora could not agree about how to account for Compu Tech's payroll for the month of October of 2020, which was before Patel became a member of the company.

41. Further, Patel and Arora had disagreements regarding the work they were each to perform for the company. Specifically, Patel began working day and night for the company from the beginning of November 2020, in providing tax and accounting services to Compu Tech's clients. Whereas, Arora performed little to no services on behalf of the company, because he said he was too old to do so.

42. Patel also realized that Arora had not transferred all the assets from his prior tax and accounting practice to Compu Tech as he had agreed, including merchant accounts and other assets. As a result, Patel requested Arora to transfer all the assets to Compu Tech on multiple occasions in November and December of 2020. Ultimately, Arora told Patel that all such assets, including merchant accounts, were properly transferred to Compu Tech on December 4, 2020.

43. Compounding matters, Arora refused to allow Patel to examine various business records for Compu Tech, including documents and information related to its properties, assets, books, records and other information. In particular, Arora never shared the password for Compu Tech's merchant account with Patel, Arora refused to provide Patel a copy of the lease agreement

for Compu Tech's premises, and refused to allow Patel to examine the company's checkbook(s) and payroll documents.

44. Upon information and belief, Patel discovered that Arora was diverting sales and revenue generated by Compu Tech to Arora's personal bank account(s) or bank account(s) associated with Arora's numerous other businesses. In fact, Arora would often have customers of Compu Tech pay him directly for the tax/accounting services they received, including requesting them to make payments to his personal bank account or issue checks in his name. Patel also discovered that Arora was paying employees from Compu Tech's business account for work they performed for Arora personally and/or work they provided to benefit Arora's other businesses.

45. Then, in or around March of 2021 (less than five months into Patel and Arora's business relationship), Arora informed Patel that he would be terminating the parties' prior agreement to own and operate Compu Tech together. Arora demanded Patel to either: (1) buy Arora out of his 50% ownership interest in the amount of \$800,000; or (2) sell Arora his 50% ownership interest in the amount of \$100,000, plus the value of his contributions to the company. *See Exhibit H: Emails between the Parties; Exhibit I: Emails between the Parties.*

46. In response to this ultimatum, Patel insisted that he had no desire to terminate their agreement and explained that he uprooted his entire life in moving from California to Texas for the sole purpose of working with Arora in managing and operating Compu Tech. *See Ex. H; Ex. I.*

47. On or about May 26, 2021, Patel learned that Arora was attempting to transfer \$180,000 from Compu Tech's business account with Bank of America to an unknown trust account, without Patel's knowledge or authorization. *See Exhibit J: Copy of Check.* However, Patel stopped the payment before it went through and transferred the funds in Compu Tech's

account to his personal account in order to prevent Arora from absconding with the company's funds. Arora then closed Compu Tech's business account with Bank of America and opened a new account over which he had sole authority/control, without Patel's authorization. Finally, Arora filed a Certificate of Amendment with the Texas Secretary of State on behalf of Compu Tech, which purports to remove Patel as a member of the company. Exhibit K: Certificate of Amendment.

48. Since at least May 31, 2021, Patel has not received, nor been able to access, any information or records regarding the status, management, or operations of Compu Tech. Instead, Patel received a letter from Arora's attorney on June 4, 2021, asking Patel to clear up four allegedly suspicious transactions in the company's records. Exhibit L. On June 11, 2021, Patel received another letter from Arora's attorney informing that Arora would be accelerating the Promissory Note from October 31, 2020, due to Patel's failure to make a monthly installment payment under the Note on May 28, 2021. Exhibit M.

49. Counter-Plaintiff Patel, therefore, respectfully requests this Court to grant the relief requested below as a result of the improper acts and omissions of Counter-Defendants described above.

E. DERIVATIVE PROCEEDING

50. Counter-Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

51. Counter-Plaintiff brings this lawsuit individually and as a derivative proceeding under Tex. Bus. Orgs. Code § 101.463.

