UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 0:23-cv-60748-LEIBOWITZ/STRAUSS

HAYES MEDICAL STAFFING, LLC,

Plaintiff,

v.

AMY EICHELBERG, *et al.,*

Defendants.
_____/

ORDER

THIS CAUSE is before the Court following a five-day bench trial which commenced on Monday, March 31, 2025, and concluded on Friday, April 4, 2025. [*See PAPERLESS MINUTE ENTRIES*, ECF Nos. 328, 329, 330, 333, 334]. Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the Court hereby enters the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

A. The Parties

1. Plaintiff Hayes Medical Staffing, LLC ("Hayes") is a staffing firm that places healthcare professionals—physicians, physician assistants, nurse practitioners, and certified registered nurse anesthetists ("CRNAs")—at medical facilities such as hospitals, clinics, and physician groups on a temporary basis, which placements are known as *locum tenens*, or *locums*. [Tr. Tran., ECF No. 353 at 47:21–25; Tr. Tran., ECF No. 354 at 139:25 thru 140:2]. Hayes operates nationwide, making *locums* placements (and on occasion permanent placements) of such medical professionals at medical facilities located throughout the United States. [Tr. Tran., ECF No. 353 at 47:24–25].

2. Defendant Jobot, LLC ("Jobot") recruits and places professional staff across a wide range of industries which, like Hayes, includes medical professionals. [*See* Tr. Tran., ECF No. 353 at 58:1–5]. Unlike Hayes, Jobot also places professionals working in other industries such as the dental

industry, construction industry, and legal industry. [Tr. Tran., ECF No. 354 at 141:13 thru 142:1; *see* Tr. Tran., ECF No. 355 at 25:2–5]. Jobot directly competes with Hayes in staffing medical professionals at medical facilities. [Tr. Tran., ECF No. 353 at 58:5]

3. Defendants Allison Patierno ("Patierno"), Amy Eichelberg ("Eichelberg"), and Scott Simon ("Simon") are current employees of Jobot and immediate former employees of Hayes.

4. Patierno was employed by Hayes from 2015 to 2020 as a *locums* recruiter. [Tr. Tran., ECF No. 354 at 212:20–22]. In January of 2021, Jobot hired Patierno, subsequently making her manager of Jobot's new *locums* division announced by the company in October of 2021. [Tr. Tran., ECF No. 354 at 216:13–21].

5. Eichelberg worked at Hayes as a Senior Consultant on Hayes's *locums* cardiology team from May 2020, until her resignation in March 2023. [Tr. Tran., ECF No. 353 at 60:3–5; 232:18–21; Tr. Tran., ECF No. 354 at 47:4-5; *see* Ex. P-1]. Eichelberg signed her offer letter to join Jobot as a Principal Recruiter on March 2, 2023. [Ex. P-8].

6. Simon worked at Hayes as a Senior Consultant on Hayes's urology, ENT, and plastic surgery *locums* team from 2016 until his resignation on January 19, 2023. [Tr. Tran., ECF No. 356 at 53:24 thru 54:1, 4–6; 138:9 thru 139:12]. Simon signed his offer letter to join Jobot as a Principal Recruiter on January 19, 2023. [Tr. Tran., ECF No. 356 at 178:19–23; ECF No. 350-7 (Jobot Offer Letter – Simon)].

B. <u>Eichelberg's and Simon's Employment Agreements with Hayes</u>

7. Eichelberg and Simon signed Employment Agreements with Hayes. Ex. P-001 (Hayes Employment Agreement – Eichelberg); Ex. P-005 (Hayes Employment Agreement – Simon). The Employment Agreements signed by Simon and Eichelberg contained nondisclosure, noncompetition, and non-solicitation restrictive covenants. [*See* Exs. P-001 at 7–10 and P-005 at 6–9].

8. <u>Eichelberg's Employment Agreement with Hayes</u>

a. *Nondisclosure Covenant*

Eichelberg's Employment Agreement with Hayes contains a nondisclosure covenant which states as follows:

> (a) At all times during and subsequent to employment with the Employer, Employee shall not, directly or indirectly, use, permit use of, disclose, discuss, publish, or disseminate in any manner, any Confidential Business Information of the Employer Group, except as necessary in the performance of Employee's job duties and for the sole benefit of the Employer Group. Employee will not remove any hard or electronic copies (including via email to personal email or cloud service) of Confidential Business Information from the Employer's premises or systems without permission and will not print hard copies of any Confidential Business Information that the Employee accesses electronically from a remote location.
>
> (b) All Confidential Business Information shall be the Employer Group's sole property during and after Employee's employment. Employee agrees to take all steps necessary, and all steps requested by the Employer, to ensure that the Confidential Business Information is kept confidential and to comply with all applicable policies and procedures of the Employer regarding the use, disclosure, maintenance and security of the Confidential Business Information.
>
> (c) Upon the termination of Employee's employment with the Employer (regardless of the manner or reason of termination), Employee shall immediately return to the Employer all Confidential Business Information, Employer assets, and other information and property obtained from or relating to the Employer Group or to which Employee had access, in good condition (normal wear and tear excepted), and shall not retain any copies thereof, whether in hard copy or electronic form.

[Ex. P-001 ¶ 8.1(a) – (c)].

Confidential Business Information is defined in Eichelberg's Employment Agreement as

> any form of information about the Employer Group, or any of its Clients and Physicians, that is not generally known to the general public, and shall include without limitation: any and all trade secrets and other confidential and proprietary information of the Employer Group (including confidential and proprietary information of a third party in the possession of the Employer), whether in oral, written, electronic or other form, and whether or not marked or otherwise identified as Confidential Business Information, including, without limitation, information relating to current, former and prospective Clients (including, without limitation, names, addresses, telephone numbers, email addresses, mailing lists, contact persons, records of Client usage, preferences, requirements, job openings and staffing needs, rates, fees and compensation information, licensing and credentialing information and requirements, contract terms, and prospects), current, former and prospective Physicians (including, without limitation, names, addresses, telephone numbers, email addresses, mailing lists, other personal and contact information, records of Physicians staffing history,

> preferences, and requirements, licensing and credentialing information and requirements, rates, fees, benefits, and compensation information, contract terms, and prospects), methods and types of recruitment and placement services, methods of service preferred by Clients and Physicians, sales and marketing information, methods and programs (including, without limitation, sales and marketing data, promotional strategies and programs, advertising plans, market research and analyses, and sales techniques), leadership, training, coaching and employee development programs and methods, documents, agreements, contracts and other arrangements, employee, independent contractor and consultant information (including, without limitation, compensation and benefits information, terms and conditions of employment or engagement, and performance reviews and evaluations), matters of internal organization, plans, policies, procedures, manners of operation, customized software, computer and management information systems, passwords, manuals, trade secrets, know-how and other intellectual property, business plans and forecasts, financial statements, budgets, financial reports and analyses, accounting and statistical data, other financial information relating to the business of the Employer Group, and other confidential and proprietary information of the Employer Group.

[Ex. P-001 ¶ 6]. Simon's Employment Agreement has a similarly broad definition of Confidential Business Information. [*See* Ex. P-005 ¶ 6].

b. *Noncompetition Covenant*

Eichelberg's Employment Agreement with Hayes also contains a noncompetition covenant whereby Eichelberg "agree[d] that, during … her employment and for a period of twelve months immediately following the termination of [her] employment" that she "w[ould] not directly or indirectly (in any capacity), on [her] own behalf or on behalf of any other person or entity" be "employed by" a "Competitive Business." [Ex. P-001 ¶ 8.2(a)(i)]. A "Competitive Business" is defined as "any business entity, unincorporated organization or personally-operated venture (as well as any parent, subsidiary, successor, or affiliate of any of such entities) located within the United States that engages in temporary (including "locum tenens") or permanent staffing of physicians or advanced practice practitioners, or any other type of staffing services engaged in by the Employer Group during the Employee's employment with the Employer." [Ex. P-001 ¶ 8.2(b)]. However, the Employment Agreement allowed Eichelberg (post termination) "to work for a staffing company which is not

directly (or indirectly through a company or related entity) operating a Competitive Business." [Ex. P-001 ¶ 8.2(c)].

c. *Non-Solicitation Covenants*

Eichelberg's Employment Agreement also contains non-solicitation covenants governing the solicitation of Hayes's clients and employees after her departure from the company. The restriction on solicitation of Hayes's employees provides, in relevant part, as follows:

> Employee agrees that, during Employee's employment, and during the Non-solicitation Period [of 24 months, post-termination], Employee shall not, in any manner, either directly or indirectly, on Employee's own behalf or for or on behalf of any other person or entity (other than the Employer), hire, attempt to hire, solicit, divert, induce or otherwise cause, attempt to cause or encourage employees or agents of the Employer Group to leave the Employer's employ for any reason.

[Ex. P-001 ¶ 8.4(a)]. The restriction on soliciting clients provides that for the same 24-month period, Eichelberg would not "solicit, recruit, offer to hire, hire, or otherwise provide services … that are the same or similar to the Business to any current, former or prospective Physicians or Clients of [Hayes]." [Ex. P-001 ¶ 8.3(a)].

9. Simon's Employment Agreement with Hayes

a. *Nondisclosure Covenant*

Simon's Employment Agreement with Hayes contains the following nondisclosure covenant, which provides in relevant part:

> At all times during and subsequent to employment with the Company, Employee shall not, directly or indirectly use, permit use of, disclose, discuss, publish, or disseminate in any manner, any Confidential Business Information of the Company, except as necessary in the performance of Employee's job duties and for the sole benefit of the Company. Employee will not remove any hardcopy of electronic copies (including via email to personal email or cloud service) of Confidential Business Information from the Company's premises or systems without permission and will not print hard copies of any Confidential Business Information that the Employee accesses electronically from a remote location.
> ***
> Upon termination… Employee shall immediately return to the Company all Confidential Business Information…, and shall not retain any copies thereof, whether in hard copy or electronic form.

[Ex. P-005 ¶ 7.1(a), (c)].

b. *Noncompetition Covenant*

Simon's Employment Agreement also contains a noncompetition covenant whereby Simon agreed that, during his employment and for a period of twelve (12) months immediately following the termination of his employment, that he would not "employed by" a "Competitive Business." [Ex. P-005 ¶ 7.2(a)(i)]. A "Competitive Business" is defined as "any business entity, unincorporated organization or personally-operated venture (as well as any parent, subsidiary, successor, or affiliate of any of such entities) located within the United States that performs the type(s) of Physician staffing services that Employee was engaged in during Employee's last two (2) years for employment with the Company… regardless of the staffing engaged in by Employee during Employee's last two years of employment with the Company, this restriction applies to both temporary (including '*locums tenens*') and permanent staffing with such type(s) of staffing." [Ex. P-005 ¶ 7.2(b)]. Nonetheless, the Employment Agreement allowed Simon (post termination) "to work in another area of staffing, such as nurse staffing, legal staffing, and staffing related to professions other than Physician staffing or any other type of staffing Employee worked in, oversaw or managed during his/her employment with the Company." [Ex. P-005 ¶ 7.2(c)].

c. *Non-Solicitation Covenants*

Simon's Employment Agreement contained two non-solicitation covenants—one as to Hayes's "Physicians or Clients" and the other as to Hayes's "Employees." The first non-solicitation covenant provides "for a period of twenty-four (24) months immediately following termination… Employee shall not solicit, recruit, offer, or otherwise provide services… that are the same as or similar to [Hayes] to any current, former, or prospective Physicians or Clients of … [Hayes] with whom [Simon] worked with or serviced, communicated with, had contact in any manner, attempted to solicit business from, or otherwise was aware of during [Simon's] last two years of employment with

[Hayes]." [Ex. P-005 ¶ 7.3(a)]. This covenant also provides that Simon will not "in any manner, either directly or indirectly, induce, encourage, solicit or cause… Physicians or Clients to cease doing business with, or otherwise change or diminish the Physicians' or Clients' business with the company." [Ex. P-005 ¶ 7.3(a)]. The second non-solicitation covenant required Simon not to "hire, attempt to hire, solicit, divert, induce or otherwise cause or encourage employees of [Hayes] to leave [Hayes's] employ for any reason" "for a period of twenty-four (24) months immediately following the termination of [his] employment with [Hayes]." [Ex. P-005 ¶ 7.4(a)].

C. Eichelberg and Simon leave Hayes for Jobot

10. Hayes was founded in June of 2012, specializing in *locum tenens* placements for physicians, physician assistants, nurse practitioners, and CRNAs at hospitals, clinics, and physician groups. [Tr. Tran., ECF No. 353 at 47:19–20]. Hayes trains its employees how to do *locums* work, which is a specialized and competitive market. [Tr. Tran., ECF No. 353 at 56:13 thru 57:25; 49:11–15].

11. Hayes's employees, including Eichelberg and Simon at the time, use spreadsheets containing Hayes's Confidential Business Information such as Hayes's physicians' work preferences, private cell phone numbers, and state licensing information to quickly pair physicians amenable to temporary placements with medical facilities seeking temporary medical staffing. [*See* Tr. Tran., ECF No. 353 at 59:13–20; 52:3–25; 124:1–15].

12. While working for Hayes, Eichelberg and Simon regularly e-mailed their spreadsheets to their personal e-mail accounts so they could do their *locums* work for Hayes remotely. [*See* Tr. Tran., ECF No. 353 at 266:22–23; Tr. Tran., ECF No. 354 at 21:19 thru 22:12; *see* Tr. Tran., ECF No. 356 at 96:11–23]

13. Hayes considers the spreadsheets used by and frequently updated by its employees as its trade secrets. [*See* Tr. Tran., ECF No. 353 at 59:10–18; 98:23–24]. The spreadsheets organize data

related to Hayes clients (medical professionals and medical facilities) by categories, giving Hayes a competitive edge in documenting information not publicly available which can be quickly sorted, searched and retrieved.[1] Indeed, Hayes litigated throughout this case, and this Court has ruled that the spreadsheets at issue constitute Hayes's "trade secrets" under the Defend Trade Secrets Act ("DTSA") and Florida Uniform Trade Secrets Act ("FUTSA"). [*See* ECF No. 83 at 13–14].

14. Patierno was trained by and employed by Hayes as a *locums* recruiter from 2015 to 2020. [Tr. Tran., ECF No. 354 at 212:20 thru 213:8].

15. As a condition of Patierno's employment with Hayes, Patierno signed Employment Agreements in October 2015, December 2017, December 2018, and December 2019, that contained nondisclosure, noncompetition, and non-solicitation covenants. [Tr. Tran., ECF No. 354 at 213:9 thru 214:11].

16. Hayes terminated Patierno's employment on October 29, 2020. [Tr. Tran., ECF No. 354 at 215:7–9].

17. In January of 2021, Jobot hired Patierno. [Tr. Tran., ECF No. 354 at 216:13–14; *see* Ex. P-18].

18. In October of 2021, Jobot announced the creation of a new *Locums* Division, the recruiters for which were managed by Patierno. [Tr. Tran., ECF No. 354 at 224:19–21]. Patierno's *locums* team at Jobot is known as the "Locumotives." [*Id.*]. The name "Locumotives" derives from

[1] *See e.g.*, Plaintiff's Opening Statement ("The evidence will show that these spreadsheets contain confidential trade secret information relating to thousands of current and prospective clients and doctors, all compiled into **easily searchable and distilled Excel spreadsheets** organized by state and specialty, which not only contained information about their licenses and their contact information, but it also had information about where they want to spend their summers and whether they need to be placed near a school because they have small children and whether they need to be placed at a facility with a microwave and a refrigerator because they have diabetes and they need their 12 medication refrigerated. That level of specificity that is non-public information."). [Tr. Tran., ECF No. 353 at 32:1–13].

the team's mission to facilitate temporary placements—*locums*. [See Tr. Tran., ECF No. 355 at 9:9–11; *see also* Tr. Tran., ECF No 354 at 232:18 thru 233:5].

19. During its start-up phase of operations, Jobot did not provide training for its recruiters. Instead, Jobot hired experienced, successful recruiters like former Hayes employees Simon and Eichelberg. [Tr. Tran., ECF No. 354 at 223:6–23].

20. Jobot's hiring of experienced recruiters who had proved successful in staffing skyrocketed the company to $100 Million in revenue in less than three years of doing business. [Tr. Tran., ECF No. 354 at 224:1–21].

21. Patierno managed Jobot's Locumotives team at the time Jobot hired Simon and Eichelberg. [*See* Tr. Tran., ECF No. 354 at 256:6–12]. At the time of their hire by Jobot, Simon and Eichelberg were top *locums* recruiters for Hayes.

22. Simon generated $5 Million in *locums* placements for Hayes the year before he went to work for Jobot. [Tr. Tran., ECF No. 354 at 237:13–24].

