

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
CIVIL ACTION

DIVERSIFIED RECYCLING, INC., a
Florida corporation, individually and on
behalf of its related entities, and
DIVERSIFIED RECYCLING, LLC, a
Florida limited liability company,

Case No. 2015-CA-011376-O

Plaintiffs,

vs.

JAMES P. QUINN, JQ INDUSTRIES,
INC., a Florida corporation, and JOSEPH
B. CHOBOT,

Defendants.

**DEFENDANTS' ANSWER AND DEFENSES
TO COMPLAINT AND COUNTERCLAIMS**

Defendants, James P. Quinn ("**Quinn**"), JQ Industries, Inc. ("**JQI**"), and Joseph B. Chobot ("**Chobot**"), hereby answer and assert defenses to the Complaint filed by Plaintiffs, Diversified Recycling, Inc. ("**DRI**") and Diversified Recycling, LLC ("**DRL**"), and assert counterclaims as set forth below.

ANSWER

NATURE OF THE ACTION

1. Defendants admit that this Court has subject matter jurisdiction, admit that Plaintiffs purport to seek injunctive relief, money damages, and attorneys' fees

and costs, deny that Plaintiffs are entitled to any relief whatsoever, and otherwise deny the allegations in paragraph 1 of the Complaint.

PARTIES

2. Defendants deny the allegations in paragraph 2 of the Complaint for lack of knowledge.

3. Defendants deny the allegations in paragraph 3 of the Complaint for lack of knowledge.

4. Defendants admit the allegations in the first three sentences of paragraph 4 of the Complaint, as well as the allegation that this Court has jurisdiction over Quinn. Defendants deny the remaining allegations in paragraph 4.

5. Defendants admit the allegations in the first sentence of paragraph 5 of the Complaint. Defendants admit that JQI entered into an Independent Contractor Agreement with Diversified Recycling Holdings, LLC (“*DRH*”), a copy of which is attached to the Complaint. Defendants deny that DRH is “DRI’s predecessor” for lack of knowledge. Defendants admit that this Court has jurisdiction over JQI. Defendants deny the remaining allegations in paragraph 5.

6. Defendants admit the allegations in paragraph 6 of the Complaint, with the exception of the allegations regarding “directly compet[ing] with Plaintiffs” because they are vague and ambiguous, the allegation about the distance

between the businesses because of lack of knowledge, and the allegation about JQ Recycling's ("*JQR*") website because the site speaks for itself.

7. Defendants admit Chobot is a Florida resident and that the Court has jurisdiction over him. Defendants deny the remaining allegations in paragraph 7.

JURISDICTION AND VENUE

8. Defendants admit that this Court has jurisdiction and otherwise deny the allegations in paragraph 8 of the Complaint.

9. Defendants admit that venue is proper and otherwise deny the allegations in paragraph 9 of the Complaint.

GENERAL BACKGROUND

10. The allegations in the first sentence of paragraph 10 of the Complaint are vague and ambiguous to the extent they purport to refer collectively to various affiliated, unnamed, and undisclosed predecessor(s) and "DRI Entities." To the extent any response is required, Defendants deny the allegations in that sentence for lack of knowledge. Defendants specifically deny the allegations in the second sentence of paragraph 10.

11. The allegations in paragraph 11 of the Complaint are vague and ambiguous to the extent that they purport to refer collectively to various affiliated, unnamed, and undisclosed "DRI Entities." To the extent any response is required, Defendants deny the allegations in paragraph 11 for lack of knowledge.

12. The allegations in paragraph 12 of the Complaint are vague and ambiguous to the extent that they purport to refer collectively to various affiliated, unnamed, and undisclosed “DRI Entities.” To the extent any response is required, Defendants deny the allegations in paragraph 12 for lack of knowledge.

13. The allegations in paragraph 13 of the Complaint are vague and ambiguous to the extent that they purport to refer collectively to various affiliated, unnamed, and undisclosed “DRI Entities.” To the extent any response is required, Defendants deny the allegations in paragraph 13 for lack of knowledge.

14. The allegations in paragraph 14 of the Complaint are vague and ambiguous. To the extent any response is required, Defendants incorporate their response to the above allegations and otherwise deny the allegations in paragraph 14.