52. Patel and Arora are the only members of Compu Tech, which is a closely held limited liability company as defined by Tex. Bus. Orgs. Code § 101.463(a). Since Compu Tech is

a closely held limited liability company, the requirements and procedures set forth in Tex. Bus. Orgs. Code §§ 101.452-101.460 do not apply here.

53. Patel is a member of Compu Tech and brings this action, both for his individual benefit and derivatively on behalf of Compu Tech, against Counter-Defendants Arora (a governing person, member, or officer of the company) and Compu Tech.

F. CAUSES OF ACTION

Count 1 – Breach of Contract

54. Counter-Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

55. The parties executed the Membership Unit Transfer Agreement on or about October 22, 2020, which is a valid and enforceable agreement.

56. Counter-Plaintiff fully performed his contractual obligations under the Agreement. Alternatively, to the extent Counter-Plaintiff failed to perform any part of the Agreement, Counter-Plaintiff was excused from performing because Counter-Defendants materially breached and/or repudiated the Agreement.

57. Counter-Defendants materially breached the Agreement by virtue of the acts or omissions described above, including but not limited to: (1) failing to transfer all assets from his tax and accounting practice to Compu Tech; (2) failing to equally participate in the work of Compu Tech; (3) refusing to allow Counter-Plaintiff full and complete access to any and all of the properties, assets, books, records and other documents of the company; (4) interfering with the operation and management of the company; (5) diverting sales and revenue belonging the company to Arora's personal account(s) or accounts for Arora's other businesses; (6) using Compu Tech funds to pay employees for work performed for Arora personally and/or for work provided to

Arora's other businesses; (7) demanding Patel to buy Arora out or sell Arora his interests in the company; (8) attempting to transfer all the company's funds to an unknown trust account; and (9) closing the company's business account with Bank of America.

58. Counter-Defendants' material breaches caused injury to Counter-Plaintiff, which resulted in the following damages: actual, special, and consequential damages in an amount to be determined by the jury, as well as pre- and post-judgment interest, costs, and reasonable and necessary attorneys' fees.

59. Counter-Plaintiff is entitled to all actual, consequential, and special damages as a result of Counter-Defendants' intentional breaches, including but not limited to contractual consideration forfeiture.

60. Counter-Plaintiff also seeks to recover exemplary damages because Counter-Defendant acted with malice and fraud.

Count 2 – Breach of Fiduciary Duties

61. Counter-Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

62. Under Texas law, the relationship between Counter-Plaintiff, Arora, and Compu Tech gives rise to fiduciary duties as a matter of law. Arora was acting as Compu Tech's agent, manager, and/or member while engaging in the above acts or omissions. Counter-Defendant Arora owed Compu Tech the highest fiduciary duties with regard to the above-referenced acts or omissions.

63. Specifically, Arora owed Compu Tech a high duty of care, coupled with the utmost good faith, candor, loyalty, fidelity, fair and honest dealing, devoid of any misrepresentation or

deceit. Arora also owed a duty of full disclosure and to refrain from self-dealing. Arora abused that confidence.

64. Arora breached his fiduciary duties to Compu Tech by engaging in the above-referenced acts or omissions, including but not limited to diverting sales/revenue belonging to the company to Arora's personal account(s) or account(s) for his other businesses; paying employees with company funds for work performed for other individuals or entities; failing to transfer all assets from his tax and accounting practice to Compu Tech; interfering with the operation and management of the company; attempting to transfer all the company's funds to an unknown trust account; closing the company's business account with Bank of America; and failing to pay valid invoices for services provided to the company by third parties.

65. Arora committed these breaches knowingly, intentionally and with malice.

66. These breaches were committed for the benefit of Arora and other third parties and to the detriment of Counter-Plaintiff and Compu Tech.

67. Counter-Defendant Arora also failed to disclose material facts to Counter-Plaintiff that were of critical importance to Counter-Plaintiff and Compu Tech.

68. Counter-Plaintiff has suffered substantial damages as a result of Counter-Defendant Arora's breaches of fiduciary duties and are entitled to all actual, consequential, and special damages as a result of these intentional breaches of fiduciary duties.