23. Eichelberg "was the top producer on the cardiology team" with a sales goal that year of over $1 million [Tr. Tran., ECF No. 354 at 46:5–19; *See* Tr. Tran., ECF No. 353 at 60:9–18].

24. Patierno is paid 10% of any revenue generated by Locumotive team members. [Tr. Tran., ECF No. 354 at 12–18; Tr. Tran., ECF No. 355 at 104:16–21].

25. On January 3, 2022, Patierno texted Simon about her job at Jobot. [*See* Ex. P-57]. Thereafter, Patierno solicited Simon to leave his employment with Hayes to join Jobot as a *locums* recruiter, stating Jobot is letting her "run l*ocums* here" and that she is going to make "stupid money" at Jobot. [Tr. Tran., ECF No. 354 at 238:6–12; *see* Ex. P-57].

26. Patierno told Simon "if you're ever ready to switch, call me, ha, ha"—Simon interviewed with Jobot within that same year. [Tr. Tran., ECF No. 354 at 238:22–25; 239:1–6; Ex. P-57].

27. Patierno told Simon in another text exchange that, at Jobot, "you don't have to open up your jobs to anyone. You kind of do your own thing:" Simon responded, asking about Jobot's compensation model. [Tr. Tran., ECF No. 354 at 243:8 thru 244:12; *see* Ex. P-61]. Patierno also assured Simon in this message "there's no top-end" to what a Jobot recruiter can make. [*Id.*].

28. Patierno for the second time in a later text message told Simon to leave Hayes to join Jobot, stating "you should come next, haha." [Tr. Tran., ECF No. 354 at 246:3–5].

29. Patierno continued to speak with Simon about *locums* throughout the year and reported back to others at Jobot about her discussions with him. [Tr. Tran., ECF No. 354 at 247:1 thru 249:15; *see* Exs. P-69, P-70, P-73].

30. On April 27, 2022, Patierno reached out to Simon *via* text message and scheduled a telephone call with him. [Ex. P-69]. Roughly two hours later, Patierno told Jobot's VP Jason Rodrigues ("Rodrigues") about her conversation with Simon, reporting Simon was having "his best year in Locums ever" at Hayes. [Ex. P-70].

31. About six months later, Simon reached out to Patierno to let her know he was interested in making the move to work at Jobot. [Tr. Tran., ECF No. 356 at 175:23 thru 176:8]. Patierno facilitated Simon's move to Jobot even though she knew about his noncompetition agreement with Hayes. [*See* Tr. Tran., ECF No. 354 at 250:9–11].

32. Simon did not apply to work at Jobot through its Human Resources or Talent Acquisition department. [Tr. Tran., ECF No. 356 at 174:10–12].

33. Instead, Patierno sent Simon's resume along with a memo titled "Locums Candidate To Hire – Scott Simon," detailing Simon's successful *locums* experience— $20 Million in lifetime billings and $5 Million in locums billings the prior year—to Jobot's talent acquisition team and Jobot's VP Rodrigues, to encourage Jobot to hire Simon for *locums* work. [Tr. Tran., ECF No. 354 at 233:6–17; 234:11–18; 235:10–18; 236:14–23; *see* Ex. P-132].

34. After reading Patierno's message and memo and then speaking with Simon, Rodrigues reported Simon was "going to be one of the best locums hires ever!" and hired Simon to be placed on Patierno's Locumotives team. [Tr. Tran., ECF No. 354 at 237:4–7; *see* Tr. Tran., ECF No. 355 at 106:24 thru 107:1; 108:12 thru 109:15; 111:18–25; Ex. P-132].

35. Simon was "100% hired" before Jobot looked at his noncompetition agreement with Hayes. [Tr. Tran., ECF No. 354 at 249:10–15; 250:9–12; Tr. Tran., ECF No. 355 at 105:3–13; 106:15 thru 107:1; *see* Exs. P-50, P-73].

36. Patierno also spoke with Eichelberg about Eichelberg's leaving Hayes to join Jobot as *a locums* recruiter. [Tr. Tran., ECF No. 354 at 252:5–11].

37. Patierno called Eichelberg to speak with her about a position at Jobot, even though she knew Eichelberg was a current employee of Hayes at the time she called her, and that Eichelberg had a noncompetition agreement with Hayes. [Tr. Tran., ECF No. 354 at 254:20 thru 255:12].

D. <u>Spreadsheets and Hayes's Confidential Business Information</u>

38. <u>Eichelberg's Hayes Spreadsheets and Confidential Business Information</u>

a. On February 27, 2023, two days before she resigned to join Jobot, Eichelberg blind copied her personal Gmail account on two e-mails she sent to Hayes colleague, Allyson Schwartz, attaching two large spreadsheets titled "Cardiology Total List-Amy" and "Provider Master-Cardiology. [Tr. Tran., ECF No. 353 at 64:21 thru 65:4; 115:16–22; 239:4–18; 240:22–23; 241:11 thru 242:19; *see* Exs. P-2; P-3]. Eichelberg then purged the e-mails from her Hayes's work e-mail Deleted Items and Trash bins. [*Id.*].

b. Eichelberg testified she blind copied the e-mails containing the spreadsheets to her personal Gmail account because Ms. Schwarz complained that the e-mails "did not go through" to her Hayes account. [*See* Tr. Tran., ECF No. 353 at 239:1 thru 240:6]. Ms. Schwarz testified she

had no issue receiving the e-mails attaching the spreadsheets in question, and she never told Eichelberg she had not received them. [Tr. Tran., ECF No. 356 at 84:23 thru 85:16].

c. The Provider Master-Cardiology spreadsheet contains information for more than 11,000 providers, including names, e-mail addresses, verified phone numbers and family member numbers, states of licensure, states of residence, interest in *locums* placements, hospital affiliations, interest in permanent placements, contacts with Hayes, and notes specific to each physician. [Tr. Tran., ECF No. 353 at 68:10–22; 69:4-25; 70:1–10, 15 thru 71:18; 72:16 thru 73:15; 248:16 thru 249:3, 16 thru 251:7; 252:10–13, 122 thru 253:16; *see* Ex. P-3].

d. The Provider-Master Cardiology spreadsheet contains information and notes not only inputted by Eichelberg but by other Hayes recruiters who worked on the spreadsheet over the course of more than ten years. [*See* Tr. Tran., ECF No. 353 at 69:20–22; 252:22 thru 253:16].

e. The Cardiology Total List spreadsheet is organized by state and contains contact information for more than 37,000 providers (home addresses, personal cellphone numbers, and personal e-mail addresses). [Tr. Tran., ECF No. 353 at 74:3 thru 75:3; 253:18–25]; Ex. P-2].

f. The Cardiology Total List spreadsheet also contains notes and information sourced and added by other Hayes recruiters – not just Eichelberg – over the course of over ten years. [Tr. Tran., ECF No. 353 at 69:20–22; 75:12–14; *see* Ex. P-2; P-3].

g. Eichelberg understood that documents created by her during her employment with Hayes belonged to Hayes and that she could not take them with her when she left the company. [Tr. Tran., ECF No. 353 at 235:7–10].

h. Eichelberg testified she decided to e-mail Hayes's Provider-Master Cardiology spreadsheet and the Cardiology Total List on February 27, 2023, because they were the largest most comprehensive lists of data Eichelberg had in her possession. [Tr. Tran., ECF No. 353 at 255:20 thru 256:3]; Ex. P-2, P-3].

i. Despite Eichelberg's testimony that the spreadsheets did not go through to her personal Gmail account, cell phone evidence collected by Eichelberg's forensic examiner indicated otherwise. [Tr. Tran., ECF No. 354 at 9:8 thru 10:17]. That evidence also shows Eichelberg sent or attempted to send the spreadsheets from her Gmail account to her me.com e-mail account. [Tr. Tran., ECF No. 354 at 15:2–24; *see* Ex P-121-Ex. A].

j. The spreadsheets themselves are Hayes's trade secrets, and they cannot be found on the internet or in the public realm. [*See* Tr. Tran., ECF No. 353 at 70:11–13; 72:13–15; 73:12–15; 75:8–10; 250:14 thru 251:22; *see* Exs. P-2; P-3].

k. The Court does not find credible Eichelberg's explanation that she blind copied her personal Gmail account on the e-mails sending the spreadsheets then deleted them from her work Deleted Items and Trash box because the files were large and the server was moving too slowly. [Tr. Tran., ECF No. 353 at 257:4–25]. Eichelberg clearly attempted to take spreadsheets with her after she left Hayes's employment in order to use them in her new role at Jobot, or to at least have them on hand to make *locums* placements for Jobot after she left Hayes. Otherwise, why blind copy them to herself just prior to her departure from Hayes for Jobot?

l. In addition to the Provider Master-Cardiology and the Cardiology Total List spreadsheets, a forensic examination by a neutral third-party forensic examiner revealed Eichelberg also took and retained on her iPhone, in her Gmail account, and on a Dell computer other confidential and trade secret information and documents, including contracts, physician agreements, confidential screening applications, risk management documents, placement confirmation letters with dates of assignments, Locums Rate Sheets, additional Excel spreadsheets with physician names, numbers, e-mail addresses, states where they can practice and recruiter notes of direct communications aggregated and assembled in a easy to search Excel spreadsheets. [Tr. Tran., ECF No. 353 at 77:2–15; 78:13–19; 79:17 thru 80:23; 94:6–15; 98:2 thru 99:6; 103:16 thru 104:25; Tr. Tran., ECF No. 354 at 19:14 thru

23:25; 28:2 thru 30:18; 31:13 thru 33:3; *see* Exs. P44; P-52; P-107; P-108; P-109]. These documents contain information that Eichelberg obtained from communicating with physicians while working for Hayes, which information is not available online or otherwise publicly available. [Tr. Tran., ECF No. 353 at 124:16–19].

m. The documents and spreadsheets took Hayes years to develop, constitute Hayes's confidential business information and trade secrets, and would be harmful to Hayes's business if a competitor, such as Jobot, were to acquire it. [Tr. Tran., ECF No. 353 at 88:1–19; 89:1 thru 90:18; 94:7 thru 96:4; 105:1–7; 252:11–18; *see* Exs. P-44; P-52; P-107; P-108].

n. In particular, the information contained in the Confidential Screening Applications and additional Excel spreadsheets retained by Eichelberg documenting conversations with physicians about their preferences ("wants locums to full-time for interventional, board certified"; "can do every other weekend. November gets off at 6:00 Friday at 8:00 through Monday") is information that can only be derived from direct communication with the physician, is not publicly available, and is competitive information that would give a *locums* competitor an advantage with regard to certain placements. [Tr. Tran., ECF No. 353 at 94:21 thru 95:10; *see* Exs. P-44; P-52; P-107; P-108].

o. Eichelberg retained and failed to return Hayes's trade secrets and Confidential Business Information even after being reminded to do so by both Hayes and Jobot following her resignation from Hayes. [Tr. Tran., ECF No. 353 at 65:13–19; 102:10–25; 115:1 thru 116:4; Tr. Tran., ECF No. 354 at 23:14 thru 25:7; 47:14–25; *see* Exs. P2; P-3; P-44; P-52; P-107; P-108].

p. Eichelberg retained Hayes's spreadsheets and Confidential Business Information throughout her first ten (10) months of employment with Jobot, until they were removed by the neutral forensic examiner. [*See* Tr. Tran., ECF No. 353 at 258:25 thru 260:6; Tr. Tran., ECF No. 354 at 379:23–24].

39. Simon's Hayes Spreadsheets and Confidential Business Information

a. After his resignation from Hayes, Hayes discovered Simon had e-mailed numerous Excel spreadsheets he worked on to do his job at Hayes containing names, contact information, preferences, notes of conversations, and other nonpublic information for thousands of physicians and clients from his Hayes e-mail account to his personal e-mail account. [Tr. Tran., ECF No. 353 at 128:6–18; 129:3–19; 130:3 thru 133:25; 135:20 thru 136:18; 138:5–14]; Tr. Tran., ECF No. 356 at 106:6–23; 123:4-17; Exs. P-9, P-10, P-11].

b. While at Hayes, Simon spent time and resources aggregating, compiling and verifying the information in the spreadsheets to do his job making placements and to recruit physicians for Hayes, which is work that he was paid to do by Hayes. [Tr. Tran., ECF No. 353 at 137:22 thru 138:14].

c. The Urology Master List spreadsheet Simon e-mailed from his Hayes's e-mail account to his personal Gmail account contains the names, e-mail addresses, city and state where each of the 11,848 doctors on it practice with their phone numbers and types of practice in which they specialize, as well as notes of Simon's direct communications with specific doctors that he wrote down in the "Notes" column to help make placements for Hayes. [Tr. Tran., ECF No. 356 at 106:24 thru 107:6; 107:13 thru 108:24; 110:21 thru 111:19; 112:10–11; Ex. P-9].

d. For example, Simon wrote that Dr. Joshua Byrd has an interest in working weekends and holidays in Kentucky and Dr. Byrd was interested in information about location and pay. [Tr. Tran., ECF No. 356 at 110:21 thru 111:12]. Simon obtained this information directly from Dr. Byrd, which information is not available on the internet and gave Hayes a competitive advantage regarding Dr. Byrd's placement in Kentucky on weekends or during holidays. [*Id.*].

e. Simon testified that, in his experience in *locums* recruiting, doctors do not publish anywhere online what days or locations they prefer in working *locums*. [Tr. Tran., ECF No. 356 at 111:20–24]. The information on Simon's spreadsheets is not outdated, despite his testimony

otherwise, as doctors do not change their specialties and do not generally change their personal cellphone numbers. [Tr. Tran., ECF No. 356 at 112:13 thru 113:20; 115:8–12].

f. Another spreadsheet Simon sent to his personal Gmail account from his Hayes e-mail account is titled "Places That Use Locums." [Tr. Tran., ECF No. 356 at 116:24 thru 117:1, Ex. P-10]. This document identifies a number of healthcare facilities that use *locums* staffing as well as their preferences. [Tr. Tran., ECF No. 356 at 117:8 thru 119:5; 121:3–9].

g. Hayes considered the spreadsheets Simon retained to be its trade secrets. [Tr. Tran., ECF No. 353 at 135:8 thru 137:14; Exs. P-9, P-10, P-11, P-111]. Simon testified that he hired a third-party vendor to "scrape" the internet to populate his spreadsheets with publicly-available information about medical professionals looking for temporary assignments posted on the world wide web. [Tr. Tran., ECF No. 355 at 107:13 thru 109:1]. While that may be true, notes regarding physician preferences and personal cellphone numbers would have been obtained only though direct communication with the physician. [Tr. Tran., ECF No. 356 at 135:16 thru 136:3].

h. The spreadsheets Simon retained post-employment include information about tens of thousands of current and prospective physicians and clients of Hayes, organized into easily searchable spreadsheets with detailed non-public information in the form of notes that came directly from communicating with physicians and clients, such as: "the Lewiston, Maine Hospital needs an ENT three days in the clinic, two days in the operating room, seeing an average of 17-25 patients per day; Dr. Alabaster wants $2,000 per day; Dr. Binkley wants to work Thursdays, Fridays, Saturdays and Sundays near Nashville; and Dr. Joshua Byrd has an interest in weekends and holidays in Kentucky." [Tr. Tran., ECF No. 353 at 131:6 thru 135:14; 136:2 thru 137:14; Tr. Tran., ECF No. 356 at 109:16 thru 112:11; *see* Exs. P-9, P-10, P-11, P-12].

i. This is the type of information that would enable a *locums* company to place a physician needed for holidays in Kentucky faster than its competitors, since holiday coverage is hard to find and these are "hard-to-place dates." [Tr. Tran., ECF No. 353 at 136:19 thru 137:11].

j. The spreadsheet entitled "AUANet2026-4" retained by Simon post-employment contains information about pediatric urologist, Dr. Charles Henderson, who is a physician Simon placed on *locums* assignments at Hayes for years and who began working with Jobot for the first time shortly after Simon joined Jobot. [Tr. Tran., ECF No. 353 at 138:9–22].

k. After Simon arrived at Jobot, Jobot placed Dr. Henderson on a *locums* assignment at Valley Childrens' Hospital. [Tr. Tran., ECF No. 353 at 138:21–22; 140:6–13]. Valley Childrens' Hospital is a Hayes client with whom Simon had worked during his employment at Hayes. [Tr. Tran., ECF No. 353 at 138:19–21; ECF No. 356 at 227:11–15; Exs. P-11; P-20].

l. Simon testified he worked with both Valley Childrens' Hospital and Dr. Charles Henderson during his employment with Hayes. [Tr. Tran., ECF No. 356 at 228:4–13]. While working at Hayes, Simon placed Dr. Henderson multiple times in *locums* positions, and Simon recommended either Dr. Henderson or Dr. Robert Mancuso as a candidate for a *locums* position at Valley Childrens' Hospital weeks before he resigned to join Jobot. [Tr. Tran., ECF No. 356 at 222:4 thru 226:5].