15. The allegations in paragraph 15 of the Complaint are vague and ambiguous to the extent that they purport to refer to undisclosed “actions” and purport to refer collectively to various affiliated, unnamed, and undisclosed “DRI Entities.” To the extent any response is required, Defendants deny the allegations in paragraph 15 for lack of knowledge.

16. The allegations in paragraph 16 of the Complaint are vague and ambiguous to the extent that they purport to refer collectively to various affiliated,

unnamed, and undisclosed “DRI Entities.” To the extent any response is required, Defendants deny the allegations in paragraph 16 for lack of knowledge.

**DEFENDANTS QUINN AND JQI AND THE
INDEPENDENT CONTRACTOR AGREEMENT**

17. Defendants admit that on or about March 5, 2015, JQI and Quinn entered into the Independent Contractor Agreement with DRH. Defendants otherwise deny the remaining allegations in paragraph 17 of the Complaint.

18. Defendants admit that it was the intent of the parties that the Independent Contractor Agreement be validly entered. Defendants deny the remaining allegations in paragraph 18 of the Complaint for lack of knowledge.

19. Defendants deny the allegations in paragraph 19 of the Complaint for lack of knowledge.

20. The terms of the Independent Contractor Agreement speak for themselves; otherwise, Defendants deny the allegations in paragraph 20 of the Complaint.

21. The terms of the Independent Contractor Agreement speak for themselves; otherwise, Defendants deny the allegations in paragraph 21 of the Complaint.

22. The terms of the Independent Contractor Agreement speak for themselves; otherwise, Defendants deny the allegations in paragraph 22 of the Complaint.

23. The terms of the Independent Contractor Agreement speak for themselves; otherwise, Defendants deny the allegations in paragraph 23 of the Complaint.

24. Defendants deny the allegations in paragraph 24 of the Complaint.

25. Defendants deny the allegations in paragraph 25 of the Complaint as stated.

26. Defendants deny the allegations in paragraph 26.

27. Defendants deny the allegations in paragraph 27 of the Complaint for lack of knowledge.

28. Defendants deny the allegations in paragraph 28 of the Complaint.

29. Defendants deny the allegations in paragraph 29 of the Complaint.

30. Defendants deny the allegations in paragraph 30 of the Complaint.

31. Defendants deny the allegations in paragraph 31 of the Complaint.

32. Defendants deny the allegations in paragraph 32 of the Complaint.

33. Defendants deny the allegations in paragraph 33 of the Complaint.

34. Defendants deny the allegations in paragraph 34 of the Complaint.

35. Defendants deny the allegations in paragraph 35 of the Complaint.

36. Defendants deny the allegations in paragraph 36 of the Complaint.

37. Defendants deny the allegations in paragraph 37 of the Complaint.

DEFENDANT JOSEPH CHOBOT AND THE CHOBOT AGREEMENT

38. Defendants admit that Chobot and Diversified Asset Recovery, LLC (“*DAR*”) entered into a Non-Competition Agreement (“*Chobot Agreement*”) on or about July 8, 2010, a copy of which is attached to the Complaint. Defendants deny the remaining allegations in paragraph 38 of the Complaint.

39. Defendants admit that Chobot’s employment with DAR moved to employment with DRL. Defendants deny that the Chobot Agreement has been validly assigned to DRL and deny that Chobot entered into any restrictive covenant agreement with DRL. Defendants deny the remaining allegations in paragraph 39 of the Complaint for lack of knowledge.

40. Defendants deny the allegations in paragraph 40 of the Complaint.

41. Defendants deny the allegations in paragraph 41 of the Complaint.

42. Defendants deny the allegations in paragraph 42 of the Complaint.

43. Defendants deny the allegations in paragraph 43 of the Complaint. As set forth more fully in their defenses, Defendants specifically deny that Plaintiffs and/or the entities on whose behalf they purport to assert claims have complied with applicable laws, have clean hands allowing them to seek equitable relief, and/or complied with their contractual obligations under the agreements they seek to enforce.

44. Defendants admit that Plaintiffs are represented by counsel and otherwise deny the allegations in paragraph 44 of the Complaint for lack of knowledge.

**COUNT I
(Reformation)**

45. Defendants admit that DRI purports to seek to reform and enforce the Independent Contractor Agreement but deny that DRI is entitled to any relief whatsoever.

