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RCR MEDIA, LLC, a Wyoming limited
6 liability company, d/b/a Student Help
Services
7

8 IN THE UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 VICTORY MATTERS, INC.,
12 Plaintiff,

13 vs.

14 STUDENT HELP SERVICES LLP,
15 REBECCA CIAGLIA, JAMES
VANELSWYK, Does 1-5,
16 Defendants.

17
18 RCR MEDIA, LLC, a Wyoming
19 limited liability company, d/b/a
Student Help Services,

20 Counterclaimant,

21 v.

22 VICTORY MATTERS, INC., a
23 California corporation; EUGENE A.
VANDERHOOF; STEVEN CRAIG
24 VANDERHOOF; and DOES 6
through 15, inclusive,

25 Counterclaim Defendants.
26

CASE NO. 8:14-cv-00270-CJC (DFMx)
Assigned to Hon. CORMAC J. CARNEY
Courtroom 9B

**COUNTERCLAIM OF RCR MEDIA,
LLC, FOR:**

- (1) BREACH OF CONTRACT,**
- (2) TORTIOUS INTERFERENCE WITH
CONTRACT,**
- (3) TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE,**
- (4) MISAPPROPRIATION OF TRADE
SECRETS,**
- (5) RECOVERY OF PERSONAL
PROPERTY,**
- (6) ACCOUNTING,**
- (7) RESTITUTION;**

AND

DEMAND FOR TRIAL BY JURY

27
28
COUNTERCLAIM

1 RCR MEDIA, LLC, a Wyoming limited liability company, d/b/a Student Help
2 Services (“Student Help”) counterclaims as follows against VICTORY MATTERS, INC.;
3 EUGENE A. VANDERHOOF; STEVEN CRAIG VANDERHOOF; and DOES 6-15.

4
5 **Jurisdiction**

6 1. The Court has jurisdiction over this Counterclaim pursuant to 28 U.S.C. §
7 1367 (supplemental jurisdiction) if the Complaint by Victory Matters, Inc. (“Victory
8 Matters”) is subject to jurisdiction. Victory Matters invokes jurisdiction under 28 U.S.C.
9 § 1332 (diversity of citizenship). Diversity of citizenship may also afford a separate basis
10 for jurisdiction over this Counterclaim.

11
12 **The Parties and Their Business**

13 2. Counterclaimant RCR Media, LLC (“Student Help”), is a Wyoming limited
14 liability company, doing business as Student Help Services, with its principal offices in
15 Dallas, Texas and Delray Beach, Florida. None of the members of Student Help is a
16 citizen of Delaware or California.

17 3. On information and belief, Counterclaim Defendant Victory Matters is a
18 Delaware corporation with its principal office in Orange County, California.

19 4. On information and belief, Counterclaim Defendant Eugene A. Vanderhoof is
20 a resident of Camden Wyoming, Delaware. He participates in some manner in the
21 ownership and control of Victory Matters.

22 5. On information and belief, Counterclaim Defendant Steven Craig Vanderhoof
23 is a resident of Orange County, California. He participates in some manner in the
24 ownership and control of Victory Matters.

25 6. Student Help is ignorant of the true names and capacities of the Counterclaim
26 Defendants sued herein as DOES 6 through 15, inclusive, and therefore sues these
27 Counterclaim Defendants by such fictitious names. Student Help will seek to amend this
28 Counterclaim to allege the true names and capacities of these DOES when they are

1 ascertained. On information and belief, each of the Counterclaim Defendants herein at all
2 times relevant to this action was and is the agent, employee, officer, representing partner,
3 licensee, or joint venturer of the remaining defendants and was acting within the course
4 and scope of that relationship. Student Help is further informed and believes, and on that
5 basis alleges, that each of the Counterclaim Defendants herein gave consent to, ratified,
6 and authorized the acts alleged herein to each of the remaining defendants and therefore
7 each of the defendants was in some actionable manner legally responsible for proximately
8 causing the events referred to herein.

9 7. On or about July 2, 2013, Student Help and Victory Matters entered a written
10 contract entitled "Independent Marketing Agent Agreement." A true and correct copy of
11 the Independent Marketing Agent Agreement is attached to this Counterclaim as Exhibit
12 1. Eugene A. Vanderhoof signed the agreement on behalf of Victory Matters. The
13 effective date of the Independent Marketing Agent Agreement was June 16, 2013.