m. Although some of the Hayes spreadsheets Simon retained during his employment with Jobot are dated 2018, 2020 and 2021, they are useful to Hayes's competitors like Jobot, since doctors do not generally change their specialties, they generally work into their late 60's, hospitals' needs and requirements rarely change, and having a document that identifies multiple clients which use locums staffing saves a locums company from having to spend time, money and resources figuring out which facilities will consider hiring physicians on a locums basis. [Tr. Tran., ECF No. 353 at 133:3–25; 143:6–23].

n. The fact that Simon hired a third-party vendor to organize and refine some aspects of the spreadsheets does not alter their status as Hayes's trade secrets. [Tr. Tran., ECF No. 356 at 133:13 thru 135:24].

o. Simon did not return any trade secrets or Confidential Business Information to Hayes following his resignation. [Tr. Tran., ECF No. 353 at 129:3–19; Tr. Tran., ECF No. 356 at 159:14 thru 160:14]. Instead. Simon retained the information, which included physician and client contact information, in both his personal Gmail accounts and on his personal cellphones. [Tr. Tran., ECF No. 353 at 124:11–15; 128:5 thru 129:19; Tr. Tran., ECF No. 356 at 159:14 thru 160:12].

p. Simon testified that even after Hayes sent him the separation letter on January 19, 2023, reminding him of his obligations to return all Hayes data, he did not take any steps to see whether he had any Hayes's data on his devices. [Tr. Tran., ECF No. 356 at 160:15–23].

q. Even after receiving a subsequent "cease-and-desist" letter from Hayes's outside counsel, Simon still failed to return Hayes's data—until the neutral forensic examiner located Hayes's information on his devices and cloud storage accounts following the August 2023 injunction hearing. [Tr. Tran., ECF No. 353 at 127:11 thru 129:19; *see* Ex. P-6].

r. The "Scott Simon Jax Business and Candidate Entries" document and the "Simon Contacts and Entities for Whom Hayes Requested Information" spreadsheet produced by Jobot in discovery reflect that Simon provided Jobot with information about Hayes's healthcare facility clients White Plains Hospital, ProMedica, Haywood Hospital, Arkansas Valley Regional Medical Center, AFC Urgent Care, and Aspirus Health. [Tr. Tran., ECF No. 353 at 159:12–19; 160:23 thru 161:5; *see* Exs. P-116, P-118].

s. Before submitting information about these clients to Jobot, Simon had already communicated with each of them about his working with Jobot, and Simon must have demonstrated

to Jobot that each of these clients of Hayes was interested in working with Jobot. [Tr. Tran., ECF No. 356 at 210:10 thru 211:18, 20 thru 212:9; 23 thru 213:25; 214:1 thru 217:9].

t. Simon had multiple healthcare client contacts who he worked with and/or reached out to during his employment at Jobot. [Tr. Tran., ECF No. 356 at 218:7–19; Ex. P-118].

u. Simon also communicated with Nicky Reissman, who is responsible for recruiting physicians, PAs, CRNAs and NPs for a healthcare facility, about making placements for Jobot during his noncompete/non-solicitation period. [Tr. Tran., ECF No. 353 at 161:6–22; Tr. Tran., ECF No. 356 at 220:6–10; Ex. P-118].

v. Simon was also aware that Aspirus Health, a client with whom he communicated about making placements for Jobot, is a Hayes client. [Tr. Tran., ECF No. 356 at 219:7–17].

w. Simon acknowledges that in the course of making placements for Jobot he communicated with the people at healthcare facility clients who handle *locums* placements at their facilities. [Tr. Tran., ECF No. 356 at 220:20 thru 221:25].

x. Simon also retained the contact information for Hayes physician, Dr. Henderson, on his cellphone after he left Hayes. [Tr. Tran., ECF No. 356 at 157:20–22].

E. Eichelberg's and Simon's Post-Employment Recruiting Efforts

40. Eichelberg's post-employment recruiting efforts

a. Eichelberg testified she understood she could not help other Jobot *locums* recruiters solicit business from Hayes clients or providers during the two-year non-solicitation period. [Tr. Tran., ECF No. 354 at 95:15–19].

b. Immediately upon her arrival at Jobot, Eichelberg continually ranked number 1 or 2 on the Locumotive teams Bot Reports; Eichelberg was included in *locums* group e-mails, meetings and requests for assistance with *locums* placements; and Eichelberg exchanged

correspondence with at least one other Jobot *locums* recruiter about her assisting him with her cardiologists until she was "ready to work again" in exchange for a referral fee. [Tr. Tran., ECF No. 354 at 69:13 thru 72:18; 73:4 thru 74:5; 74:13 thru 75:8; 75:22 thru 77:4; 77:12 thru 78:10; 95:20–25; 96:13 thru 97:14; *see* Exs. P-59, P-60, P-62, P-85; P-127, P-148].

c. After being hired by Jobot, Eichelberg contacted the Hayes's physicians she had placed in *locums* jobs at Hayes on their personal cellphone numbers, stating she was no longer with Hayes, asking them to "stay in touch," and reminding them that she will find her "way back to cardio." [Tr. Tran., ECF No. 354 at 48:15 thru 51:12; 52:7 thru 53:24; 54:6–25; Exs. P-26, P27, P-28, P-86].

d. Eichelberg testified that she made multiple efforts to solicit active Hayes employees to leave Hayes and join Jobot after she had signed Jobot's New Employee Protocols and Offer Letter. [Tr. Tran., ECF No. 354 at 98:6–13, 23 thru 99:22; *see* Exs. P-47, P-80, P-88].

e. On the day she accepted the job offer from Jobot, Eichelberg sent text messages to Hayes Account Coordinator, Kat Crawford, stating "Apply at Jobot. They've opened a Jobot Health arm and they are building an AC (account coordinator) team." [Tr. Tran., ECF No. 354 at 98:25 thru 100:17].

f. Eichelberg knew her text messages to Crawford violated her non-solicitation agreement with Hayes, as she cautioned Crawford to "Keep it strictly confidential if you do. Don't tell a single person. I'm under a 'nonsolicitation." [Tr. Tran., ECF No. 354 at 100:3–5; Ex. P-47]. Eichelberg promised Crawford "I'm under a 'nonsolicitation," but if you apply, I'll reach out to my contacts to pull your resume. It's 100% remote." [Tr. Tran., ECF No. 354 at 101:25 thru 102:2; Ex. P-47].

g. Eichelberg also encouraged Hayes employee, Sara Boucher, to leave Hayes and encouraged Patierno to hire Boucher during her non-solicitation period. [Tr. Tran., ECF No. 354 at

103:23–25; 105:22 thru 107:14; 108:8–16; 110:9–17; Exs. P-39, P-41, P-42]. Eichelberg sent text messages to Patierno, telling Patierno that Boucher "would be another huge asset" to Jobot and that Boucher is "the backbone to the neurology team" at Hayes. [Tr. Tran., ECF No. 354 at 312:8 thru 313:14; 107:1–9; Ex. P-42].

h. Eichelberg also suggested Patierno hire Hayes employee Meg Wilson, reporting she was "good." [Tr. Tran., ECF No. 354 at 315:2–14, 24; 316:13–16].

i. Only after receiving a "cease-and-desist" letter from Hayes did Eichelberg begin telling Hayes employees she could not help them find a position at Jobot. [Tr. Tran., ECF No. 354 at 211:8–13, *see* ECF Nos. 350-51, 350-52, 350-53, 350-54].

41. Simon's post-employment recruiting efforts

a. After Jobot hired Simon, Simon supplied Patierno with information about Hayes's employees to recruit for Jobot, including Eichelberg, whom Jobot hired and placed on the Locumotives team, along with Simon. [Tr. Tran., ECF No. 354 at 317:4 thru 318:22; 228:24 thru 229:7; 231:15 thru 232:23; Ex. P-24].

b. Simon provided Patierno with information about Hayes employee, Rich Simon, including that Rich was billing $3 Million at Hayes, was on track for more that year, and that Hayes was "kissing his ass" letting Rich work remotely after Simon's departure. [Tr. Tran., ECF No. 356 at 233:5 thru 234:20; 235:22 thru 236:6; Ex. P-53].

c. Patierno wrote to Simon "I'll have to find a way to let [Rich Simon] know he's always welcome here" at Jobot. [Tr. Tran., ECF No. 356 at 234:4–7; Ex. P-53].

d. Simon gave Patierno his opinion about another successful Hayes' recruiter, JR Pryor, who was credited with billing over $1 Million on the Hayes Oncology team, when Patierno told him she wanted to bring JR down to Jobot. [Tr. Tran., ECF No. 356 at 236:7 thru 238:8; Ex. P-55].

e. Patierno asked about Simon's thoughts on Jobot's hiring Hayes employee, Sara Boucher. [Tr. Tran., ECF No. 356 at 238:7 thru 239:2; 239:12–22].

F. Eichelberg's and Simon's Post-Employment Competition with Hayes

42. Eichelberg and Simon violated their non-competition agreements with Hayes by working on Jobot's *locums* team; reporting to Locumotive Team Senior Recruiting Manager Patierno; participating in *locums* team meetings and e-mails, and communicating about *locums* placements with other *locums* recruiters during their one-year restricted non-compete periods. [Tr. Tran., ECF No. 353 at 116:17 thru 118:18; 125:23 thru 126:8; Tr. Tran., ECF No. 354 at 59:10 thru 60:19; 224:19–24].

43. During their first year of employment with Jobot (their non-compete period), Eichelberg and Simon received e-mails from numerous Jobot *locums* recruiters with titles such as "Locums Hot Docs as of 5/30" and "Updated Locums Jobs," asking for their assistance in making *locums* placements. [Tr. Tran., ECF No. 354 at 69:13 thru 72:18; 73:4 thru 74:5; 74:13 thru 75:8; 75:22 thru 77:9; 261:2 thru 262:18; 264:5–22; 265:3 thru 266:20; 267:1–15; 270:1 thru 271:16; *see* Exs. P-59, P-60, P-62; P-63; P-65; P-127, P-148].

44. Patierno included both Eichelberg and Simon on group e-mails to the Locumotives team with other Jobot *locums* recruiters regarding *locums* placements and *locums* work. [Tr. Tran., ECF No. 354 at 80:7 thru 81:16; 257:8 thru 260:12; *see* Ex. P-25]. Simon and Eichelberg were also included in health group chats that discussed healthcare staffing. [*See* Tr. Tran., ECF No. 354 at 87:3–14].

45. Patierno's explanations that all of these job posting links, Team Messages, chats and e-mails to Simon and Eichelberg, which span the first ten (10) months of their employment, were simply "errors" and "accidents," are not credible. [Tr. Tran., ECF No. 354 at 262:14 thru 263:1; 272:9 thru 274:17].

46. In numerous weeks following their hire, Simon and Eichelberg were ranked by Jobot as the top number 1 and number 2 recruiters on Patierno's *locums* team, which ranking was based on

the number of "The Locumotive New Clients" they acquired, the number of new "Locumotive Jobot Profiles" they uploaded, and the number of new "Locumotive DocuSign Agreements" they had signed with clients, among other metrics. [Tr. Tran., ECF No. 354 at 61:2–19; 64:25 thru 65:18; 66:1–24; 68:13–22; 277:7–17; *see* Exs. P-30, P-31, P-32, P-33].

47. Out of thirteen (13) *locums* recruiters listed on the Bot Reports, Eichelberg and Simon consistently ranked at the top due to their high activity in getting new contracts, getting new clients, uploading new Jobot profiles of interested candidates, interviewing prospective clients and candidates and providing Jobot with information that may ultimately lead to a placement. [Tr. Tran., ECF No. 354 at 66:25 thru 67:22; Exs. P-29; P-124; P-126].

48. Despite making less than five (5) placements at Jobot between them within the first 20 months of their hire, Simon and Eichelberg were paid well over six-figure salaries because of their value in providing Hayes's information to Jobot that would lead to placements and generate revenue. [Tr. Tran., ECF No. 354 at 67:23 thru 68:8; 92:6 thru 94:14; Exs. P-22; P-23].

49. Patierno fired other recruiters who failed to make placements within 6 months of their hire, but Jobot retained Simon and Eichelberg despite their "poor performance." [Tr. Tran., ECF No. 354 at 92:16 thru 93:1; 281:12 thru 287:2; Exs. P-22, P-23].

50. Patierno testified that Jobot hired and kept Simon and Eichelberg because of their high activity in the Jax Bots reports. [Tr. Tran., ECF No. 354 at 287:7 thru 288:19].

51. Rodrigues, Jobot's VP, testified he wanted Eichelberg and Simon back in *locums* staffing since they have experience in *locums* placements and were not performing well staffing other positions. [Tr. Tran., ECF No. 355 at 112:1 thru 119:12].

52. Eichelberg and Simon testified that it was their plan to return to full-time *locums* recruiting after their non-compete period expired. [*See* Tr. Tran., ECF No. 354 at 17:23 thru 18:10; 58:1–6; 256:6–19].

53. Eichelberg's post-employment competition with Hayes

a. Eichelberg left Hayes to join Jobot and took the Hayes spreadsheets containing Hayes's Confidential Business Information with the intent of doing *locums* work at Jobot. *See* Eichelberg text messages to Jen Bystiga dated March 25, 2023. [Tr. Tran., ECF No. 354 at 17:12 thru 18:15; Ex. P-35].

b. Eichelberg sent a text message to another friend, Mario Blanco, a few weeks after she had accepted the job at Jobot, stating "But I'm working with the *locums* team, and same manager. So it's amazing. I won't have to be entirely out of the *locums* loop over the year." [Tr. Tran., ECF No. 354 at 58:1–3; Ex. P-34].

c. One new hire on the Locumotives team, Miranda Salman, e-mailed Eichelberg shortly after joining asking for advice about Eichelberg's *locums* process. [Tr. Tran., ECF No. 354 at 149:2–7; Tr. Tran., ECF No. 355 at 88:6–19; Ex. P-62]. Eichelberg continued to receive e-mails to her personal Gmail account about cardiology *locums* placement opportunities during her restricted period, while working on the Locumotives team at Jobot. [Tr. Tran., ECF No. 354 at 82:2 thru 84:5; 85:3 thru 86:7; 86:21 thru 87:25; Exs. P-45, P-46].

d. Jobot linked Eichelberg's Jobot profile to open *locums* positions, such as a *locums* medical oncologist job. [Tr. Tran., ECF No. 354 at 78:17 thru 79:21; 272:5 thru 273:1; Ex. P-64].

54. Simon's post-employment competition with Hayes

a. Simon left Hayes to join Jobot and took Hayes's spreadsheets (trade secrets) and Confidential Business Information with the intent of doing *locums* work at Jobot. *See* Simon e-mail to Jobot CEO dated January 11, 2023, stating "I feel Jobot's environment will offer the ability for me to not only exceed my current production but more importantly, to resume loving what I do again." [Tr. Tran., ECF No. 356 at 178:4–12; Ex. P-123].

b. After Jobot hired Simon, Jobot *locums* recruiter, Kylee Hales, e-mailed Simon, asking if he had any surgical critical care needs in Connecticut "either locums or permanent." [Tr. Tran., ECF No. 356 at 205:12 thru 206:3; Ex. P-66].

c. Six months into Simon's employment with Jobot, Pat McKeough, another *locums* recruiter on the Locumotives Team, e-mailed Simon about staffing *locums* at Heywood Hospital. [Tr. Tran., ECF No. 356 at 203:14 thru 204:2; Ex. P-65]. When Simon responded, "no *locums* for me," McKeough laughed out loud typing "LOL" and responded "You're on the Locumotive bot report! LOL." [Tr. Tran., ECF No. 356 at 204:3–16; Ex. P-65].

d. Jobot also linked Simon's name to online job postings for healthcare staffing positions, such as neurologists and nurse practitioner openings at Jobot's healthcare facility clients. [Tr. Tran., ECF No. 352 at 273:3 thru 274:18; Ex. P-67]. Simon's Jobot profile was linked to neurologists and nurse practitioner openings at Jobot's healthcare facility clients. [*Id.*]

e. Patierno sent Simon an agreement for physician *locum* tenens coverage services during his restricted period, which she claims was yet another "accident." [Tr. Tran., ECF No. 354 at 274:24 thru 276:2; Tr. Tran., ECF No. 356 at 206:4–12; *see* Ex. P-76].

f. Jobot placed Hayes physician, Dr. Henderson, with Hayes client Valley Childrens' Hospital for the first time after Simon arrived at Jobot. [Tr. Tran., ECF No. 356 at 226:13 thru 227:15] Simon was attempting to place Dr. Henderson with Valley Childrens' right before he left Hayes. [Tr. Tran., ECF No. 356 at 222:19 thru 223:2].