46. Defendants incorporate by reference their responses to paragraphs 1-37 and 43-44 of the Complaint.

47. Defendants admit that the Independent Contractor was purported to be made by DRH and not Integer Holdings, Inc. ("*Integer*"). Defendants admit that the Independent Contractor Agreement was intended to be validly entered. Defendants deny the remaining allegations in paragraph 47 of the Complaint for lack of knowledge.

**COUNT II
(Breach of Non-Compete against Quinn/JQI)**

48. Defendants admit that DRI purports to seek relief for breach of the Independent Contractor Agreement but deny that it or any other entity it purports to represent is entitled to any relief whatsoever. Defendants further contend that DRI lacks standing to assert claims on behalf of unnamed and undisclosed entities.

49. Defendants incorporate by reference their responses to paragraphs 1-45 and 47 of the Complaint.

50. Defendants deny the allegations in paragraph 50 of the Complaint.

51. Defendants deny the allegations in paragraph 51 of the Complaint.

52. Defendants deny the allegations in paragraph 52 of the Complaint.

COUNT III
(Breach of Confidentiality against Quinn/JQI)

53. Defendants admit that DRI purports to seek relief for breach of the Independent Contractor Agreement but deny that it or any other entity it purports to represent is entitled to any relief whatsoever. Defendants further contend that DRI lacks standing to assert claims on behalf of unnamed and undisclosed entities.

54. Defendants incorporate by reference their responses to paragraphs 1-45 and 47 of the Complaint.

55. Defendants deny the allegations in paragraph 55 of the Complaint.

56. Defendants deny the allegations in paragraph 56 of the Complaint.

57. Defendants deny the allegations in paragraph 57 of the Complaint.

58. Defendants deny the allegations in paragraph 58 of the Complaint.

COUNT IV
(Misappropriation of Trade Secrets against Quinn/JQI)

59. Defendants admit that DRI purports to seek relief for misappropriation of trade secrets but deny that it or any other entity it purports to

represent is entitled to any relief whatsoever. Defendants further contend that DRI lacks standing to assert claims on behalf of unnamed and undisclosed entities.

60. Defendants incorporate by reference their responses to paragraphs 1-44 of the Complaint.

61. Defendants deny the allegations in paragraph 61 of the Complaint.

62. Defendants deny the allegations in paragraph 62 of the Complaint.

63. Defendants deny the allegations in paragraph 63 of the Complaint.

64. Defendants deny the allegations in paragraph 64 of the Complaint.

COUNT V
(Breach of Contract against Chobot)

65. Defendants admit that DRL purports to seek relief for breach of the Chobot Agreement but deny that it or any other entity it purports to represent is entitled to any relief whatsoever. Defendants further contend that DRL lacks standing to assert claims on behalf of unnamed and undisclosed entities.

66. Defendants incorporate by reference their responses to paragraphs 1-44 of the Complaint.

67. Defendants deny the allegations in paragraph 67 of the Complaint.

68. Defendants deny the allegations in paragraph 68 of the Complaint.

69. Defendants deny the allegations in paragraph 69 of the Complaint.

70. Defendants deny the allegations in paragraph 70 of the Complaint.

COUNT VI
(Unjust Enrichment against Quinn/JQI)

71. Defendants admit that DRL purports to seek relief for unjust enrichment but denies that it or any other entity it purports to represent is entitled to any relief whatsoever. Defendants further contend that DRL lacks standing to assert claims on behalf of unnamed and undisclosed entities.

72. Defendants incorporate by reference their responses to paragraphs 1-45 and 47 of the Complaint.

73. Defendants deny the allegations in paragraph 73 of the Complaint.

74. Defendants deny the allegations in paragraph 74 of the Complaint.

75. Defendants deny the allegations in paragraph 75 of the Complaint.

COUNT VII
(Tortious Interference against Quinn/JQI)

76. Defendants admit that DRL purports to seek relief for tortious interference but denies that it or any other entity it purports to represent is entitled to any relief whatsoever. Defendants further contend that DRL lacks standing to assert claims on behalf of unnamed and undisclosed entities.

77. Defendants incorporate by reference their responses to paragraphs 1-44 of the Complaint.

78. Defendants deny the allegations in paragraph 78 of the Complaint.

79. Defendants admit that Quinn and JQI are aware of the existence of the Chobot Agreement attached to the Complaint and otherwise deny the allegations in paragraph 79 of the Complaint.