69. ***Exemplary damages.*** Counter-Plaintiff's injuries resulted from Counter-Defendant's malice, fraud, and/or gross negligence in orchestrating the series of improper acts and omissions described above, which entitles Counter-Plaintiff to exemplary damages under Tex. Civ. Prac. & Rem. Code § 41.003(a).

COUNT 3 – FRAUD

70. In addition to or in the alternative to the above cause of action, Counter-Plaintiff asserts a cause of action for common law fraud against Counter-Defendants (including fraud in the inducement, fraud in the transaction, conspiracy to defraud and fraud by non-disclosure).

71. Counter-Defendants knew or recklessly disregarded the fact that the above-described acts, practices, misleading statements and omissions would be relied upon by the Counter-Plaintiff to his detriment in making decisions regarding the management and operation of the business, and entering the agreement(s) described above.

72. Counter-Defendants knew or recklessly disregarded the fact that the above transactions were part of a scheme to defraud Counter-Plaintiff out of his contributions, labor services, sales, revenue, personal property, and other cash belonging to the company.

73. Counter-Defendants failed to disclose material facts, which they knew or should have known, were of critical importance to Counter-Plaintiff, and/or which made the disclosures that Counter-Defendants and others made to Counter-Plaintiff misleading. Counter-Defendants should have made the following disclosures to Counter-Plaintiff:

- a. Arora never intended to share equally in the work of Compu Tech;
- b. Arora was planning on diverting sales/revenue generated by the business to her own personal benefit;
- c. Arora did divert sales and revenue generated by the business to his own personal benefit;
- d. Counter-Defendants were failing to make payments to third parties for services provided to Compu Tech;
- e. Arora was planning to use funds from the company to pay for his personal expenses;
- f. Arora was planning to, and did, steal thousands of dollars' worth of personal property and cash from the business;

- g. Counter-Defendants were using company funds to pay employees for work provided to Arora personally or other businesses;
- h. Information regarding the company's properties, assets, books, records and other information;
- i. Counter-Defendants were planning on depleting the funds in the company's business account with Bank of America;
- j. Counter-Defendants were planning on closing the company's business bank account with Bank of America;
- k. Any information regarding the status, management, or operations of the company since at least May 31, 2021; and
- l. Any other disclosures supported by the facts in this suit.

74. Counter-Defendants' duty to disclose the facts laid-out above arises from the following:

- a. the confidential and fiduciary relationship between the parties;
- b. Counter-Defendants' voluntary disclosure of information to Counter-Plaintiff, which gave rise to the duty to disclose the whole truth;
- c. Counter-Defendants' representations to Counter-Plaintiff, which gave rise to the duty to disclose new information that Counter-Defendants became aware of that made their earlier representations misleading or untrue; and/or
- d. Counter-Defendants' partial disclosures to Counter-Plaintiff that conveyed a false impression, which gave rise to the duty to speak.

75. By reason of the foregoing, Counter-Defendants have engaged in common law fraud by one or more of the following:

- a. Employing devices, schemes, conspiracies and artifices to defraud;
- b. Making untrue statements of material facts or failing to state material facts necessary to make the statements made not untrue in light of the circumstances under which they were made; and

- c. Engaging in acts, practices, and a course of business which operated as a fraud or deceit upon Counter-Plaintiff in connection with the transactions, acts, and omissions described above.

76. Counter-Plaintiff has suffered substantial damages as a result of Counter-Defendants' common law fraud, and is entitled to all actual, consequential, special, punitive, and equitable damages, plus all pre and post-judgment interest to which he is entitled by law.

77. ***Exemplary damages.*** Counter-Plaintiff's injuries resulted from Counter-Defendants' malice, fraud, and/or gross negligence, which entitles Counter-Plaintiff to exemplary damages under Tex. Civ. Prac. & Rem. Code § 41.003(a).

COUNT 4 – PROMISSORY ESTOPPEL

78. The facts set forth above are incorporated herein by reference as if fully set forth below.

79. Counter-Plaintiff brings this cause of action for promissory estoppel against Counter-Defendants.

80. Counter-Defendants made promises to Counter-Plaintiff, as described above.

81. It was foreseeable that Counter-Plaintiff would rely on Counter-Defendants' promises in agreeing to purchase 50% of the membership interests in Compu Tech and move from California to Texas to manage and/or operate the business.