14 8. The Independent Marketing Agent Agreement provided that Victory Matters
15 would assist Student Help as an independent marketing agency to promote the services of
16 Student Help to borrowers of student loans. Student Help provides document preparation
17 services for borrowers seeking to consolidate their student loans.

18 9. Student Help delivered to Victory Matters a copy of the "Consolidation
19 Service Agreement" that would be signed between Student Help and its clients, the
20 borrowers of student loans. Victory Matters obtained the signatures of clients on their
21 contracts with Student Help. A redacted copy of one such Consolidation Service
22 Agreement, signed by a client on June 17, 2013, is attached this Counterclaim as Exhibit
23 2. Section 10 of the Consolidation Service Agreement provided that "I, the Client, may
24 cancel this contract at any time prior to being approved for Federal Student Loan
25 Consolidation."

26 10. When the term of the Independent Marketing Agent Agreement expired on
27 June 15, 2014, Victory Matters did not deliver the signed client contracts to Student Help.
28 As provided in Section 23.1 of the Independent Marketing Agent Agreement, the

1 agreement between Student Help and Victory Matters remained in force for one year after
2 the effective date of June 16, 2013.

3 11. Under the Independent Marketing Agent Agreement, Student Help promised
4 to pay Victory Matters a percentage share of the fees derived from borrowers who did
5 business with Student Help as a result of the efforts of Victory Matters. A result of this
6 promise was that Victory Matters had a financial incentive to prevent clients from
7 cancelling their agreements with Student Help. If a client were to cancel his or her
8 agreement, the fees would be refunded, and Victory Matters would lose its share of those
9 fees and also any future fees that might otherwise be paid by the client.

10 12. Student Help suffered an interruption to its cash flow when merchant banks
11 terminated the accounts of Student Help in December 2013 and refused to open new
12 accounts. Student Help relied upon its merchant banking accounts to process automated
13 payments from clients, including debit and credit card payments. On information and
14 belief, the banks terminated the accounts of Student Help and refused to open new
15 accounts because of a history of unacceptably high rates of “NSF” (or “not sufficient
16 funds”) and declined transactions with clients.

17 13. Victory Matters substantially contributed to the unacceptably high rates of
18 NSF and declined payment transactions involving clients of Student Help. Victory
19 Matters did this, by misleading clients into believing that they could not cancel their
20 contracts with Student Help, and by failing to respond promptly to inquiries from clients
21 who wanted to cancel. Dissatisfied clients who believed that they could not cancel their
22 contracts, or whose inquiries were not promptly answered, simply closed or drained their
23 own banking or credit accounts, rather than continuing to pay for services that the clients
24 no longer wanted to buy. That led to their payment transactions with Student Help being
25 declined.

26 14. Beginning in December 2013, after Student Help had lost its merchant
27 banking accounts and the ability to draw payments from clients by automated transactions,
28 Victory Matters and Steven Craig Vanderhoof then solicited and induced clients of

1 Student Help to enter new contracts – with another firm or firms – for providing document
2 preparation services in seeking to consolidate their student loans. One such firm trades
3 under the fictitious business name of “Student Loan Services.US.”

4 15. On information and belief, Victory Matters and Steven Craig Vanderhoof
5 have derived and may continue to derive substantial revenues from inducing clients of
6 Student Help to enter new contracts with other firms, such as Student Loan Service.US.

7
8 **FIRST CLAIM FOR RELIEF**
9 **(Breach of Contract)**

10 16. Student Help incorporates its other allegations as if fully restated here.

11 17. The term of the Independent Marketing Agent Agreement expired on June 15,
12 2014. Pursuant to Section 27 of the agreement, “Sections 3, 4, 8, 9, 10, 11, 12, 13, 14, 15,
13 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 shall survive termination of
14 this Agreement.”

15 18. Section 9 of the Independent Marketing Agent Agreement provides, in part
16 9.1, that Victory Matters “has no authority to bind [Student Help] to any action or restraint
17 of action or to enter into any representations of such authority except to the extent it has
18 been agreed that [Student Help] will enroll Prospects into [Student Help’s] Student Loan
19 Services.”

20 19. Victory Matters breached Section 9 by misrepresenting to clients that they
21 could not cancel their agreements with Student Help. In doing so, Victory Matters
22 exceeded its authority and implicitly represented that it possessed authority that was
23 lacking.