80. Defendants deny the allegations in paragraph 80 of the Complaint.

81. Defendants deny the allegations in paragraph 81 of the Complaint.

82. Defendants deny each allegation not expressly admitted herein.

83. Defendants deny that Plaintiffs or any other entities they purport to represent are entitled to any relief sought in the Complaint, including that relief sought in the “WHEREFORE” clauses following paragraphs 47, 52, 58, 64, 70, 75, and 81 of the Complaint.

AFFIRMATIVE AND OTHER DEFENSES

1. **LACK OF STANDING.** Plaintiffs lack standing to assert some or all of their claims. Specifically, Plaintiffs lack standing to pursue claims arising under, seeking to enforce, or predicated upon contract(s) to which Plaintiff(s) are not a party. Plaintiffs further lack standing to pursue claims on behalf of unnamed and undisclosed entities.

2. **PLAINTIFFS’ BREACH.** Plaintiffs and/or the entities they purport to represent materially breached contractual obligations to Defendants, thereby relieving Defendants of any obligation to comply with the restrictive covenants at issue in this case. For example, and without limitation, Plaintiffs and/or the

entities they purport to represent (a) unilaterally and without authority reduced JQI/Quinn's compensation under the Independent Contractor Agreement; (b) failed to pay monies due to JQI/Quinn under the Independent Contractor Agreement; (c) failed to pay monies due under the Chobot Agreement or related employment relationship; (d) failed to issue and/or timely issue to JQI/Quinn stock due under the Independent Contractor Agreement; and (e) violated the implied terms in the Independent Contractor Agreement, the Chobot Agreement, and the employment relationship contemplated thereunder that Plaintiffs and/or the entities they purport to represent would comply with applicable law, including, for example, the Florida Minimum Wage Act and the federal Fair Labor Standards Act.

3. **ILLEGAL AND UNETHICAL CONDUCT.** Plaintiffs' claims are barred by the illegal and/or improper conduct of Plaintiffs and/or the entities they purport to represent. For example, and without limitation, Plaintiffs and/or the entities they purport to represent: (a) violated federal laws and/or regulations applicable to their business; (b) misclassified Quinn as an independent contractor; (c) failed to properly pay Quinn and Chobot in violation of the Florida Minimum Wage Law and the federal Fair Labor Standards Act; and (d) violated Florida's Deceptive and Unfair Trade Practices Act.

4. **NO LEGITIMATE BUSINESS INTERESTS.** Plaintiffs cannot establish that they or any of the entities they purport to represent have any legitimate business interests in support of enforcing the agreements under which they are suing.

5. **NO IRREPARABLE HARM.** Plaintiffs are not entitled to injunctive relief because there is no threat of irreparable harm.

6. **VAGUE AND OVERBROAD COVENANTS.** The restrictive covenants under which Plaintiffs are suing are vague, ambiguous, overbroad, and not capable of being modified without an impermissible re-write of the contracts.

7. **STATUTE OF FRAUDS.** Plaintiffs' claims are barred in whole or in part by the statute of frauds.

8. **WAIVER AND ESTOPPEL.** Plaintiffs' claims are barred by the doctrines of waiver and/or estoppel. For example, and without limitation, Plaintiffs have knowingly and voluntarily chosen to not enforce restrictive covenants against other former employees who have left the employ of Plaintiffs and/or the entities they purport to represent and joined competing businesses.

9. **EXPRESS CONTRACT.** Plaintiffs' claim for unjust enrichment fails to the extent an express contract exists.

10. **UNCLEAN HANDS.** Plaintiffs are barred from seeking injunctive relief against Defendants under the doctrine of unclean hands.

11. **IMPROPER RELIEF.** Plaintiffs improperly seek relief not authorized by the applicable contracts and/or law.

Accordingly, Defendants respectfully request that Plaintiffs' Complaint be dismissed with prejudice and that Defendants be awarded their attorneys' fees, costs, and such other additional relief as the Court deems just and proper. To the extent applicable, Defendants specifically demand recovery of their attorneys' fees pursuant to Fla. Stat. § 688.005 and Fla. Stat. § 542.335.