G. <u>Patierno's and Jobot's Recruitment of Eichelberg and Simon</u>

55. At the time Patierno recruited Eichelberg and Simon for Jobot's Locumotive team, Patierno and Jobot knew about their nondisclosure, noncompetition, and non-solicitation agreements with Hayes. [Tr. Tran., ECF No. 354 at 214:18 thru 215:6].

56. Jobot's VP Rodrigues assumed Simon had a noncompetition agreement with Hayes because Rodrigues previously hired Patierno, who had a non-compete with Hayes. [Tr. Tran., ECF No. 355 at 105:6–13].

57. Jobot has hired "seven or eight" recruiters from Hayes with non-compete agreements and received "cease-and-desist" letters from Hayes for all but two of them. [Tr. Tran., ECF No. 355 at 118:13 thru 120:3; 121:12–24].

58. Rodrigues and Patierno knew Simon had a noncompetition agreement Hayes, but after an initial phone call, Rodrigues informed Jobot's Chief Growth Officer, Tonya Ghanbari, that Simon was "an A+" and "we should hire him anyway." [Tr. Tran., ECF No. 354 at 236:12–23; Ex. P-132].

59. Rodrigues is not aware of a single recruiter not hired by Jobot because of an active noncompetition agreement. [Tr. Tran., ECF No. 355 at 121:20–24].

60. Patierno could not recall a single instance in which she did not hire a candidate she liked for her Locumotives team because they had a non-compete agreement. [Tr. Tran., ECF No. 354 at 250:24 thru 252:4].

61. Before this litigation commenced, Hayes confronted Jobot and Patierno for tortiously interfering with its post-employment restrictive covenants with its *locums* recruiters. [Tr. Tran., ECF No. 353 at 204:18 thru 205:25; 206:16 thru 207:18, 22–25; *see* Ex. P-17].

62. Patierno was involved in bringing Hayes employees Gabrielle Hayes, Thomas Hiemer, and Nicholas Hiemer over to Jobot. [Tr. Tran., ECF No. 354 at 305:2 thru 309:20].

63. In June of 2021, Hayes sent a "cease-and-desist" letter to Jobot and Patierno regarding their hiring of other Hayes employees (Ken Clark, Josh Arney, Anae Obee) to perform *locums* recruiting during their non-compete periods. [Tr. Tran., ECF No. 353 at 205:1 thru 207:25; *see* Ex. P-17].

64. No one at Jobot read Simon's Employment Agreement with Hayes before Jobot hired him. [Tr. Tran., ECF No. 355 at 105:14-106:23].

65. Jobot and Rodrigues have "hired people many times with noncompetes," and the fact that Simon and Eichelberg had one-year non-compete agreements did not give them any pause about hiring them. [Tr. Tran., ECF No. 355 at 111:2–7].

66. Rodrigues testified that when Jobot learns a candidate has a non-compete agreement, Jobot will offer them a position without ever reviewing that agreement. [Tr. Tran., ECF No. 355 at 118:1–6]. Rodrigues himself does not look at restrictive covenant agreements before or after recruiters at Jobot are hired. [Tr. Tran., ECF No. 355 at 121:12–19].

67. Even though other teams at Jobot do not do *locums* work, Jobot placed Simon and Eichelberg on Jobot's *locums* team, "The Locumotives."

68. Jobot placed Simon and Eichelberg on its *locums* team during their non-compete period. [Tr. Tran., ECF No. 354 at 224:19–24].

69. Patierno knew Simon and Eichelberg had non-compete agreements with Hayes, but she did not object to Jobot's placing them on her *locums* team. [Tr. Tran., ECF No. 354 at 229:14–21].

70. Patierno could have told Jobot's Talent Acquisition team that Eichelberg and/or Simon should not be placed on her team, but she did not. [Tr. Tran., ECF No. 354 at 229:14–16; 230:7–19]. Rather, Patierno recruited top Hayes *locums* recruiter (Simon) for her *locums* team, who, in turn, recruited another top Hayes *locums* recruiter (Eichelberg) for the same *locums* team. [*See* Tr. Tran., ECF No. 354 at 304:23 thru 309:6].

71. Eichelberg understood from Jobot that she would be placed "with the Locums team and same manager" so she "won't have to be entirely out of the Locums loop over the year." [Ex. Pl-34].

72. Rodrigues made the decision to place Simon on Patierno's *locums* team, despite his knowledge of Simon's non-compete and non-solicit agreements with Hayes. [Tr. Tran., ECF No. 355 at 105:6–13; 106:15 thru 107:1].

73. Rodrigues testified that he has "no issue" with his decision to place Eichelberg on Patierno's Locumotives team. [Tr. Tran., ECF No. 355 at 113:17–21].

74. Patierno acknowledges that Eichelberg and Simon received multiple e-mails and/or text messages about *locums* work, but she contends she "asked [Jobot's] tech [department] on multiple occasions" to remove Eichelberg and Simon from *locums* distribution lists (which never happened). [Tr. Tran., ECF No. 354 at 267:16–23].

75. Patierno testified that she believed Simon could contact Hayes's clients during the non-solicit period as long as Simon did so in relation to staffing positions that were not in direct competition with Hayes. [Tr. Tran., ECF No. 354 at 299:8–16].

76. Patierno recommended Jobot hire Simon because she thought he was a great *locums* recruiter. [Tr. Tran., ECF No. 354 at 233:12–17; Ex. P-132].

77. When Patierno recommended Jobot hire Simon, she knew Simon had generated an estimated $20 million in lifetime billings and $5 million the prior year in *locums* recruiting for Hayes. [Ex. P-132].

78. Jobot incentivizes Patierno with, and Patierno financially benefits from, the recruiting billings generated by her team. [Tr. Tran., ECF No. 354 at 237:8–11; Tr. Tran., ECF No. 355 at 103:4–9]. Jobot pays Patierno ten percent (10%) of all billings generated by her team. [Tr. Tran., ECF No. 354 at 237:12–18].

79. Simon and Eichelberg executed "New Employee Protocols" at the start of their employment with Jobot. [Exs. P-80, P-81]. If an employee violates "any of the protocols . . ., Jobot is supposed to terminate that employee." [Tr. Tran., ECF No. 355 at 125:23 thru 126:2].

80. Rodrigues is aware that a federal judge has already found that Simon and Eichelberg took Hayes' trade secrets and confidential information. [Tr. Tran., ECF No. 355 at 136:1–4]. Rodrigues admits this is a violation of Jobot's New Employee Protocols. [Tr. Tran., ECF No. 355 at 136:5–7]. Despite this admitted violation of Jobot's New Employee Protocols, Jobot has not terminated Simon or Eichelberg. [Tr. Tran., ECF No. 355 at 136:8–11]. Rodrigues decided to completely disregard this finding by a federal judge because Rodrigues disagrees with the finding. [Tr. Tran., ECF No. 355 at 136:12–14].

81. Rodrigues has not disciplined Patierno for failing to properly report Eichelberg's and Simon's violation of Jobot's New Employee Protocols. [Tr. Tran., ECF No. 355 at 249:1–12].

82. Jobot has not terminated Eichelberg or Simon for this violation of the New Employee Protocols. [Tr. Tran., ECF No. 355 at 250:10–12].

83. Rodrigues cannot recall a single time Jobot has terminated somebody for violating the New Employee Protocols. [Tr. Tran., ECF No. 355 at 246:23–25].

84. Despite his position as a Jobot Vice President, Rodrigues "personally does nothing" to enforce Jobot's New Employee Protocols. [Tr. Tran., ECF No. 355 at 251:17–21].

85. Despite testifying that a violation of Jobot's New Employee Protocol should result in termination, Rodrigues testified there is "no chance" he will terminate Eichelberg or Simon because he only learned of their violations of the New Employee Protocols during this litigation. [Tr. Tran., ECF No. 355 at 254:13 thru 255:4].

86. Patierno, as Simon's direct Manager at Jobot, repeatedly solicited information from Simon about his former co-workers at Hayes with the intent of bringing them over to Jobot, causing Simon to breach his non-solicitation agreement with Hayes, as well as Jobot's New Employee Protocols. [Tr. Tran., ECF No. 354 at 309:14 thru 311:16; 325:5 thru 327:4; *see* Exs. P-8, P-24, P-51, P-53, P-54, P-55].

87. Patierno asked Simon for information about the level of success and billings of Hayes employees Sara Boucher, Amy Eichelberg, Rich Simon, and JR Pryor in connection with bringing these employees from Hayes to work at Jobot. [Tr. Tran., ECF No. 354 at 310:25 thru 312:2; 317:4 thru 318:22; 320:2–25; 322:8–22; 323:6 thru 324:12; *see* Exs. P-24, P-51, P-53, P-54, P-55]. Patierno told Simon that she will "have to find a way to let [Rich Simon] know he's always welcome here." [Tr. Tran., ECF No. 354 at 320:6 thru 321:13; 322:7–25; Tr. Tran., ECF No. 355 at 258:7 thru 261:6; *see* Exs. P-53, P-54].

88. Although Jobot was aware that Eichelberg and Simon took Hayes's data and solicited Hayes's employees to leave Hayes and join Jobot, neither Eichelberg nor Simon was terminated or disciplined for this conduct. [Tr. Tran., ECF No. 354 at 203:1 thru 205:1].

89. Jobot and Patierno took no actions to enforce Jobot's own policies requiring that new hires, like Eichelberg and Simon, not take prior employer data or encourage former coworkers to join Jobot during the non-solicitation period. [Tr. Tran., ECF No. 354 at 203:1 thru 205:1; 326:21 thru 328:25].

90. While Jobot maintains safeguards are in place to ensure Simon and Eichelberg did not take actions that violated their non-compete and non-solicit agreements, only Patierno and Rodrigues monitored those safeguards or "fail-safes" and admit they have done nothing to enforce Jobot's policies and procedures when it comes to Simon and Eichelberg. [Tr. Tran., ECF No. 355 at 26:20 thru 27:13; 240:18 thru 245:20; 246:3 thru 248:25; 249:8–12; 250:4–12; *see* Ex. P-47].

91. Jobot, Rodrigues, and Patierno were aware that Simon and Eichelberg copied, downloaded and e-mailed Hayes's spreadsheets (trade secrets) and Confidential Business Information to their personal e-mail accounts and retained the information after they joined Jobot. [Tr. Tran., ECF No. 355 at 129:22 thru 133:20; *see* ECF No. 83].

92. Jobot and Patierno were aware that Simon and Eichelberg either entered data or shared Hayes's Confidential Business Information to other Jobot employees regarding potential physician candidates, practice group managers, and healthcare clients within days and weeks of their hire. [Tr. Tran., ECF No. 354 at 289:4 thru 293:3; *see* Ex. P-98].

93. Within days of his hire, Simon began sending staffing contracts on behalf of Jobot to healthcare facilities for placements, including Promise Healthcare, Treasure Coast Community Health, AFC Urgent Care, and Community Hospitals and Wellness Centers. [Tr. Tran., ECF No. 354 at 288:1 thru 293:3; *see* Exs. P-51; P-98].

94. The employee whom Simon directed to send out the contracts for him, Gabrielle Haynes, is a "Locums Recruiting Coordinator" at Jobot. [Tr. Tran., ECF No. 354 at 289:11–24].

95. Patierno signed the staffing agreements for Simon and did nothing to determine whether the healthcare facilities he was contacting to make placements with were Hayes clients. [Tr. Tran., ECF No. 354 at 291:15 thru 293:19]. Patierno never asked Simon if these healthcare facilities to which he was sending staffing contracts were clients of Hayes. [*See id.*].

96. As Simon's manager, Patierno reviewed clients and candidates Simon entered into Jobot's JAX system, and she looked at all of his jobs. [Tr. Tran., ECF No. 354 at 291:12 thru 296:5].

97. Patierno knew that, within days of his hire, Simon uploaded information into Jobot's JAX system about numerous healthcare facilities, including Promise Healthcare, White Plains Hospital, Treasure Coast Community Hospital, Promedica, Upper Great Lakes Family Health Center, Heywood Hospital, Community Health Center of Fort Dodge, and several others, and she did nothing to determine whether any of this information that Simon entered came from Hayes. [Tr. Tran., ECF No. 354 at 296:3 thru 298:23].

98. Patierno knew that some of these healthcare facility clients Simon entered information about into Jobot's systems were Hayes's clients, such as Aspirus Health, because Patierno made placements for them when she worked at Hayes. [Tr. Tran., ECF No. 354 at 298:8 thru 299:16].

99. As manager of Jobot's Locumotives team, Patierno deemed it okay for Simon to contact healthcare clients to staff them, knowing they were Hayes clients, during his nondisclosure, non-solicit and non-compete period, as long as Simon made placements that Hayes did not make. [Tr. Tran., ECF No. 354 at 299:8–22].

100. Patierno testified that, regardless of whether the information came from Hayes, it could be used as long as "you can publicly find these hospitals online and call in and ask them if they need a rad tech." [Tr. Tran., ECF No. 354 at 298:15–19].

101. Patierno was aware that within three weeks of her hire, Eichelberg was contacting healthcare facility contacts (called practice managers) – the very ones who make decisions about *locums* placement hires at healthcare facility clients –while performing work for Jobot. [Tr. Tran., ECF No. 354 at 300:9 thru 303:17; Tr. Tran., ECF No. 355 at 90:15 thru 93:1; Ex. P-38].

102. Patierno had no concerns about Eichelberg working with the very people who make *locums* staffing decisions at facility clients during her non-compete period, and she did nothing to determine if the clients Eichelberg thought she should upload to Jobot Health were Hayes's clients. [Tr. Tran., ECF No. 354 at 302:8 thru 305:7; Tr. Tran., ECF No. 355 at 92:8 thru 93:1; *see* Ex. P-38].

103. Although Defendants repeatedly testified that Simon and Eichelberg were placing dentists, lawyers, and other non-healthcare related positions, the evidence demonstrates that simply was not the case. [Tr. Tran., ECF No. 356 at 207:1 thru 214:19; Ex. P-116].

104. Within three weeks of his hire at Jobot, Simon notified Jobot he had "a good in" to the national network for US Acute Care Solutions, a company that provides emergency medicine and other healthcare services – not legal services or accounting services. [Tr. Tran., ECF No. 356 at 206:19

thru 207:13; *see* Ex. P-58]. Jobot's Client Services Coordinator responded by asking Simon if he was targeting *locums* placements for this client. [Tr. Tran., ECF No. 356 at 206:19 thru 207:16; Tr. Tran., ECF No. 357 at 54:6–10].

105. When Eichelberg notified Patierno of her intent to make placements at healthcare facility Cayuga Health, Patierno never asked if Eichelberg obtained her contact at Cayuga from Hayes or if it was a Hayes client because, in her words, Eichelberg was trying to staff a controller position there – disregarding Eichelberg's non-disclosure obligations to Hayes. [Tr. Tran., ECF No. 354 at 303:22 thru 304:15; *see* Ex. P-37].

106. Patierno's testimony that she would recommend Eichelberg's and Simon's termination if they provided any Hayes's confidential or trade secret information or documents to Jobot is belied by the fact that she knew Simon and Eichelberg were contacting healthcare facility clients, including clients she worked with when she was employed by Hayes, and did nothing about it. [*See* Tr. Tran., ECF No. 354 at 304:5–22; 328:22–25].

II. CONCLUSIONS OF LAW

A. Eichelberg and Simon breached their employment agreements with Hayes (Count I)

The three elements of a breach-of-contract action are: (1) a valid contract; (2) a material breach; and (3) damages. *Friedman v. New York Life Ins. Co.*, 985 So.2d 56, 58 (Fla. 4th DCA 2008); *J.J. Gumerberg Co. v. Jamis Servs., Inc.*, 847 So. 2d 1048, 10499 (Fla. Dist. Ct. App. 2003); *Indus. Med. Pub. Co. v. Colonial Press of Miami, Inc.*, 181 So. 2d 19, 20 (Fla. Dist. App. 1966)). A valid contract, in turn, is generally composed of four basic elements: offer, acceptance, consideration, and sufficient specification of essential terms. *Jericho All-Weather Opportunity Fund, LP v. Pier Seventeen Marina & Yacht Club, LLC*, 207 So. 3d 938, 941 (Fla. Dist. Ct. App. 2016) (first citing *St. Joe Corp. v. McIver*, 875 So. 2d 375, 381 (Fla. 2004) and then citing *W. Const., Inc. v. Fla. Blacktop, Inc.*, 88 So. 3d 301, 304 (Fla. Dist. Ct. App. 2012)). The parties in this case do not dispute that the Employment Agreements between Hayes and

Simon/Eichelberg constitute valid contracts under Florida law. The dispute is whether Eichelberg and Simon breached their non-disclosure, non-competition, and non-solicitation covenants and whether those covenants are enforceable. Before the Court reaches breach, it must determine whether the restrictive covenants are valid and enforceable.