24 20. Section 22 of the Independent Marketing Agent Agreement provides, in part
25 22.1, that Victory Matters “shall indemnify and hold [Student Help] harmless from and
26 against and shall pay to bank the full amount of, any losses resulting to [Student Help],
27 either directly or indirectly from ... any fraud, theft, dishonesty, defamation or willful
28 misconduct of [Victory Matters]”

1 21. Victory Matters breached Section 22 by not indemnifying and holding Student
2 Help harmless and not paying back the losses resulting to Student Help from the dishonest
3 misrepresentations to clients that they could not cancel their agreements with Student
4 Help.

5 22. Section 20 of the Independent Marketing Agent Agreement provides, in part
6 20.1, that the “Parties will work to establish good client relations and to advance each
7 other’s interests under this agreement.”

8 23. Victory Matters breached Section 20 by misrepresenting to clients that they
9 could not cancel their agreements with Student Help, and by failing to respond promptly
10 to inquiries from clients who wanted to cancel.

11 24. Section 15 of the Independent Marketing Agent Agreement provides, in part
12 15.1, that Victory Matters “will hold in complete confidence” the confidential information
13 of Student Help. Section 24 of the agreement provides, in part 24.1, that Victory Matters
14 “will not in any way directly or indirectly, for itself or on behalf of, or in conjunction
15 with, any other person, firm, partnership, corporation, or other entity, solicit, divert, or
16 take away any referred clients or clients of [Student Help] during the term of this
17 Agreement or at any time thereafter.”

18 25. Victory Matters breached Sections 15 and 24 by soliciting and inducing
19 clients of Student Help to cancel their contracts with Student Help, and to enter new
20 contracts, with another firm or firms.

21 26. Section 23 of the Independent Marketing Agent Agreement provides, in part
22 23.8.2, that “Upon termination or expiration of this Agreement, [Student Help] property
23 shall be promptly returned to [Student Help] by [Victory Matters].”

24 27. Victory Matters breached Section 23 by failing to return the signed client
25 contracts to Victory Matters promptly after the term of the agreement expired on June 15,
26 2014.

27 28. As a result of Victory Matters’s breaches of contract, Student Help has
28 suffered damages in an amount to be proven at trial.

1 **FIFTH CLAIM FOR RELIEF**

2 **(Recovery of Personal Property)**

3 38. Student Help incorporates its other allegations as if fully restated here.

4 39. Student Help is entitled to possession of its signed client contracts held by
5 Counterclaim Defendants, directly or indirectly.

6
7 **SIXTH CLAIM FOR RELIEF**

8 **(Accounting)**

9 40. Student Help incorporates its other allegations as if fully restated here.

10 41. Student help is entitled to an accounting of revenues derived from inducing
11 clients of Student Help to enter new contracts with other firms, such as Student Loan
12 Service.US.

13
14 **SEVENTH CLAIM FOR RELIEF**

15 **(Restitution)**

16 42. Student help incorporates its other allegations as if fully restated here

17 43. Student help is entitled to restitution of the unjust enrichment obtained by the
18 Counterclaim Defendants, in an amount to proven.

19
20
21 **WHEREFORE**, RCR Media, LLC, a Wyoming limited liability company doing
22 business as Student Help Services (“Student Help”), prays for judgment against
23 Counterclaim Defendants Victory Matters, Inc., Eugene A. Vanderhoof, Steven Craig
24 Vanderhoof, and DOES 6 through 15, inclusive, as follows:

25 1. On the first claim for relief, for specific performance of the obligation to
26 return Student Help property to Student Help, and for actual, consequential and special
27 damages, with interest and costs as allowed by law, including attorney’s fees and
28 expenses.

DEMAND FOR JURY TRIAL

Defendant and Counterclaimant RCR MEDIA, LLC, a Wyoming limited liability company doing business as Student Help Services, respectfully demands a jury trial on any and all issues so triable, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, and Civil Local Rule 38-1.

Respectfully submitted,

Dated: April 24, 2014

KOHN LAW GROUP, INC.

By: /s/ Robert E. Kohn

Robert E. Kohn
Counsel for Defendant and Counterclaimant RCR MEDIA, LLC, a Wyoming limited liability company, d/b/a Student Help Services

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2014, I electronically filed the foregoing document using the Court's CM/ECF system. I certify that all other participants in this action are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: April 24, 2014

KOHN LAW GROUP, INC.

By: /s/ Robert E. Kohn
Robert E. Kohn
Counsel for Defendant and Counterclaimant RCR
MEDIA, LLC, a Wyoming limited liability company,
d/b/a Student Help Services