COUNTERCLAIMS

Quinn, JQI, and Chobot (at times collectively "*the Quinn Parties*") file these Counterclaims against DRI, DRL, and the DRI Entities they purport to represent (at times collectively "*the Diversified Parties*"), under Florida Rule of Civil Procedure 1.170. For sake of convenience, the abbreviations used in Defendants' Answer will be continued in this pleading. In support of their Counterclaims, Quinn, JQI, and Chobot state as follows:

PRELIMINARY STATEMENT

1. The Quinn Parties deny that DRI, DRL, and/or the unidentified and undisclosed "DRI Entities" are parties to the applicable Independent Contractor Agreement and/or Chobot Agreement with standing to seek relief thereunder. These counterclaims are in part conditional and alternative and based on the Diversified Parties' allegations that they are proper parties to the applicable agreements and relationships thereunder. The Quinn Parties reserve the right to bring alternative claims against third parties who are actually named in the applicable agreements and/or are parties to the relationships thereunder, but who are not presently named as parties to this action.

PARTIES AND JURISDICTION

2. The Quinn Parties have compulsory counterclaims against the Diversified Parties arising out of the transaction or occurrence that is the subject of

the Diversified Parties' claims. Alternatively, the Quinn Parties have permissive counterclaims against the Diversified Parties that are properly submitted in response to the Complaint.

3. The Quinn Parties seek relief in excess of \$15,000, exclusive of costs, interest, and attorneys' fees.

4. Venue is proper in this Court as the Diversified Parties filed the original lawsuit in this Court, and the Diversified Parties have their principal places of business in Orange County, Florida.

STATEMENT OF FACTS

FAILURE TO PAY JQI/QUINN COMPENSATION DUE

5. JQI, Quinn, and DRH entered into the Independent Contractor Agreement on or about March 5, 2015. A true and correct copy of the Agreement is attached as Exhibit "A" to the Complaint and incorporated by reference herein.

6. The Complaint alleges that DRH, identified as the "Company" in the Independent Contractor Agreement, is a predecessor to DRI and that DRI, on behalf of itself and the DRI Entities including DRL, thereby assumed the benefits and obligations of DRH as the "Company" under the Independent Contractor Agreement.

7. The Independent Contractor Agreement defines "Contractor" to refer both to JQI and Quinn individually. (ICA, Preliminary Statement; Sec. 12.)

8. Accordingly, pursuant to the allegations of the Complaint and the terms of the Independent Contractor Agreement, all the Diversified Parties owed both JQI and Quinn a duty to comply with Company's obligations under the Independent Contractor Agreement.

9. The term of the Independent Contractor Agreement commenced on March 5, 2015 for a period through and including 2020 (the "*Term*"). (ICA, Sec. 1.)

10. The Diversified Parties were required during the Term to "pay [JQI/Quinn] annual compensation of \$200,000 (*Annual Compensation*) to be paid in 26 bi-weekly equal installments." (ICA, Sec. 4(A).)

11. However, in May 2015, the Diversified Parties unilaterally and without authority reduced JQI and Quinn's compensation to \$75,000 annually, a reduction of over 60%.

12. The Diversified Parties then reduced JQI and Quinn's compensation even further in August 2015 to \$56,250 annually, a reduction of over 70% from the compensation required under the Independent Contractor Agreement.

13. Additionally, the Diversified Parties failed to pay JQI/Quinn for the final seven days of work performed under the Independent Contractor Agreement.

14. JQI/Quinn's last paycheck was dated September 18, 2015 and was for the pay period ending September 15, 2015.

15. JQI/Quinn terminated the Independent Contractor Agreement on September 22, 2015.

16. However, the Diversified Parties did not pay JQI/Quinn for his services between September 16 and September 22.

17. The Diversified Parties' failure to properly pay all Annual Compensation due under the Independent Contractor Agreement during the Term was and is a breach of the Agreement and a violation of law.

FAILURE TO ISSUE JQI/QUINN SHARES

18. Under the Independent Contractor Agreement, the Diversified Parties were required, within 14 calendar days of the execution of the Independent Contractor Agreement, to "issue 1,000,000 Vested Restricted Common Stock Shares (the 'Shares') of the Company to [JQI/Quinn] that will be recorded in book entry upon the Company's books and records." (ICA, Sec. 4(B)(i).)

19. The Diversified Parties did not do so. Instead, they issued JQI 1,000,000 shares in DRI on July 29, 2015, four months after they were contractually required to do so.