82. Counter-Plaintiff reasonably and substantially relied on Counter-Defendants' promises to Counter-Plaintiff's detriment.

83. Counter-Plaintiff has suffered damages as a result of Counter-Defendants' failure to do as they promised.

84. Injustice can be avoided only by enforcing Counter-Defendants' promises to Counter-Plaintiff.

85. Counter-Plaintiff seeks his actual damages, special damages, and consequential damages in an amount to be determined by the jury, as well as pre- and post-judgment interest, costs, and reasonable and necessary attorneys' fees.

COUNT 5 - CONVERSION

86. Pleading in the alternative, if such is necessary, Counter-Plaintiff and Compu Tech had a property interest in all assets, monies, and property of the company. Counter-Defendant Arora wrongfully exercised dominion and control over funds belonging to the company by diverting it to his personal bank account(s), or elsewhere, which amounted to a clear repudiation of Counter-Plaintiff and Compu Tech's rights. Counter-Defendant Arora has wrongfully exercised dominion and control over personal property and funds belonging to Counter-Plaintiff or Compu Tech by closing the company business account.

87. Counter-Plaintiff seeks an award of all damages to which he is entitled, in an amount to be determined by a jury, including but not limited to actual damages, loss of value damages, loss of use damages, lost sales, and lost profits, plus all pre and post-judgment interest to which he is entitled by law.

88. ***Exemplary damages.*** Counter-Plaintiff's injuries resulted from Counter-Defendant Arora's malice, fraud, and/or gross negligence, which entitles Counter-Plaintiff to exemplary damages under Tex. Civ. Prac. & Rem. Code § 41.003(a).

COUNT 6 – VIOLATIONS OF THE TEXAS THEFT LIABILITY ACT

89. Counter-Plaintiff further asserts claims under the Texas Theft Liability Act and hereby intends to show that Counter-Defendant Arora unlawfully appropriated property in the form of funds, materials, and/or supplies belonging to Counter-Plaintiff or Compu Tech. Counter-Plaintiff or Compu Tech were entitled to possession of said funds, materials, or supplies.

90. Counter-Defendant Arora unlawfully appropriated Counter-Plaintiff or Compu Tech's personal property and funds in violation of the Texas Penal Code § 31.03, et seq.

91. Arora's unlawful appropriation was made with the intent to deprive Counter-Plaintiff and Compu Tech of the property.

92. Arora has misappropriated money and other assets from Counter-Plaintiff or Compu Tech without their consent, which deprived them of their rights to exercise control or ownership over such property.

93. Arora's wrongful conduct caused injury to Counter-Plaintiff and Compu Tech, which resulted in the loss of the appropriated property and lost profits.

94. Counter-Plaintiff seeks actual damages within the jurisdictional limits of this Court plus all pre and post-judgment interest to which they are entitled by law.

95. ***Additional damages.*** Upon proof of actual damages, Counter-Plaintiff is entitled to additional statutory damages of up to \$1,000 from Counter-Defendant Arora under Tex. Civ. Prac. & Rem. Code § 134.005(a)(1).

96. ***Court costs.*** Counter-Plaintiff further seeks and is entitled to recover court costs under Tex. Civ. Prac. & Rem. Code § 134.005.

97. ***Attorneys' fees.*** Counter-Plaintiff further seeks and is entitled to recover reasonable and necessary attorneys' fees under Tex. Civ. Prac. & Rem. Code § 134.005.

98. ***Exemplary damages.*** Counter-Plaintiff's injuries resulted from Arora's malice, fraud, and/or gross negligence, which entitles Counter-Plaintiff to exemplary damages under Tex. Civ. Prac. & Rem. Code § 41.003(a).

COUNT 7 – MONEY HAD AND RECEIVED

99. Pleading in the alternative, if such is necessary, Counter-Defendants secured money for themselves by taking undue advantage of Counter-Plaintiff, which, in equity and good conscience, belongs to Counter-Plaintiff.