1. Florida law governing enforcement of restrictive covenants.

When a breach-of-contract action is based upon enforcement of a restrictive covenant, the plaintiff must plead and prove additional elements in order to establish that the restrictive covenant is a valid restraint of trade. *See* Fla. Stat. § 542.335. "Section 542.335 does not protect covenants 'whose sole purpose is to prevent competition *per se*' because those contracts are void as against public policy." *White v. Mederi Caretenders Visiting Servs. of Se. Fla., LLC*, 226 So. 3d 774, 785 (Fla. 2017) (quoting *Colucci v. Kar Kare Auto. Grp.*, 918 So. 2d. 431, 440 (Fla. Dist. Ct. App. 2006)). Instead, under Florida law, "a contract providing restrictions on competition must involve a legitimate business interest as defined by statute to be enforceable." *Id.* at 779. "Section 542.335 contains a comprehensive framework for analyzing, evaluating, and enforcing restrictive covenants in Florida based on an unfair competition analysis." *Henao v. Prof'l Shoe Repair, Inc.*, 929 So. 2d 723, 726 (Fla. Dist. Ct. App. 2006) (citation modified). "[T]he term 'restrictive covenants' includes all contractual restrictions upon competition, such as noncompetition/nonsolicitation agreements, confidentiality agreements, exclusive dealing agreements, and all other contractual restraints of trade." *Id.* Section 542.335 replaced Section 542.33, which the legislature repealed "with respect to restrictive covenants entered into or having an effective date on or after July 1, 1996." FLA. STAT. § 542.331. In enacting section 542.335, the legislature rejected the "contract approach" to enforcement of contractual restrictions on competition and replaced it with an approach based on legitimate business interests. *Henao*, 929 So. 2d at 726.

Under Section 542.335, three requirements must be satisfied for a restrictive covenant to be enforceable: (1) the restrictive covenant must be "set forth in a writing signed by the person against

whom enforcement is sought"; (2) the party seeking to enforce the restrictive covenant "shall plead and prove the existence of one or more legitimate business interests justifying the restrictive covenant"; and (3) the party seeking to enforce the restrictive covenant "shall plead and prove that the contractually specified restraint is reasonably necessary to protect the legitimate business interest or interests justifying the restriction." FLA. STAT. § 542.335(1)(a)–(c). "Any restrictive covenant not supported by a legitimate business interest is unlawful and is void and unenforceable." FLA. STAT. § 542.335(1)(b). The term "legitimate business interest" includes, but is not limited to:

1. Trade secrets, as defined in Section 688.002(4).

2. Valuable confidential business or professional information that otherwise does not qualify as trade secrets.

3. Substantial relationships with specific prospective or existing customers, patients, or clients.

4. Customer, patient, or client goodwill associated with:
   a. An ongoing business or professional practice, by way of trade name, trademark, service mark, or "trade dress";
   b. A specific geographic location; or
   c. A specific marketing or trade area.

5. Extraordinary or specialized training.

FLA. STAT. § 542.335. "Section 542.335 commands courts to modify, or blue pencil, a non-competition agreement that is 'overbroad, overlong, or otherwise not reasonably necessary to protect the legitimate business interest,' instructing courts to 'grant only the relief reasonably necessary to protect such interest.'" *White*, 226 So. 3d at 785 (quoting Fla. Stat. § 542.335(1)(c)).

Subsections 542.335(1)(b) and (c) govern the enforcement of restrictive covenants in Florida, and they require the party seeking to enforce a restrictive covenant "to plead and prove: (1) the existence of one or more legitimate business interests justifying the restrictive covenant, and (2) the contractually specified restraint is reasonably necessary to protect the legitimate business interest(s)."

Ansaarie v. First Coast Cardiovascular Inst., P.A., 252 So. 3d 287, 290 (Fla. Dist. Ct. App. 2018) (citation modified).

2. Hayes's restrictive covenants are valid and enforceable restraints of trade.

The Employment Agreements are in writing and signed by Eichelberg and Simon, so the first part of the three-part test is satisfied. [*See* Exs. P-0001 & P-0005]; FLA. STAT. § 542.335. Next, the Court examines whether Hayes pleaded and proved the restrictions on trade were reasonably necessary to protect its legitimate business interests.

(a). *Legitimate Business Interests.*

The restrictive covenants at issue in this case protect Hayes's legitimate business interest in its Confidential Business Information, its substantial relationships with specific or prospective clients, and its employees specially trained by Hayes for *locums* work. *See* Fla. Stat. § 542.335. In the operative complaint, Hayes pleaded its legitimate business interests protected by the restraints on disclosure, competition, and solicitation as follows: (1) trade secrets; (2) valuable confidential business or professional information; (3) substantial relationships with specific existing clients and healthcare professionals; (4) client and healthcare professional goodwill within Hayes's geographic market area; and (5) investment in education and training of an employee. [Am. Compl., ECF No. 95 ¶¶ 35–36].

(b). *Reasonably Necessary.*

At trial, Hayes proved by a preponderance of the evidence that its nondisclosure, noncompetition, and non-solicitation covenants were reasonably necessary to protect its enumerated legitimate business interests.

The nondisclosure covenant prohibiting Eichelberg and Simon from disclosing Hayes's Confidential Business Information and trade secrets was reasonably necessary to protect Hayes's legitimate business interest in that information. The nondisclosure covenant protects information acquired by Hayes employees about Hayes physicians and Hayes medical centers, known only to Hayes

and not publicly available, accumulated by Hayes's employees over many years to its competitive advantage in the *locums* space. The record evidence shows Eichelberg and Simon disclosed some (if not all) of the Hayes information they took with them to Jobot—Hayes's competitor in *locums* placements. The information clearly had value to Jobot as its success skyrocketed soon after Eichelberg and Simon joined The Locumotives.

Turning to the noncompetition covenant prohibiting Eichelberg and Simon from being employed by a Competitive Business for one year immediately following their departure from Hayes. It, too, was reasonably necessary to protect Hayes's legitimate business interest. The interest here is Hayes's substantial relationships with specific existing clients and healthcare professionals. For a relationship with a prospective client or health care professional to qualify as a legitimate business interest, a party must prove the relationship was with a particular, identifiable individual. *Ansaarie v. First Coast Cardiovascular Inst., P.A.*, 252 So. 3d 287, 290 (Fla. Dist. Ct. App. 2018). At trial, Hayes proved by a preponderance of the evidence that Eichelberg and Simon joined Jobot's *locums* team and were the team's star performers for weeks on end after their arrival. Hayes also introduced evidence that Jobot placed at least one physician with whom Hayes had a longstanding relationship, and that Jobot acquired new medical-facility clients that once belonged to Hayes after Eichelberg and Simon joined Jobot. Indeed, Jobot recruited Eichelberg and Simon because they were top performers at Hayes in *locums* work—work Jobot entered in 2021 (two years before Eichelberg and Simon joined Jobot). The non-competition covenant is also reasonable in time because it is limited to one year following the termination of employment.

Finally, the non-solicitation covenant prohibiting Eichelberg and Simon from soliciting Hayes's clients and physicians for two years following termination was reasonably necessary to protect Hayes's legitimate business interest in its existing clients and health care professionals and its investment in training its employees in *locums* work. Florida case law has recognized the right of

employers to enforce similar non-solicitation provisions when a former employee solicits its customers. *E.g.*, *Smart Pharmacy, Inc. v. Viccari*, 213 So. 3d 986, 989 (Fla. Dist. Ct. App. 2016); *Litwinczuk v. Palm Beach Cardiovascular Clinic, L.C.*, 939 So. 2d 268, 270, 272–73 (Fla. Dist. Ct. App. 2016); *Southernmost Foot & Ankle Specialists, P.A. v. Torregrosa*, 891 So. 2d 591, 593–96 (Fla. Dist. Ct. App. 2004). At trial, Hayes proved that Jobot actively recruited Eichelberg and Simon to do *locums* work in their new Locums Division; that Eichelberg and Simon actively recruited Hayes's employees to join them at Jobot; and that Eichelberg and Simon communicated with Hayes's physicians and medical center clients in an effort to increase Jobot's *locums* placements. It does not matter whether Eichelberg or Simon were directly credited in Jobot's JAX system with *locums* placements as to Hayes's clients and physicians. The circumstantial evidence is overwhelming that Eichelberg and Simon boosted Jobot's *locums* business in ways that would have never occurred without their participation in the Locumotives. Hayes thus proved by a preponderance of the evidence that enforcement of the non-solicitation covenant was reasonably necessary to protect its legitimate business interests. *See Infinity Home Care, LLC v. Amedisys Holdings, LLC*, 180 So. 3d 1060, 1067 (Fla. Dist. Ct. App. 2015) (finding evidence that former employee was soliciting the same referral sources and employer's evidence of a decline in referrals after former employee's departure was sufficient to find enforcement of restrictive covenants was reasonably necessary to prevent unfair competition).

Accordingly, the Court concludes that Hayes has pleaded and proven that the nondisclosure, noncompetition, and non-solicitation covenants were reasonably necessary to protect its legitimate business interests as required by Florida law.

(c). *Enforceability, Breach, and Damages.*

"Whether a non-compete covenant is reasonable or overly broad is a question of fact for the trial court." *Whitby v. Infinity Radio Inc.,* 951 So. 2d 890, 897 (Fla. Dist. Ct. App. 2007) (citing *Orkin Exterminating Co. v. Girardeau,* 301 So. 2d 38, 40 (Fla. Dist. Ct. App. 1974), *cert. denied,* 317 So. 2d 75

(Fla.1975) (recognizing that "[w]hat is a reasonable area is a factual matter to be determined in each [non-compete] case"); *Sarasota Beverage Co. v. Johnson,* 551 So. 2d 503, 507 (Fla. Dist. Ct. App. 1989) (citing *Dorminy v. Frank B. Hall Co., Inc.,* 464 So. 2d 154 (Fla. Dist. Ct. App. 1985)) (concluding that "[t]he facts of each [non-compete] case determine whether the area and time restrictions are reasonable"). "[A] trial court may not resolve disputed issues of fact when considering a motion for summary judgment." *Albelo v. S. Bell,* 682 So. 2d 1126, 1129 (Fla. Dist. Ct. App. 1996). Moreover, most of the evidence in this case concerning Hayes's legitimate business interests and the broadness of the non-compete covenant is by way of testimony that necessarily gives rise to questions of credibility, determinations of which are inappropriate on summary judgment. *See Kuczkir v. Martell,* 480 So. 2d 700, 701 (Fla. Dist. Ct. App. 1985).[2] At trial, Hayes proved by a preponderance of the evidence that Eichelberg and Simon were actively participating in *locums* work in direct competition to Hayes. Thus, the noncompetition covenant that prohibits Eichelberg and Simon from directly competing with Hayes in *locums* work for Jobot with respect to the placement of medical providers at medical facilities is reasonable and thus enforceable.

1. Eichelberg and Simon breached their noncompetition covenants.

During their first year of employment with Jobot, which also was the restricted one-year noncompete period, Eichelberg and Simon worked with Jobot's *locums* team, participated in *locums* team meetings, were included in *locums* team group e-mails, and were frequently contacted by the *locums*

[2] After the hearing on Hayes's request for a preliminary injunction (which was granted), United States District Judge Darrin P. Gayles concluded that Hayes's non-competition covenant was unenforceable, in part, because it was overbroad and unduly restrictive by barring Eichelberg and Simon from working for any Hayes competitor in *any* capacity. *Hayes Med. Staffing, LLC v. Eichelberg,* No. 0:23-CV-60748, 2024 WL 670440, at *9 (S.D. Fla. Jan. 23, 2024) (citing *Cross Country Staffing, Inc.*, No. 18-24717-CIV, 2018 WL 11453726, at *3 (finding a non-competition covenant overbroad insofar as it bars a former employee from working for a competing business in any capacity)). Judge Gayles thus ruled that the non-competition covenant must be modified and narrowed to direct competition to make it enforceable. *Id.*

recruiters on their team and on the other *locums* team, "Dr. Joboto", to partner on *locums* placements. Jobot's Vice President, Jason Rodrigues, reported internally in writing that Simon was "going to be one of the best locums hires ever!" that "the one year non-compete is not great but we should hire him anyway." Eichelberg boasted to her family and friends that she was working on Jobot's Locums Team with the same l*ocums* manager, which was "amazing," and that she would not have to stay out of the Locums Loop for the one year noncompete period. And it appears that she and Simon both were kept in the "locums loop." Defendants produced Locumotive Team "Bot Reports" which consistently ranked Simon and Eichelberg at the top of the Locumotives team. Simon, Eichelberg, and other members of the Jobot have relationships with clients throughout the United States and perform staffing services nationwide. *See Hayes Healthcare Servs., LLC v. Meacham*, No. 19-60113-CIV, 2019 WL 2637053, at * 5 (S.D. Fla. Feb. 1, 2019); *see., e.g.*, *Proudfoot Consulting Co. v. Gordon*, 576 F. 3d 1223, 1231 (11th Cir. 2009) (finding that a district court did not clearly err in including North America and Europe in the geographic scope of a non-compete covenant because the employer conducts its operations in that territory and the former employee was assigned to that territory).

At trial, Hayes proved by a preponderance of the evidence that Simon and Eichelberg assisted Jobot's *locums* recruiters make placements of Hayes physicians at Hayes medical facility clients in direct competition with Hayes.

2. Eichelberg and Simon breached their nondisclosure covenants.

At trial, Hayes proved by a preponderance of the evidence that Eichelberg and Simon disclosed Hayes's Confidential Business Information to Jobot in violation of their nondisclosure covenant. Eichelberg and Simon admit they sent Hayes's spreadsheets (trade secrets) and Confidential Business Information to their personal e-mail addresses. Eichelberg and Simon admit they did not return the information when they resigned to work for Jobot. Eichelberg and Simon admit they did not return the information when Hayes reminded them to do so post-resignation. Eichelberg and

Simon admit that, even after Hayes sent them a "cease and desist" letter, they still did not return any of the information. The retention of Hayes's trade secrets and Confidential Business Information post-employment (and e-mailing to information their personal e-mail accounts) violated the non-disclosure provisions in their Employment Agreements.

Further, Jobot's Locumotives team members were assigned points on Bot Reports not only for placing positions but also for uploading data about new clients, contracts, and other information that may assist in generating new business for the team. In the four days immediately following Simon's hire at Jobot, he was already sending contracts to healthcare facilities on behalf of Jobot. Out of the first twenty-two (22) clients Simon entered information about to Jobot's JAX system during his first three months of employment, eighteen (18) of them were healthcare facilities. Additionally, from the outset of their employment with Jobot, Eichelberg and Simon were routinely included in *locums* e-mails, *locums* group threads, and *locums* team meetings. Specifically, Jobot *locums* recruiters introduced Simon to *locums* contacts at hospitals and sought advice from Eichelberg on her *locums* recruiting process.

Finally, Jobot's placement of Simon and Eichelberg on the Locumotives Team and engaging them in the *locums* activity at Jobot belies Jobot's arguments that it took measures to ensure Simon and Eichelberg complied with their Employment Agreements. To the contrary, the evidence shows Simon and Eichelberg were (at least until Jobot retained outside counsel for this litigation) fully immersed in Jobot's *locums* business, including being kept fully "in the loop" on *locums* developments and opportunities and by entering facility and provider clients and data directly into Jobot's systems. In sum, Simon's and Eichelberg's employment with Jobot was a direct violation of their non-compete agreements with Hayes.

3. Eichelberg and Simon breached their non-solicitation covenants.

At trial, Hayes proved by a preponderance of the evidence that Eichelberg and Simon also breached their non-solicitation covenants. After Simon began working for Jobot, Patierno repeatedly used Simon in her efforts to recruit Hayes employees to join Jobot. Patierno's text messages reflect she asked Simon for specific information on Eichelberg and multiple other Hayes employees, including Rich Simon, JP Marengo, and Sara Boucher. Simon provided information to Patierno about those employees, including information about their success at Hayes, the amount of their billings, and their books of business. Eichelberg also provided Patierno with information in an effort to encourage Patierno and Jobot to hire former Hayes colleagues Sara Boucher and Meg Wilson. In text messages, Eichelberg directly solicited Kat Crawford to leave Hayes to work at Jobot, writing in the text to keep the communication confidential because she is under a "non-solicit," and providing her a link to apply for a position at Jobot.

In view of the foregoing, the Court finds Plaintiff proved by a preponderance of the evidence that Eichelberg and Simon breached their employment agreements with Hayes. Accordingly, judgment is entered on Count I (breach of contract) against Defendants Amy Eichelberg and Scott Simon and for Plaintiff Hayes Medical Staffing, LLC.