20. Additionally, pursuant to the Independent Contractor Agreement, an additional 2,000,000 of shares in "the Company" were to be issued to JQI/Quinn over a 5-year vesting period. (ICA, Sec. 4(B)(ii) and Exhibit B.)

21. When JQI/Quinn terminated the Independent Contactor Agreement on September 22, 2015, approximately 10,834 of JQI/Quinn's additional 2,000,000 shares of "the Company" had vested.

22. However, the Diversified Parties did not issue JQI/Quinn the additional vested shares upon the Agreement's termination. Instead, they sent JQI and Quinn a letter on September 22, 2015 advising that JQI/Quinn was entitled only to the original 1,000,000 shares. To this date, the Diversified Parties have not issued JQI/Quinn the additional vested shares despite their contractual obligation to do so.

23. The Diversified Parties' failure to timely issue the original 1,000,000 shares and failure to issue at all the approximately 10,834 additional vested shares are breaches of the Independent Contactor Agreement.

FAILURE TO PAY CHOBOT HIS FINAL PAYCHECK

24. Chobot was formerly employed by DAR and then DRL. Upon information and belief, and according to the allegations in the Complaint, the Diversified Parties were each and collectively Chobot's employer, joint employer, and/or single employer.

25. The Diversified Parties agreed to pay Chobot wages during his employment on a bi-weekly basis.

26. Chobot's employment concluded on or about November 16, 2015.

27. Chobot performed work and services applicable to the final pay period of his employment. The Diversified Parties agreed to provide compensation for such work and services but have not done so.

28. Chobot sought, but has never been provided, his final paycheck.

29. The Diversified Parties' failure to pay Chobot his final paycheck is a breach of the employment agreement or relationship between the parties and is a violation of law.

ADDITIONAL FLSA VIOLATIONS

30. From March 2015 until the end of Quinn's employment, the Diversified Parties misclassified Quinn as an independent contractor rather than an employee.

31. As a matter of economic reality, Quinn was an employee and not an independent contractor. Quinn was economically dependent on the business of the Diversified Parties, who suffered and permitted him to work for them and controlled his activities.

32. Upon information and belief, and according to the allegations in the Complaint, the Diversified Parties were each and collectively Quinn's employer, joint employer, and/or single employer.

33. At all times while working for the Diversified Parties, Quinn was engaged in commerce or in the production of goods for commerce.

34. At all times while working for the Diversified Parties, Quinn regularly worked in excess of 40 hours a week.

35. Quinn was not compensated at a rate of one and one-half times his regular rate of pay for any hours worked in excess of 40 per workweek.

36. At all times while working for the Diversified Parties, Chobot was engaged in commerce or in the production of goods for commerce.

37. At all times while working for the Diversified Parties, Chobot regularly worked in excess of 40 hours a week.

38. Chobot was not compensated for all hours worked during his employment.

39. By way of example, Chobot regularly worked through lunch and worked before and after hours for which he received no compensation. The Diversified Parties systematically reduced and ignored hours that Chobot worked during his employment, paying instead for a standardized schedule that did not match the actual hours worked by Chobot. And as mentioned above, the Diversified Parties failed to pay Chobot any compensation whatsoever for any hours worked during the final pay period of his employment.

40. The Diversified Parties further failed to compensate Chobot at a rate of one and one-half times his regular rate of pay for any hours worked in excess of 40 per workweek.

41. Upon information and belief, and according to the allegations in the Complaint, the Diversified Parties constitute, and at all times material hereto constituted, an enterprise existing for a common business purpose.

42. The Diversified Parties' enterprise has, and at all times material hereto had, an annual dollar volume of sales or business done exceeding \$500,000; employees engaged in commerce or in the production of goods for commerce; and employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce by any person.

43. The Diversified Parties are, and at all times material hereto were, engaged in an enterprise engaged in commerce or in the production of goods for commerce as defined by the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("*FLSA*").

44. Upon information and belief, the Diversified Parties failed to maintain accurate records of the hours worked by Quinn and Chobot. The records, if any, concerning the hours worked by Quinn and Chobot are in the possession and custody of the Diversified Parties.

45. The Diversified Parties violated the FLSA by, among other things: (a) failing to pay Chobot for the final pay period of his employment; (b) failing to pay Chobot for all hours worked; (c) failing to pay Quinn for the final pay period of his employment; and (d) failing to pay Quinn and Chobot overtime premiums at a rate

of one and one-half times their regular rate of pay for hours worked in excess of 40 per workweek.