100. Counter-Plaintiff seeks actual damages in an amount to be determined by a jury, plus all pre and post-judgment interest to which they are entitled by law.

101. ***Court costs.*** Counter-Plaintiff further seeks and is entitled to recover court costs in his action for money had and received.

102. ***Exemplary damages.*** Counter-Plaintiff's injuries resulted from Counter-Defendants' malice, fraud, and/or gross negligence, which entitles Counter-Plaintiff to exemplary damages under Tex. Civ. Prac. & Rem. Code § 41.003(a).

COUNT 8 - REQUEST FOR DECLARATORY JUDGMENT

103. Counter-Plaintiff is entitled to declaratory relief under Tex. Civ. Prac. & Rem. Code § 37.001, et seq. A ripe controversy exists with respect to the rights, status, and other legal relations of the parties per Tex. Civ. Prac. & Rem. Code § 37.003. Counter-Plaintiff is a person "interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise..." per Tex. Civ. P. Rem. Code § 37.004. In order to afford Counter-Plaintiff relief from uncertainty and insecurity and to settle the controversy, Counter-Plaintiff is entitled to a declaratory judgment.

104. Specifically, Counter-Plaintiff requests that this Court enter a declaratory judgment that: (1) the above-referenced transactions with Counter-Defendants be set aside and are void, including all transfers to others; (2) that any money Counter-Plaintiff paid to acquire his membership interests in Compu Tech should be returned; (3) that Counter-Defendants cannot force Counter-Plaintiff to buy-out Counter-Defendant's interests in the company; (4) that Counter-

Plaintiff is entitled to contract consideration forfeiture and/or disgorgement as a result of the acts and omissions of Counter-Defendants described above; (5) that any changes, amendments, corrections, or modifications to the ownership of Compu Tech made without Counter-Plaintiff's approval are void and should be set aside; and (6) any other declarations this Court determines are necessary to relieve Counter-Plaintiff of uncertainty and insecurity and to settle the controversy between the parties.

105. ***Costs and Attorneys' Fees.*** Counter-Plaintiff requests the Court to award him costs and reasonable and necessary attorneys' fees as are just and equitable pursuant to Tex. Civ. Prac. & Rem. Code § 37.009.

G. APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

106. Based on the facts set forth above, Counter-Plaintiff makes the following application for temporary restraining order, temporary injunction, and permanent injunction.

107. Injunctive relief is appropriate when the applicant is entitled to the relief demanded, and all or part of the relief requires the restraint of some act prejudicial to the applicant. *See* Tex. Civ. Prac. & Rem. Code §65.011. Counter-Defendants are performing or about to perform or allowing the performance of an act relating to the subject of pending litigation; in violation of the rights of Counter-Plaintiff, and the acts would tend to render the judgment in this litigation ineffectual. *Id.* at §65.011(2). Counter-Plaintiff is entitled to a writ of injunction under the principles of equity and the statutes of this state relating to injunctions. *Id.* at §65.011(3). Further, such restraint is necessary to ensure the preservation of the subject matter of the suit until the suit is resolved by a judgment. *See City of Dallas v. Wright*, 36 S.W.2d 973, 975 (Tex. 1931). Finally, irreparable injury to Counter-Plaintiff or Compu Tech's personal property is threatened, irrespective of any remedy at law. *See* Tex. Civ. Prac. & Rem. Code

§65.011 (5).

108. The allegations presented in the preceding paragraphs are incorporated by reference and are further supported by the affidavit of Counter-Plaintiff Patel. *See* Affidavit of Counter-Plaintiff, attached hereto as Exhibit N and incorporated by reference.