B. Plaintiff failed to prove its misappropriation of trade secrets claims against Eichelberg and Simon (Counts II and III)

To establish misappropriation of trade secrets, Hayes must prove (1) it possesses trade secret information and took reasonable steps to safeguard its secrecy; and (2) Eichelberg and/or Simon misappropriated the trade secret. *See Marlite, Inc. v. Alvin Eckenrod*, No. 09-22607-CIV, 2010 WL 11506348, at *3 (S.D. Fla. June 9, 2010) (citing *Del Monte Fresh Produce Co. v. Dole* Food Co., 136 F. Supp. 2d 1271, 1291 (S.D. Fla. 2001) (citing FLA. STAT. § 688.002.). "Misappropriation" under the DTSA includes the "acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means" or "disclosure or use of a trade secret of another without express or implied consent." 44 U.S.C. § 1839(5). "Improper means" includes "theft,

bribery, misrepresentation, [and] breach or inducement of a breach of a duty to maintain secrecy," but excludes "reverse engineering, independent derivation, or any lawful means of acquisition." 18 U.S.C. § 1839(6). "Misappropriation" under the FUTSA occurs when a party acquires, discloses, or uses the trade secret. *Compulife Software, Inc. v. Newman*, 959 F.3d 1288, 1311 (11th Cir. 2020) ("One party can misappropriate another's trade secret by either acquisition, disclosure, or use.") (citing FLA. STAT. § 688.002(2)). The analysis for misappropriation of trade secrets under DTSA and FUTSA are "nearly the same." *Nephron Pharms. Corp. v. Hulsey*, No. 6:18-cv-1573-ORL-31LRH, 2020 WL 7684863, at *3 (M.D. Fla. Oct. 7, 2020), *report and recommendation adopted at* No. 6:18-cv-1573-ORL-31LRJ, 2020 WL 7137992 (M.D. Fla. Dec. 7, 1010).

The parties do not seriously dispute that the spreadsheets taken by Eichelberg and Simon constitute Hayes's trade secrets, especially in light of Judge Gayles's prior ruling that they are. The issue at trial was whether Hayes proved (1) that it took reasonable steps to safeguard the spreadsheets' secrecy (and the Confidential Business Information contained therein), and (2) that Eichelberg and/or Simon misappropriated the spreadsheets under either the DTSA or FUTSA. The Court concludes Hayes failed to prove both.

First, the unrebutted testimony at trial was that Eichelberg and Simon e-mailed the spreadsheets to themselves to accomplish their work for Hayes remotely for the sake of convenience (and during the COVID-19 pandemic) while they were employed by Hayes. As counsel for Hayes explained, once the spreadsheets left Hayes's IT system, they were literally "out the door." [Tr. Tran., ECF No. 357 at 146:4]. Indeed, at any time during (or after) their employment with Hayes, Eichelberg and/or Simon could have posted the spreadsheets to the internet or forwarded them to anyone anywhere in the world at any time. In this electronic age, Hayes's decision not to lock down or safeguard the spreadsheets and the Confidential Business Information contained therein (which it considers to be valuable trade secrets) within its own IT environment allowed Eichelberg and Simon

to e-mail the spreadsheets to their personal e-mail accounts throughout their employment and prior to their departure from the company. And, Hayes's failure to monitor its systems to protect against transmission of its spreadsheets secrets allowed the transfers to go undetected until after Eichelberg and Simon left Hayes's employ. [*See* Tr. Tran., ECF No. 356 at 88:23 thru 91:6, 100:9–15]. Accordingly, the Court concludes Hayes failed to prove by a preponderance of the evidence to prove that it took "reasonable steps" to safeguard the secrecy of the spreadsheets (and the Confidential Business Information contained therein).

Hayes's reliance on the non-disclosure covenants as evidence of its reasonableness in securing the secrecy of the spreadsheets and their Confidential Business Information is misplaced. While having employees agree to and sign that they will not disclose Confidential Business Information alerts employees of their non-disclosure duties, the signed agreements themselves do nothing to prevent trade secrets in electronic format from escaping unnoticed. Indeed, Hayes's IT witness testified he did not know that Eichelberg and Simon had e-mailed the spreadsheets to themselves until after they left Hayes's employment. [Tr. Tran., ECF No. 356 at 92:13–20; 93:13–22; 99:10 thru 101:24]. Hayes did not have an off-boarding protocol that accounted for Eichelberg's and Simon's use of their personal devices to accomplish work for Hayes. The fact that IT did not become involved in securing Hayes's electronic documents in the possession of employees leaving the company, when Hayes knew they had been e-mailing the spreadsheets to their personal e-mail accounts, shows an absence of taking reasonable steps to safeguard.

As to whether Eichelberg and Simon "misappropriated" the spreadsheets, that's a closer question. As discussed above, Hayes successfully proved that both Eichelberg and Simon improperly disclosed Hayes's Confidential Business Information to Jobot. And Eichelberg at least *intended* to take her spreadsheets for use doing *locums* work at Jobot. But there is no evidence in the record that she did, in fact, use the spreadsheets (as opposed to specific information contained within them). And

there is no evidence in the record that the spreadsheets were uploaded into Jobot's JAX system or used by Jobot in any way.

Eichelberg and Simon obtained the spreadsheets in the first instance so they could do their work at Hayes. So, they did not improperly acquire them. Hayes's assertion that Eichelberg's and Simon's post-employment retention of the spreadsheets in violation of their Employment Agreements is "misappropriation" of trade secrets seems a stretch since there is zero evidence the spreadsheets *themselves* were ever used or disclosed. While there is no doubt in the Court's mind that Eichelberg and Simon disclosed Hayes's Confidential Business Information contained in the spreadsheets to Jobot, Hayes specifically identified the spreadsheets themselves (not merely the Confidential Business Information contained within them) as its trade secrets and litigated this case as such. [*See* Tr. Tran., ECF No. 353 at 59:10–18; 98:23–24]. *See, e.g.,* Plaintiff's Amended Motion for Preliminary Injunction, ECF No. 12 at 3 ("Among other documents [Eichelberg] took just two days before giving her notice, Eichelberg emailed to her personal Gmail account several Excel Spreadsheets titled 'Master List' and 'Cardio-Total List.' The Master Lists and Cardio-Total Lists contain highly confidential and proprietary information relating to Hayes' current and prospective clients. The Cardio-Total Lists she took contain private contact information for more than 37,000 facility clients and physician clients (home addresses, personal cellphone numbers and personal email addresses), all compiled into an organized and distilled list by state. The Master Lists she took contain the same information for another 11,200 clients, but also includes information about each physician's hospital affiliations, whether they are interested in locums or permanent placements only, when they were last contacted and by which Hayes' employee, the various states in which each physician is licensed, their areas of specialty, and notes input by various Hayes employees who were working off of these spreadsheets during Eichelberg's employment. The notes are specific to the client's needs for placement, such as 'going into IVC fellowship but may be interested in general work during fellowship' and dates of

availability for placements. Hayes also discovered that Simon similarly took and retained sensitive documents and spreadsheets consisting of client 'master lists' and 'CS Peripheral Vascular lists' containing well over 1000 physician client names, contact information, home addresses, email addresses, treatment specialties, and affiliations, organized by state, and other personal information of Hayes' physician clients that is not publicly available and which would give a competitor – like Jobot -a competitive edge. *These spreadsheets of client lists taken by Eichelberg and Simon were created, compiled and maintained by Hayes and constitute valuable non-public, confidential and trade secret information belonging to Hayes,* as defined under the Agreements.") (emphasis added); Tr. Tran., ECF No. 353 at 32:1–13 ("The evidence will show that these spreadsheets contain confidential trade secret information relating to thousands of current and prospective clients and doctors, all compiled into *easily searchable and distilled Excel spreadsheets* organized by state and specialty, which not only contained information about their licenses and their contact information, but it also had information about where they want to spend their summers and whether they need to be placed near a school because they have small children and whether they need to be placed at a facility with a microwave and a refrigerator because they have diabetes and they need their 12 medication refrigerated. That level of specificity that is 13 non-public information.") (emphasis added)].

There is insufficient evidence in this record that the spreadsheets themselves ever made it to Jobot. Indeed, Hayes did not sue Jobot or Patierno for misappropriation of trade secrets. Nor did Hayes amend its complaint after discovery to add such claims. Nevertheless, it is Hayes's failure to prove it acted reasonably to protect the secrecy of the spreadsheets and the Confidential Business Information contained therein that dooms its claims under the DTSA and the FUTSA.

In sum, the Court finds Plaintiff failed to prove by a preponderance of the evidence that Eichelberg or Simon misappropriated its trade secrets. Accordingly, judgment on Counts II and III

(misappropriation of trade secrets) is in favor of Defendants Amy Eichelberg and Scott Simon and against Plaintiff Hayes Medical Staffing, LLC.

C. Eichelberg and Simon breached their fiduciary duties to Hayes (Count IV)

The elements necessary to state a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) a breach of that duty; and (3) damage proximately caused by that duty. *Brouwer v. Wyndham Vacation Resorts, Inc.*, 336 So. 3d 372, 373 (Fla. Dist. Ct. App. 2022) (citing *Sola v. Markel*, 320 So. 3d 326, 328 (Fla. Dist. Ct. App. 2021)). "[A]n employee may not engage in disloyal acts in anticipation of his future competition, such as using confidential information acquired during the course of his employment or soliciting customers and other employees prior to the end of his employment." *Taubenfeld v. Lasko*, 324 So. 3d at 538.

Florida law recognizes two fundamental categories of fiduciary duty: a duty of loyalty and a duty of care. *777 Partners LLC v. Pagnanelli*, No. 20-20172-CIV, 2022 WL 4597804, at *5 (S.D. Fla. Mar. 16, 2022) (citing *Taubenfeld*, 324 So. 3d 529, 539 *Flight Equip. & Eng'g Corp. v. Shelton*, 103 So. 2d 615, 627 (Fla. 1958)). Only the duty of loyalty is relevant here. *See Hunt v. Skygroup Invs. LLC*, No. 8:25-CV-00092-MSS-TGW, 2025 WL 1237316, at *3 (M.D. Fla. Apr. 29, 2025) ("[T]he duty of loyalty requires an employee to refrain from engaging in disloyal competition with his or her employer, or otherwise to cause injury to its business endeavors."). The terminology has become confused in some cases: some courts state that there is a fiduciary duty *and* a duty of loyalty in Florida law—but others explain that one of the fiduciary duties is the duty of loyalty.[3] However, recent precedent holds that

[3] *See Valiant Servs. Grp., LLC v. Com. Works, Inc.*, No. 6:21-CV-1239-RBD-GJK, 2022 WL 738471, at *2 n.2 (M.D. Fla. Jan. 24, 2022) (citing *Taubenfeld v. Lasko*, 324 So. 3d 529, 538 (Fla. Dist. Ct. App. 2021); *Stonepeak Partners, LP v. Tall Tower Cap., LLC*, 231 So. 3d 548, 553 (Fla. Dist. Ct. App. 2017)) ("The duty of loyalty is part of a fiduciary duty, and a breach of a duty of loyalty gives rise to a breach of fiduciary duty claim; *but see OPS Int'l, Inc. v. Ekeanyanwu*, 672 F. Supp. 3d 1228, 1236 (M.D. Fla. 2023) (quoting *Charles Schwab & Co. v. McMurry*, No. 2:08-cv-534-FtM-29SPC, 2008 WL 5381922, at *1 (M.D. Fla. Dec. 23, 2008) ("It is well-established under Florida law that an employee owes a fiduciary duty and a duty of loyalty to his or her employer.").

the duty of loyalty is a category of fiduciary duty, with a breach of the duty of loyalty giving rise to a breach-of-fiduciary-duty claim. *See Taubenfeld*, 324 So. 3d at 538.

To claim a breach of loyalty in Florida state law, a plaintiff must "allege (1) the existence of a duty of loyalty, (2) a breach of that duty, and (3) damages proximately caused by the breach." *Martin v. Partsbase, Inc.*, No. 20-80235-CIV, 2020 WL 7495536, at *2 (S.D. Fla. Dec. 4, 2020) (first citing *Hennegan Co. v. Arriola*, 855 F. Supp. 2d 1354, 1361–62 (S.D. Fla. 2012) and then citing *Gracey v. Eakes*, 837 So.2d 348 (Fla. 2002)). Absent an agreement prohibiting it, a former employee may compete with their former employer. *JetSmarter Inc. v. Benson*, No. 17-62541-CIV, 2018 WL 2694598, at *5 (S.D. Fla. Apr. 6, 2018), *report and recommendation adopted*, No. 17-62541-CIV, 2018 WL 2688771 (S.D. Fla. Apr. 16, 2018) (citing *New World Fashions, Inc. v. Lieberman*, 429 So. 2d 1276, 1277 (Fla. Dist. Ct. App. 1983)). However, an employee may not "engage in disloyal acts in anticipation of his future competition …." *Id.* (citing *Fish v. Adams*, 401 So. 2d 843, 845 (Fla. Dist. Ct. App. 1981)). This includes "using confidential information acquired during employment," soliciting customers, or soliciting "employees prior to the end of his employment." *Id.* (emphasis added). In *Freedom Med*, the court found a breach of fiduciary duty where an employee "[worked with their company's direct] competitors to obtain bids and encourag[ed] others to delay completing projects …." *Freedom Med., Inc. v. Sewpersaud*, 469 F. Supp. 3d 1269, 1278 (M.D. Fla. 2020), *order clarified*, No. 620CV771ORL37GJK, 2020 WL 3487642 (M.D. Fla. June 25, 2020). A breach of the duty of loyalty can also arise where an employee provides confidential information to an outside party. *Barnett Bank of Marion Cnty., N.A. v. Shirey*, 655 So. 2d 1156 (Fla. Dist. Ct. App. 1995) (finding a breach when a bank employee disclosed confidential financial information to a third party.) *See also Mortg. Now, Inc. v. Stone*, No. 3:09CV80/MCR/MD, 2010 WL

11519201, at *7 (N.D. Fla. Sept. 29, 2010) (finding potential liability where an employee recruited other members of the firm to work for a new competitor).

"The general rule with regard to an employee's duty of loyalty to his employer is that an employee does not violate his duty of loyalty when he merely organizes a competing business during his employment to carry on a rival business after the expiration of his employment." *Furmanite*, 506 F. Supp. 2d at 1149 (citing *Fish*, 401 So. 2d at 845). Moreover, an employee may take customer lists that he or she developed while employed. What is not allowed is for the employee to engage in disloyal acts in anticipation of his future competition, such as using confidential information acquired during the course of employment or soliciting customers and other employees prior to the end of employment. *Id.* (citing *Harllee v. Prof'l Serv. Indus., Inc.,* 619 So. 2d 298, 300 (Fla. Dist. Ct. App. 1992)*; Ins. Field Servs., Inc. v. White & White Inspection & Audit Serv.*, 384 So. 2d 303 (Fla. Dist. Ct. App. 1980).

"A fiduciary relationship may be either express or implied." *First Nat'l Bank & Tr. Co. of Treasurer Coast v. Pack*, 789 So. 2d 411, 415 (Fla. Dist. Ct. App. 2001) (citation omitted). "A fiduciary relationship which is implied in law is based on the specific factual circumstances surrounding the transaction and the relationship of the parties and may be found when confidence is reposed by one party and a trust accepted by the other." *Benessere Inv. Grp., LLC v. Swider,* No. 24-CV-21104-RAR, 2024 WL 4652090, at *10 (S.D. Fla. Oct. 31, 2024) (citation modified). "An implied fiduciary duty may exist between employer and employee when an employee is entrusted with confidential information, and the duty to keep those confidences endures even after the employee has left the employer." *Id.* (citing *Sensormatic Elecs. Corp. v. TAG Co. US, LLC*, 632 F. Supp. 2d 1147, 1191 (S.D. Fla. 2008), *aff'd in part sub nom. Sensormatic Elecs., LLC v. Kahle*, 367 F. App'x 143 (Fed. Cir. 2010). Thus, under Florida law, "an employee may not engage in disloyal acts in anticipation of his future competition, such as using confidential information acquired during the course of his employment

…." *Furmanite*, 506 F. Supp. 2d at 1149 (citing *Harllee*, 619 So. 2d at 300). An employee does not have to be managerial in order to have this duty. *Id.* (citing *Fish,* 401 So. 2d at 845).

After due consideration, the Court finds Hayes has proven that Eichelberg and Simon breached their fiduciary duties to Hayes. As discussed above, the record reflects that Eichelberg and Simon e-mailed Hayes's spreadsheets containing Confidential Business Information to themselves prior to their departures and that Eichelberg and Simon used the Confidential Business Information contained in those spreadsheets to solicit Hayes clients for Jobot even though their restrictive covenants prohibited it. As discussed above, Hayes has proven that Eichelberg and Simon breached their restrictive covenants by disclosing Hayes's confidential information obtained during their employment to Hayes's competitor, Jobot, immediately after they left Hayes's employment. On these facts, Hayes has proven that Eichelberg and Simon breached their duty of loyalty to Hayes, causing Hayes damages in the form of lost business. Accordingly, judgment on Count IV is in favor of Plaintiff Hayes Medical Staffing, LLC, and against Defendants Amy Eichelberg and Scott Simon.