109. The affidavit and pleadings evidence that Counter-Defendant Arora has been operating Compu Tech in violation of Counter-Plaintiff's rights as a member of the company. Specifically, Counter-Defendant has improperly excluded Counter-Plaintiff from the operations of Compu Tech. Counter-Defendant has refused to provide Counter-Plaintiff information he is entitled to regarding Compu Tech, despite his prior requests. Counter-Defendant has also diverted or stolen funds, revenue, and/or other personal property belonging to the company to his personal bank account(s) or other account(s) to which he has access. Currently, Counter-Plaintiff is not even aware what bank account the revenues from the company are being deposited into, or where any funds Counter-Defendant took from the company's prior business account have been deposited. Counter-Plaintiff has also not been informed about any matters related to the profits and losses of Compu Tech since at least May 31, 2021.

110. Unless restrained by this Court, Counter-Defendants will continue to engage in the misconduct described herein. Such misconduct, if allowed to continue, will cause irreparable, permanent, and irreversible injury to Counter-Plaintiff and Compu Tech for which there is no adequate remedy at law. Based on a balance of the equities, injunctive relief is proper due to the harm to Counter-Plaintiff and Compu Tech as a result of Counter-Defendants' improper conduct and failure to properly operate and manage Compu Tech in accordance with the parties' agreements.

111. Any attempts by Counter-Defendants to continue operating Compu Tech,

allowing it to be open to the public, and hiding assets belonging to the company unfairly prejudices Counter-Plaintiff's right to access potential evidence in the case and his ability to acquire complete and full relief upon acquiring a judgment. Therefore, Counter-Plaintiff asks the Court to enjoin Arora and Compu Tech from hiding, secreting, moving, selling, assigning, transferring or otherwise disposing of any assets belonging to Compu Tech or Counter-Plaintiff. Further, Counter-Plaintiff requests the Court to enjoin Arora and Compu Tech from providing tax or accounting services until this matter is resolved.

112. Counter-Plaintiff is likely to prevail on the merits of his case against Counter-Defendants, as asserted herein.

113. Counter-Plaintiff will suffer probable injury that is imminent and irreparable if this injunctive relief is not granted.

114. Counter-Plaintiff, individually and derivatively on behalf of Compu Tech, seeks a temporary injunction to prevent Counter-Defendants from engaging in the improper acts described above, including providing tax and accounting services to Compu Tech's clients in Counter-Plaintiff's absence. Specifically, Counter-Plaintiff requests the Court to issue a temporary restraining order against Counter-Defendants Arora and Compu Tech, and their agents, servants, employees, independent contractors, representatives, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from further engaging in certain proscribed activities, as set forth below:

- a. Hiding, secreting, moving, selling, assigning, transferring or otherwise disposing of funds or personal property belonging to Compu Tech;
- b. Providing, or allowing anyone on behalf of Compu Tech to provide, any tax or accounting services under Counter-Plaintiff's Enrolled Agent license;

- c. Providing tax or accounting services to any former or current clients of Compu Tech; and
- d. Entering into or incurring any debts on behalf of Counter-Plaintiff or Compu Tech.

115. Counter-Plaintiff has joined all indispensable parties pursuant to Texas Rule of Civil Procedure 39.

116. Counter-Plaintiff asks the Court to set its application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Counter-Defendants Arora and Compu Tech.

117. Counter-Plaintiff requests that, after an evidentiary hearing, the Court issue a temporary injunction against Arora and Compu Tech, ordering them to:

- a. allow Counter-Plaintiff to examine and copy the records of Compu Tech;
- b. reinstitute Compu Tech's bank account used prior to May of 2021; and
- c. return any funds removed from Compu Tech's bank account with Bank of America without Counter-Plaintiff's authorization.

118. Counter-Plaintiff requests that, after an evidentiary hearing, the Court issue a temporary injunction against Arora and Compu Tech, and their agents, servants, employees, independent contractors, representatives, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from further engaging in certain proscribed activities, as set forth below:

- a. Hiding, secreting, moving, selling, assigning, transferring or otherwise disposing of funds or personal property belonging to Compu Tech;
- b. Providing, or allowing anyone on behalf of Compu Tech to provide, any tax

or accounting services under Counter-Plaintiff's certified public accounting license;

- c. Providing tax or accounting services to any former or current clients of Compu Tech; and
- d. Entering into or incurring any debts on behalf of Counter-Plaintiff or Compu Tech.