D. Patierno and Jobot Tortiously Interfered with Hayes's Contractual Relationships (Count V)[4]

A claim for tortious interference exists where the plaintiff can establish the following: (1) the existence of the contract; (2) the defendant's knowledge of the contract; (3) the defendant's intentional procurement of the breach of contract; (4) the absence of justification or privilege; and (5) damages resulting from the breach. *Johnson Enters. of Jacksonville Inc. v. FPL Grp. Inc.*, 162 F.3d 1290, 1321 (11th Cir. 1998) (citing *Fla. Tel. Corp. v. Essig*, 468 So. 2d 543, 544 (Fla. Dist. Ct. App. 1985)). Satisfying the

[4] Defendants assert for the first time in their Proposed Findings of Fact and Conclusions of Law that this count is preempted by the FUTSA. However, a threat or intent to misappropriate trade secrets does not violate FUTSA. FLA. STAT. § 688.003(a). As discussed in Part II.B, Plaintiff failed to prove that either Eichelberg or Simon used their spreadsheets at Jobot. Indeed, Plaintiff did not sue Jobot for misappropriation of its trade secrets.

third element requires proof that the defendant influenced, induced, or encouraged the contracting party to breach. *Farah v. Canada*, 740 So. 2d 560, 561 (Fla. Dist. Ct. App. 1999). The fourth element requires proof that the interfering defendant is a third party, a stranger to the relationship in question. *Salt v. Ruder, McClosky, Smith, Schuster & Russell, P.A.*, 742 So. 2d 381, 386 (Fla. Dist. Ct. App. 1999) (citations omitted). A party is not a stranger if he has "any beneficial or economic interest in, or control over" the relationship, including a "supervisory interest in how the relationship is conducted or a potential financial interest in how a contract is performed." *Walter v. Jet Aviation Flight Servs., Inc.*, No. 9:16-cv-81238, 2017 WL 3237375, at *8 (S.D. Fla. July 31, 2017) (quoting *Hamilton v. Suntrust Mortg., Inc.*, 6 F. Supp. 3d 1312, 1320 (S.D. Fla 2014) (citation modified)). Further, a "showing of malice is not necessary to establish the element of intentional inference." T*extron Fin. Corp. v. RV Having Fun Yet, Inc.*, No. 3:09-CV-2-J-34TEM, 2011 WL 13176212, at *4 (M.D. Fla. Aug. 3, 2011) (citing *Tamiami Trail Tours, Inc. v. Cotton*, 463 So. 2d 1126, 1128 (Fla. 1985)).

"In Florida, an employer is vicariously liable for an employee's tortious conduct where the conduct occurs within the scope of the employment." *Fields v. Devereux Found., Inc.*, 244 So. 3d 1193, 1196 (Fla. Dist. Ct. App. 2018). The employee's conduct must be of the kind she was hired to perform and must occur "substantially within the time and space limits authorized or required by the work to be performed," and must "be activated at least in part by a purpose to serve" the employer. *Id.* (citing *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353, 357 (Fla. Dist. Ct. App. 2001)). "Thus, an employer can generally be held vicariously liable for an intentional tort where the employee's tortious conduct is undertaken in furtherance of the employer's interests." *Id.* (first citing *Perez v. Zazo*, 498 So. 2d 463, 465 (Fla. Dist. Ct. App. 1986) then citing *Columbia By The Sea, Inc. v. Petty*, 157 So. 2d 190, 192 (Fla. Dist. Ct. App. 1963) then citing *Jax Liquors, Inc. v. Hall*, 344 So. 2d 247, 247 (Fla. Dist. Ct. App. 1976)). The fact that the employee may also personally benefit from her tortious conduct does not automatically negate vicarious liability of the employer. *Salt*, 742 So. 2d at 385.

At trial, Hayes proved all the elements of its tortious interference claim against Patierno, and Jobot is vicariously liable for Pateirno's tortious conduct. Pateirno's actions were undertaken in furtherance of Jobot's interests. As a former Hayes employee herself, Patierno knew Eichelberg and Simon had signed non-compete and non-solicit agreements with Hayes, but she recruited them for her *locums* team at Jobot anyway. [Tr. Tran., ECF No. 354 at 214:12–21]. Further, Jobot's Vice President Rodrigues testified he was aware of Simon's non-compete but hired Simon because he would be a great *locums* addition. The evidence is abundantly clear. Jobot was building a new *locums* division, and it intentionally procured two of Hayes's top *locums* recruiters to ensure the division's success. [*See* Tr. Tran., ECF No. 354 at 221:13 thru 226:21]. The evidence also suggests that, once outside counsel got involved, Patierno and Jobot attempted damage control. [*See* Tr. Tran., ECF No. 354 at 229:20 thru 230:14]. But the damage had already been done. Hayes's Confidential Business Information had been disclosed to Jobot to Hayes's detriment.

Additionally, despite Jobot's legal counsel reviewing Simon's and Eichelberg's Employment Agreements with them at the start of their employment with Jobot, Jobot and Patierno placed Simon and Eichelberg in the *locums* division on the Locumotives Team. [*See* Tr. Tran., ECF No. 354 at 259:25 thru 250:12, 252:5–11, 255:6–12, 256:7–8, 257:3 thru 260:9]. Thus, despite their knowledge about restrictions on their employment, Jobot and Patierno placed Simon and Eichelberg on the very team doing *locums* placements where they attended *locums* team meetings and received *locums* team communications. From the outset of their non-compete period, Jobot assigned Simon and Eichelberg to the very team in direct competition with Hayes headed by a former Hayes employee whom Hayes had trained to do *locums* work.

Jobot clearly intended to hire both Simon and Eichelberg based on their massive success in *locum*s recruiting for Hayes, notwithstanding the terms of their noncompetes. Jobot's VP Rodrigues expressly instructed Jobot's Chief Growth Officer to move Simon's final interview with CEO

Golledge "up to ASAP" because "[t]his is going to be one of the best locums hires ever!" Rodrigues continued in stating, "the one year non-compete is not great, but we should hire him anyway." [Tr. Tran., ECF No. 355:12–15]. Jobot did just that. Patierno also used her Hayes connection with Simon to solicit and recruit Simon for her *locums* team at Jobot knowing full well that Simon was subject to the same restrictions she had during and after her employment with Hayes. [*See* Tr. Tran., ECF No. 354 at 228:24 thru 229:19].

Within Jobot, Patierno was treated as Simon's referral source; she provided Jobot with information about Simon's financial success at Hayes, his experience, resume and contact numbers. Patierno reported in an e-mail entitled "Locums candidate to hire Scott Simon" that Simon's billings in locums were over $20 million, which caught the attention of Jobot's VP Rodrigues. [Tr. Tran., ECF No. 354 at 234:25 thru 235:24]. Before Eichelberg joined Jobot, Eichelberg told friends that she would continue to be involved in *locums* work, "working with the *locums* team and same manager" at Jobot, and that she "won't have to be entirely out of the locums loop over the year." [Tr. Tran., ECF No. 354 at 256:6–9]. Moreover, after Eichelberg started work at Jobot on the Locumotives team, teammates handling *locums* placements asked Eichelberg for *locums* advice and assistance. [*See* Tr. Tran., ECF No. 354 at 264:23 thru 265:19; Ex. P-62].

Jobot made no effort to separate Eichelberg and Simon from Jobot's *locums* work, even though it has other business groups where they could have been placed during their non-compete period. Despite their non-competition obligations, Jobot included Eichelberg and Simon on *locums* staffing e-mails and Patierno included Eichelberg and Simon in *locums* team meetings from the start. Jobot also linked Eichelberg's and Simon's contact information to *locums* positions posted on its website. The evidence is clear Jobot and Patierno did not care that Simon and Eichelberg breached their non-compete agreements with Hayes by working on Jobot's Locumotives team.

While the evidence shows that Jobot and Patierno did not care about the non-compete agreements, the evidence also shows they altogether ignored the non-solicitation agreements. Patierno actively encouraged Simon and Eichelberg to provide her with information on his former co-workers from Hayes. [*See* Tr. Tran., ECF No. 354 at 304:23 thru 309:6; 309:11 thru 318:12]. In text message exchanges and e-mails, Patierno asked Simon about Eichelberg while she was still a Hayes employee. [Tr. Tran., ECF No. 354 at 318:1–8]. Patierno also asked Simon for information about other Hayes employees including Sara Boucher, J.R. Pryor, and Rich Simon. [*See* Tr. Tran., ECF No. 354 at 310:1–19, 323:6–13, 24 thru 325:22]. Patierno discussed bringing Hayes top producer J.R. Pryor to Jobot in a Locumotives Team meeting. [Tr. Tran., ECF No. 354 at 323:6–10]. After Simon revealed to Patierno that Rich Simon was on track to exceed $3 Million in Oncology *locums* at Hayes, Patierno wrote "I'll have to find a way to let him know he's always welcome here (at Jobot)." [Tr. Tran., ECF No. 354 at 320:14, 322:12–13]. Clearly, Patierno and Jobot had no regard for Simon's or Eichelberg's non-solicitation agreements with Hayes.

Last are the nondisclosure agreements. Jobot and Patierno were aware that Simon and Eichelberg retained Hayes's Confidential Business Information after they joined Jobot. [*See* Tr. Tran., ECF No. 354 at 304:5 thru 305:7]. This made Eichelberg and Simon extremely valuable to Jobot. In fact, Jobot paid Simon and Eichelberg six-figure salaries during the non-compete period when they were not supposed to be directly competing with Hayes. [*See* Tr. Tran., ECF No. 354 at 92:20–22; ECF no. 355 at 180:18–19]. The circumstantial evidence is overwhelming that Simon and Eichelberg fed Hayes's Confidential Business Information to team members given Jobot's skyrocketing success immediately following their hiring. Within four days of his hire, Simon sent staffing contracts on behalf of Jobot to healthcare facilities for placements. Tellingly, Jobot rewards its recruiters with activity points for entering data relating to clients and candidates into Jobot's JAX system—points

which Eichelberg and Simon earned from the outset while consistently outperforming other members of their *locums* team throughout their non-compete period.

As for the final element of a tortious interference claim, Patierno and Jobot are "strangers" to the relationship between Simon, Eichelberg, and Hayes. Neither Patierno nor Jobot has a beneficial supervisory or financial interest in Simon's or Eichelberg's Employment Agreement with Hayes. In sum, because Patierno and Jobot are strangers to these agreements and relationships, Patierno and Jobot are liable for their tortious interference with Simon's and Eichelberg's agreements with Hayes.

The Court finds, then, that Hayes proved all elements of a tortious interference claim: (1) the existence of Simon and Eichelberg's Employment Agreements with Hayes (that contained the restrictive covenants); (2) Patierno and Jobot's knowledge of the restrictive covenants; (3) Patierno and Jobot's intentional procurement of Simon and Eichelberg's breach of their restrictive covenants (non-disclosure, non-solicitation, non-competition); (4) the absence of justification or privilege for Patierno or Jobot to ignore those restrictions; and (5) damages in the form of lost business, resulting from the breach. Accordingly, judgment on Count V is in favor of Plaintiff Hayes Medical Staffing, LLC, and against Defendants Allison Patierno and Jobot, LLC.

E. Injunctive Relief (Count VI)

Hayes seeks the entry of a permanent injunction (1) permanently enjoining all Defendants from ever using any of the Hayes's Confidential Business Information and/or trade secrets taken by Eichelberg and Simon to the extent any remains in their possession; and (2) enjoining all Defendants from transferring any of Hayes's Confidential Business Information and/or trade secrets to any third parties. [*See* Am. Compl., ECF No. 95 at 35–36; ECF No. 72 at 23–25]. Hayes also asks that the time period for the restrictive covenants be tolled because Simon and Eichelberg violated their Employment Agreements. [ECF No. 72 at 24–25]. As discussed below, the Court will enforce the tolling provision of the Employment Agreements against Eichelberg and Simon. However, the Court

must deny Hayes's request for a permanent injunction based upon its claims for misappropriation of trade secrets because Hayes did not prevail on those claims.

III. DAMAGES AND REMEDIES

A. Damages sought and Defendants' joint and several liability.

Plaintiff's Amended Complaint sought the following damages:

> A. Permanent injunctive relief against Eichelberg, Patierno, Simon and Jobot (i) enjoining them from retaining and/or using Hayes Confidential Information and Trade Secrets that they took and/or improperly obtained; (ii) directing them to return to Hayes the Confidential Information and Trade Secrets in whatever form in which they exist in Defendants' possession; (iii) enjoining the transfer of the Confidential Information and Trade Secrets to any third party; (iv) requiring Defendants to identify all copies and all transfers of the Confidential Information and Trade Secrets, including the identity of any third party receiving or obtaining the Confidential Information and Trade Secrets or a copy thereof; (v) prohibiting Defendants from misappropriating, using, or disclosing Hayes Locums' Confidential Information and Trade Secrets in their possession; and (vi) enjoining Eichelberg and Simon from violating the restrictive covenants in their Agreements, tolled for the period of time they have been violating their Agreements;
>
> B. An award of monetary damages in an amount to be determined at trial including, but not limited to, the disgorgement of all profits Defendants were and/or will be paid by Hayes' clients as a result of their misconduct;
>
> C. An award of exemplary damages;
>
> D. An award of attorneys' fees;
>
> E. An award of Hayes' costs and expenses of this suit; and
>
> F. Such other and further relief that the Court deems just and proper.

[Am. Compl., ECF No. 95 at 37].

After the bench trial, Plaintiff proposed the Court award it the following damages:

1. Lost profits: $3,148,304.00.

2. Permanent lost profits (Billings Clinic): $6,064,524.00

3. Unjust enrichment: (1) $1,396,095.00 minus lost profits; (2) $19,688.00 (Dr. Henderson); (3) $1,034,725.00 (trade secrets development).

4. Punitive damages against Eichelberg.

5. Permanent injunction and tolling Eichelberg's and Simon's restrictive covenants.

6. Reasonable attorney's fees and costs.

[ECF No. 347 at 61].

Plaintiff argues all Defendants are jointly and severally liable for all harms, irrespective of the claims asserted and proven against them. [ECF No. 367 at 1–3]. Plaintiff's damages theory initially relied upon a line of cases involving the misappropriation of trade secrets. [*See* ECF No. 347 at 53–59]. Those cases do not apply as the Court has found in favor of Defendants on Counts II and III—the misappropriation of trade secrets claims against Eichelberg and Simon. After the parties submitted their Proposed Findings of Fact and Conclusions of Law, the Court requested supplemental briefing on the joint and several liability question because, even if Eichelberg and Simon were found to have misappropriated Plaintiff's trade secrets, the Court could not hold Defendants Patierno and Jobot jointly liable for damages flowing from the violation because Plaintiff did not assert misappropriation of trade secrets claims against Patierno or Jobot. [*See* ECF No. 360 (citing *Burger King Corp. v. Hinton, Inc.*, 203 F. Supp. 2d 1357, 1367 (S.D. Fla. 2002) ("The Court cannot award damages on claims outside of the pleadings.") (citing *Hooters of Am. v. Carolina Wings, Inc.*, 655 So.2d 1231, 1233 (Fla. 1st DCA 1995)))].

In response to the Court's request for supplemental briefing, Plaintiff distinguishes *Burger King* in two main ways. First, Plaintiff argues it need not prove damages flowing from a particular claim as to a specific defendant because all claims asserted in this action allow for the recovery of damages. [ECF No. 367 at 3–5]. Put another way, Plaintiff contends all Defendants caused the same economic injuries to Plaintiff, so all must be held liable for all damages irrespective of the claims asserted against each. [*Id.*]. Second, Plaintiff argues joint and several liability is the default rule in Florida for intentional torts. [*Id.* at 6–8]. Here, Plaintiff says because "misappropriation of trade secrets, breach

of fiduciary duty and tortious interference are intentional torts," Defendants can be held jointly and severally liable for all of Plaintiff's damages. [*Id.* at 7 (emphasis in original)].

For starters, Plaintiff is correct that codefendants in a trade secrets misappropriation case are jointly and severally liable for the harm flowing from the misappropriation. [*See* ECF No. 347 at 53–59 (citing misappropriation of trade secrets cases holding defendants joint and severally liable for damages flowing from the misappropriation)]. But, as stated above, that theory does not apply here. As to Plaintiff's second argument, Plaintiff is correct that "[j]oint and several liability among multiple tortfeasors exists when the tortfeasors, acting in concert or through independent acts, produce a single injury." [*Id.* at 6–8]. *See Smith v. Dep't of Ins.*, 507 So. 2d 1080, 1090 (Fla. 1987). This principle is set forth in section 875 of the Restatement (Second) of Torts (1979), which provides:

> § 875. Contributing Tortfeasors—General Rule
>
> Each of two or more persons whose tortious conduct is a legal cause of a single and indivisible harm to the injured party is subject to liability to the injured party for the entire harm.