119. This application for temporary injunction is authorized by Tex. Civ. Prac. & Rem. Code §65.011 and common law.

120. Counter-Plaintiff requests that the above temporary injunction become a permanent injunction upon final resolution of this lawsuit.

121. Counter-Plaintiff has demonstrated a probable right to relief on final hearing based on the above-referenced acts or omissions by Counter-Defendants.

122. Counter-Plaintiff will suffer probable injury that is imminent and irreparable if this injunctive relief is not granted.

123. Further, Counter-Plaintiff has no other adequate legal remedy to obtain the relief requested herein.

124. Unless restrained by this Court, Counter-Defendants will continue to engage in the misconduct described herein. Such misconduct, if allowed to continue, will cause irreparable, permanent, and irreversible injury to Counter-Plaintiff and Compu Tech for which there is no adequate remedy at law. Based on a balance of the equities, injunctive relief is proper due to the harm to Counter-Plaintiff and Compu Tech as a result of Counter-Defendants' conduct.

125. Counter-Plaintiff, individually and derivatively on behalf of Compu Tech, is willing to post a bond prior to the issuance of the injunctive relief requested herein to mitigate any potential harm to Counter-Defendants.

126. Counter-Plaintiff requests that a hearing be set on his Application for Temporary Restraining Order and Temporary Injunction and that, following the hearing, Counter-Defendants be temporarily enjoined from engaging in the above-described conduct pending trial on the merits and that, following a trial on the merits, a permanent injunction be entered as part of the Court's judgment in this cause.

H. CONDITIONS PRECEDENT

127. All conditions precedent to Counter-Plaintiff's claims for relief have been performed or have occurred.

I. PRAYER

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiff respectfully prays that the Court issue a temporary restraining order against Counter-Defendants Compu Tech and Arora, restraining them from directly or indirectly:

- a. Hiding, secreting, moving, selling, assigning, transferring or otherwise disposing of funds or personal property belonging to Compu Tech;
- b. Providing, or allowing anyone on behalf of Compu Tech to provide, any tax or accounting services under Counter-Plaintiff's Enrolled Agent license;
- c. Providing tax or accounting services to any former or current clients of Compu Tech; and
- d. Entering into or incurring any debts on behalf of Counter-Plaintiff or Compu Tech.

Counter-Plaintiff further requests that Counter-Defendants appear and file an answer herein, and upon final hearing of this cause, Counter-Plaintiff prays to have a judgment against Counter-Defendants Arora and Compu Tech for the following:

- a. all actual, consequential and special damages allowed by law;
- b. declaratory judgment as requested herein;
- c. a hearing date for Counter-Plaintiff's application for a temporary injunction and following the hearing, a temporary injunction as requested herein;
- d. a permanent injunction as requested herein;
- e. exemplary damages;
- f. attorneys' fees and costs;
- g. pre-judgment and post judgment interest at the maximum rate allowed by law; and
- h. such other relief to which Counter-Plaintiff may be entitled in law or equity.

Respectfully submitted,

NGUYEN & CHEN, LLP



Anissah M. Andang
State Bar No. 24072895
Email: aandang@nguyen-chen.com
Randall Towns
State Bar No. 24110445
Email: rtowns@nguyen-chen.com
11200 Westheimer, Suite 120
Houston, Texas 77042
Telephone: (832) 767-0339
Fax: (832) 767-0669
service@nguyen-chen.com

ATTORNEYS FOR RAJENDRA PATEL

CERTIFICATE OF SERVICE

I hereby certify that, on June 28, 2021, a true and correct copy of the above and foregoing was served upon all parties and/or counsel of record in accordance with TRCP 21 and 21a.

Via E-Service:

LYNN, PINKER, HURST & SCHWEGMANN, L.L.P.

Edward Jason Dennis

Joshua D. Lang

2100 Ross Avenue

Suite 2700

Dallas, Texas 75201

jdennis@lynnllp.com

jlang@lynnllp.com

Counsel for Plaintiffs and Counter-Defendants

/s/ Anissah M. Andang

Anissah M. Andang