Additionally, section 876 provides further:

> § 876. Persons Acting in Concert
> For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he
> (a) does a tortious act in concert with the other or pursuant to a common design with him, or
> (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or
> (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.

Acadia Partners, L.P. v. Tompkins, 759 So. 2d 732, 736–37 (Fla. Dist. Ct. App. 2000) (citing Restatement (Second) of Torts § 876 (1979)). The problem here is that Eichelberg and Simon are also liable for breach of contract, which is not an intentional tort. So, holding all Defendants liable for all damages when some damages flow not from an intentional tort but by breach of contractual duties seems problematic.

That said, Florida recognizes joint and several liability among defendants where some defendants tortiously interfere with contracts breached by other defendants due to the interference. *See Designs for Vision, Inc. v. Amedas, Inc.*, 632 So. 2d 614 (Fla. Dist. Ct. App. 1994) ("When a party breaches a contract …, and the breach results from the tortious interference of another party…, the proper procedure is to make the two jointly and severally liable for the damages resulting from the breach."); *Kahlert v. Tom Heller, Inc.*, 557 So. 2d 11 (Fla. Dist. Ct. App. 1990) (joint and several liability between co-defendants on separate breach of contract and tortious interference claims); *Mead Corp.*, 191 So.2d 592 (Fla. Dist. Ct. App. 1966) (citing *Bermil Corp. v. Sawyer*, 353 So. 2d 579, 585 (Fla. Dist. Ct. App. 1977) (finding joint and several liability among defendants one of whom was liable for breach of contract and the other liable for tortious interference)). That theory of damages fits this case. Defendants Eichelberg and Simon breached their employment agreements with Plaintiff Hayes due to Defendants Patierno's and Jobot's tortious interference with those contracts. Accordingly, the Court will impose joint and several liability among all Defendants for damages flowing from those claims—breach of contract by Eichelberg and Simon and tortious interference by Jobot and Pateirno.

B. Damages awarded jointly and severally

At trial, Hayes proved that Eichelberg's and Simon's breaches of their restrictive covenants caused Hayes damages. Not only did the breaches cause Hayes to lose former clients Billings Clinic and Dr. Henderson, but Hayes also suffered damages in the form of lost profits and business to Jobot that would have been realized had Eichelberg and Simon not joined Jobot's *locums* team at Patierno's urging and Jobot's assent.

The starting point to determine Hayes' lost profits is the "crossover list"— the clients and provider with whom Simon and/or Eichelberg worked while at Hayes and are clients and a provider of Jobot in the *locums* space. [Tr. Tran., ECF No. 353 at 156:4–11; ECF No. 354 at 179:24 thru 180:1; ECF No. 357 at 92:13–24]. Hayes's business from these clients decreased at the same time that Jobot's

business from these clients increased. [Tr. Tran., ECF No. 353 at 156:12–16; ECF No. 357 at 97:24 thru 98:16, 162:9 thru 163:11; Exs. P-103 and P-137]. Indeed, it is undisputed that Jobot's revenue grew exponentially from the crossover clients immediately after Simon and Eichelberg joined Jobot. [Tr. Tran., ECF No. 355 at 167:13–24, ECF No. 357 at 97:24 thru 98:16, 162:8 thru 165:8, 263:8 thru 267:24; Ex. P-103]. Conversely, Hayes's growth from these clients fells significantly in 2024 after Eichelberg and Simon left Hayes. [Tr. Tran., ECF No. 355 at 173:2–10; Ex. P-137].

To determine Hayes's lost profits, Hayes's damages expert, Mr. Hosfield, used Hayes's 2022 sales as the baseline. Then, Mr. Hosfield used Jobot's sales to crossover list clients in 2023 and 2024 to determine Hayes's lost sales. [Tr. Tran., ECF No. 355 at 166:5–22; Ex. P-103]. Next, Mr. Hosfield calculated Hayes's lost revenue from the crossover list clients by deducting the revenue that Jobot earned from those clients in 2022 from the revenue that Jobot earned from them in 2023 and 2024. [Tr. Tran., ECF No. 355 at 171:18–23; Ex. P-103]. Mr. Hosfield then determined the costs (physician cost and insurance and commissions earned by recruiters) that Hayes would have incurred had they obtained the revenue lost to Jobot. [Tr. Tran., ECF No. 355 at 175:24 thru 176:23]. After subtracting these costs, Mr. Hosfield applied Hayes's gross margin. [Tr. Tran., ECF No. 357 at 93:9 thru 94:13, 259:24 thru 260:21; Ex. P-137]. Applying Hayes's gross margin, Mr. Hosfield determined the amount of Hayes' lost profits for 2023 as $1,217,493 and $1,930,813 for 2024 through September, for a total of **$3,148,304**.[5] [Tr. Tran., ECF No. 355 at 179:18 thru 180:2; Exs. P-103 and P-107].

Additionally, damages relating to former Hayes client Billings Clinic were calculated separately. Until Simon and Eichelberg joined Jobot, Hayes had an exclusivity agreement with Billings Clinic, meaning that Billings Clinic would present any hiring need to Hayes first and only utilize the services of other companies if Hayes could not fill the need; as a result, Hayes suffered a permanent loss of

[5] Mr. Hosfield testified that the sum equals $3,148,30**4**.00. [Tr. Tran., ECF No. 355 at 179:18 thru 180:2; Exs. P-103 and P-107]. However, $1,217,493.00 + $1,930,813.00 = $3,148,30**6**.00.

revenue from Billings Clinic when Billings Clinic ended the exclusivity agreement and began working with Jobot. [Tr. Tran., ECF No. 357 at 95:14 thru 96:7, 132:12–25; Ex. P-103]. Accordingly, Mr. Hosfield performed additional analysis to determine Hayes's permanent loss of revenue from Billings Clinic. [Tr. Tran., ECF No. 355 at 180:7–20]. Mr. Hosfield determined the lost discounted cash flow generated by Billings Clinic for five years. [Tr. Tran., ECF No. 355 at 181:13–16; ECF No. 357 at 95:13 thru 96:7, Ex. P-135]. Again, applying Hayes's gross margin after subtracting costs, Mr. Hosfield determined the permanent lost profit suffered by Hayes as a result of the lost business from Billings Clinic totaled $1,535,327 after one year, **$2,889,228** after two years, and a total cumulative amount of $6,064,524 after five years. [Tr. Tran., ECF No. 355 at 181:3–13; Ex. P-135]. The Court finds that awarding Hayes lost profits from Billings Clinic beyond two years is too speculative given the competitive nature of the *locums* market and Hayes's own Employment Agreements which allow competition after one year and solicitation of former clients after two years.

Accordingly, the Court awards damages jointly and severally against all Defendants for lost profits in the total amount of **$6,037,532.00** ($3,148,304.00 + $2,889,228.00). Because Hayes recovers lost profits damages, Hayes takes no award for unjust enrichment. "A double recovery based on the same element of damages is prohibited." *Montage Grp., Ltd. v. Athle-Tech Computer Sys., Inc.,* 889 So. 2d 180, 199 (Fla. Dist. Ct. App. 2004) (first citing *Atl. Coast Line R. Co. v. Saffold*, 178 So. 288, 290 (Fla. 1938) and then citing *Besett v. Basnett*, 437 So. 2d 172, 173 (Fla. Dist. Ct. App. 1983)).

C. Punitive damages

In Florida, punitive damages are limited to "truly culpable behavior…. [P]unitive damages are in a sense explicitly based on juror emotion, in that one function of the award is to express society's collective outrage at unacceptable behavior … punish and deter." *Air Ambulance Prof'ls, Inc. v. Thin Air*, 809 So. 2d 28, 30–31 (Fla. Dist. Ct. App. 2002) (reversing punitive damages award where evidence presented at trial did not show the type of "gross and flagrant behavior" required for a punitive damage

award) (citation omitted). The "most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendants' conduct." *See State Farm Mut. Auto. Ins. v. Campbell*, 538 U.S. 408, 418 (2003) (citation modified). Specifically addressing a punitive damage award in a tortious interference with a business relationship case, the Florida Fourth District Court of Appeal in *Hospital Corp. of Lake Worth v. Romaguera*, 511 So. 2d 559, 561 (Fla. Dist. Ct. App. 1986), explained that "the two most important criteria are: 1. Whether the interference was *justified*. 2. The nature, extent and *enormity* of the wrong." *Imperial Majesty Cruise Line, LLC v. Weitnauer Duty Free, Inc.*, 987 So. 2d 706, 708 (Fla. Dist. Ct. App. 2008) (emphasis in original). The Florida courts have also recognized that elements of a tortious interference may be established under circumstances that do not justify an award of punitive damages. *Id.* ("[T]his court recognized that the elements of a tortious interference may be established under circumstances that do not justify an award of punitive damages.") (citing *Air Ambulance Professionals, Inc. v. Thin Air,* 809 So. 2d 28, 30 (Fla. Dist. Ct. App. 2002)).

In the case at bar, Hayes failed to present any evidence of malice on the part of any Defendant. While the record reflects Defendants utterly disregarded Eichelberg's and Simon's restrictive covenants with Hayes, ignoring restrictive covenants alone does not constitute the kind of egregious, gross, and flagrant conduct needed to support a punitive damages award. Accordingly, the Court declines to award punitive damages in this case.

E. Injunction against Eichelberg and Simon

"Post-employment restrictive covenant agreements are valid restraints of trade or commerce under certain conditions." *Envt'l Servs., Inc. v. Carter*, 9 So. 3d 1258, 1261 (Fla. Dist. Ct. App. 2009). Specifically, Section 542.335 of the Florida Statutes contains a comprehensive framework for analyzing, evaluating and enforcing restrictive covenants contained in employment contracts. *Henao v. Prof'l Shoe Repair, Inc.*, 929 So. 2d 723, 726 (Fla. 5th DCA 2006). A violation of an enforceable restrictive covenant creates a presumption of irreparable injury. *Id.* Section 542.335 employs the term

"restrictive covenants" and includes all contractual restrictions such as noncompetition/nonsolicitation agreements, confidentiality agreements, exclusive dealing agreements, and all other contractual restraints of trade. *Id.* If valid, a restrictive covenant may be enforced by way of temporary and permanent injunctive relief. FLA. STAT § 542.335(1)(j). Section 542.335(1) of the Florida Statutes permits enforcement of contracts that restrict or prohibit competition, but only "so long as such contracts are reasonable in time, area, and line of business …."

This Court concluded Eichelberg and Simon breached enforceable restrictive covenants contained in their Employment Agreements with Hayes. [*See* Pt. II.A., *supra*]. The Employment Agreements themselves provide for tolling of the restricted periods in the event of a breach. [*See* Ex. P-001 ¶ 10 (Eichelberg); Ex. P-005 ¶ 9 (Simon)]. That tolling provision states "the *entire* restricted period shall be tolled and begin anew if there is any breach by Employee of the post-employment obligations set out in"[6] the Employment Agreement, which provides that the employee (1) shall not use or disclose Hayes's Confidential Information at any time post-employment [Ex. P-001 ¶ 8.1(a) (Eichelberg); Ex. P-005 ¶ 9 (Simon)]; (2) shall not compete with Hayes for a period of twelve (12) months following termination [Ex. P-001 ¶ 8.2(a) (Eichelberg); Ex. P-005 ¶ 7.1(a) (Simon)]; and (3) shall not solicit Hayes's clients or employees for a period of twenty-four (24) months following termination [Ex. P-001 ¶ 8.3(a) (Eichelberg); Ex. P-005 ¶ 7.1(a) (Simon)].

Thus, Eichelberg and Simon are *permanently enjoined* from using, transferring, and/or disclosing Hayes's Confidential Business Information as defined in the Employment Agreements. Eichelberg and Simon are further enjoined (1) from competing with Hayes for a period of twelve (12) months,

[6] The tolling provision in Eichelberg and Simon's Employment Agreements contain identical language, just in different sections of the agreement. [*See* Ex. P-001 1-3 ¶ 10 (Eichelberg) (emphasis in original); Ex. P-005 ¶ 9 (Simon) (emphasis in original)].

and (2) from soliciting Hayes's clients and employees for a period of twenty-four (24) months as of the date of this Order.

F. Attorney's Fees and Costs

Because no party prevailed on all claims and because some claims may (or may not) entitle a prevailing party to attorney's fees and costs, the parties are directed to file a separate motion for attorney's fees and costs, citing the legal authority by which they are entitled to such recoveries. The Court points out that the Employment Agreements expressly provide that: "Should any dispute arise under this Agreement, each party agrees to pay for its own direct, indirect or incidental expenses incurred, including, but not limited to, its own attorney's fees, court costs and other expenses incurred throughout all negotiations, trials or appeals undertaken in order to enforce the party's rights under this Agreement, **despite any statutory or case law to the contrary**." [*See* Ex. P-001 ¶ 13 (Eichelberg); Ex. P-005 ¶ 20 (Simon) (emphasis added)]. However, Section 542.335(1)(k), Florida Statutes provides that "[i]n the absence of a contractual provision authorizing an award of attorney's fees and costs to the prevailing party, a court may award attorney's fees and costs to the prevailing party in any action seeking enforcement of, or challenging the enforceability of, a restrictive covenant. **A court shall not enforce any contractual provision limiting the court's authority under this section**." Fla. Stat. Ann. § 542.335(1)(k) (emphasis added). Accordingly, Hayes must specifically brief its entitlement to attorney's fees and costs against Eichelberg and Simon if it seeks such a recovery from them.

That said, either party seeking an award of attorney's fees or costs must move for such an award by separate motion that satisfies the following conditions:

a. Identify the authority for awarding attorney's fees and costs. *See, e.g.,* FLA STAT. §§ 768.79 (offer of judgment); 57.041 (recovery of costs from losing party).

b. Allocate requested attorney's fees and costs between those claims upon which fees and costs may be awarded and those claims which do not allow such recovery, where applicable. *Chodorow v. Moore*, 947 So. 2d 577, 579–80 (Fla. Dist. Ct. App. 2007).

c. Submit billing records and an affidavit in support of the motion. *See Van Diepen v. Brown,* 55 So. 3d 612, 614-15 (Fla. Dist. Ct. App. 2011). "Where the claims are … distinct from each other …, no attorney's fees are awardable if the attorney billing records do not support the fee." *Id.*; *see also Effective Teleservices, Inc. v. Smith*, 132 So. 3d 335, 341 (Fla. Dist. Ct. App. 2014) (noting award of fees must be supported by substantial, competent evidence).

IV. CONCLUSION

For all of the reasons stated above, the Court finds as follows:

1. As to Count I (breach of contract), the Court finds in favor of Plaintiff Hayes Medical Staffing, LLC, and against Defendants Amy Eichelberg and Scott Simon.

2. As to Counts II and III (misappropriation of trade secrets), the Court finds in favor of Defendants Amy Eichelberg and Scott Simon and against Plaintiff Hayes Medical Staffing, LLC.

3. As to Count IV (breach of fiduciary duty), the Court finds in favor of Plaintiff Hayes Medical Staffing, LLC, and against Defendants Amy Eichelberg and Scott Simon.

4. As to Count V (tortious interference with contractual relationships), the Court finds in favor of Plaintiff Hayes Medical Staffing, LLC, and against Defendants Allison Patierno and Jobot, LLC.

5. Plaintiff's request for a permanent injunction [**ECF No. 366**] is **DENIED** for reasons set forth in a separate Order ruling on the motion. However, the Court enforces the tolling provision

of the Employment Agreements against Eichelberg and Simon, limited to the geographic scope of the United States, as follows:

a. Eichelberg and Simon are *permanently enjoined* from directly or indirectly, using, copying, disseminating, divulging, transferring, or communicating any of Hayes's Confidential Business Information as defined in the Employment Agreements.

b. Eichelberg and Simon are enjoined from competing with Hayes as defined in the Employment Agreements for a period of twelve (12) months from the date of this Order.

c. Eichelberg and Simon are enjoined from soliciting Hayes's clients and/or employees as defined in the Employment Agreements for a period of twenty-four (24) months from the date of this Order.

6. The Court will enter a separate final judgment in accordance with Rule 58 of the Federal Rules of Civil Procedure. The parties must provide the Court with their proposed Final Judgments in Word **no later than Monday, December 22, 2025,** at leibowitz@flsd.uscourts.gov.

DONE AND ORDERED in the Southern District of Florida on December 2, 2025.

DAVID S. LEIBOWITZ
UNITED STATES DISTRICT JUDGE

cc: counsel of record