FDUTPA VIOLATIONS

46. As a result of their misclassification of Quinn as an independent contractor rather than an employee, the Diversified Parties avoided payroll taxes and/or paying into Florida's unemployment compensation fund, among other benefits.

47. As a result of their misclassification of Quinn as an independent contractor rather than an employee, the Diversified Parties filed an IRS Form 1099 for his tax purposes rather than a Form W-2.

48. The Diversified Parties' conduct constitutes an unfair method of competition, unconscionable act or practice, and/or unfair or deceptive act or practice, which violates the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.* ("**FDUTPA**").

49. The Quinn Parties have engaged the undersigned attorneys to represent them and are obligated to pay a reasonable fee for services.

50. The Quinn Parties have satisfied all conditions precedent to these counterclaims.

**COUNT 1 - BREACH OF CONTRACT
(BROUGHT BY JQI)**

51. JQI incorporates by reference paragraphs 1-50 of the counterclaims above.

52. Through the actions described above, the Diversified Parties breached the Independent Contractor Agreement.

53. The Diversified Parties' contractual breaches proximately caused JQI to suffer damages.

Accordingly, JQI respectfully requests that the Court enter judgment in its favor and against the Diversified Parties, and award it damages, interest, costs, and such other relief as the Court deems proper and just.

**COUNT 2 - BREACH OF CONTRACT
(BROUGHT BY QUINN)**

54. Quinn incorporates by reference paragraphs 1-50 of the counterclaims above.

55. Through the actions described above, the Diversified Parties breached the Independent Contractor Agreement.

56. The Diversified Parties' contractual breaches proximately caused Quinn to suffer damages.

Accordingly, Quinn respectfully requests that the Court enter judgment in his favor and against the Diversified Parties, and award him damages, interest, costs, and such other relief as the Court deems proper and just.

**COUNT 3 – UNPAID WAGES
(BROUGHT BY QUINN)**

57. Quinn incorporates by reference paragraphs 1-50 of the counterclaims above.

58. Through the actions described above, the Diversified Parties failed to compensate Quinn for wages earned during his employment.

59. As a result of the Diversified Parties' actions, Quinn has suffered damages.

60. As a result of the Diversified Parties' actions, Quinn has incurred attorneys' fees and costs.

61. Quinn is entitled to an award of attorneys' fees and costs pursuant to Fla. Stat. § 448.08.

Accordingly, Quinn respectfully requests that the Court enter judgment in his favor and against the Diversified Parties, and award him damages, interest, costs, attorneys' fees and such other relief as the Court deems proper and just.

**COUNT 4 – UNPAID WAGES
(BROUGHT BY CHOBOT)**

62. Chobot incorporates by reference paragraphs 1-50 of the counterclaims above.

63. Through the actions described above, the Diversified Parties failed to compensate Chobot for wages earned during his employment.

64. As a result of the Diversified Parties' actions, Chobot has suffered damages.

65. As a result of the Diversified Parties' actions Chobot has incurred attorneys' fees and costs.

66. Chobot is entitled to an award of attorneys' fees and costs pursuant to Fla. Stat. § 448.08.

Accordingly, Chobot respectfully requests that the Court enter judgment in his favor and against the Diversified Parties, and award him damages, interest, costs, attorneys' fees and such other relief as the Court deems proper and just.

**COUNT 5 - VIOLATION OF FLSA
(BROUGHT BY QUINN)**

67. Quinn incorporates by reference paragraphs 1-50 of the counterclaims above.

68. By his signature below, Quinn consents to join this action.

69. Through the actions described above, the Diversified Parties violated the FLSA.

70. The Diversified Parties' violations of the FLSA were knowing, willful and not in good faith.

71. As a result of the Diversified Parties' actions, Quinn has suffered damages.

72. As a result of the Diversified Parties' actions, Quinn has incurred attorneys' fees and costs.

73. Quinn is entitled to an award of damages, liquidated damages, attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

Accordingly, Quinn respectfully requests that the Court enter judgment in his favor and against the Diversified Parties, and award him damages, liquidated damages, interest, costs, attorneys' fees and such other relief as the Court deems proper and just.

**COUNT 6 - VIOLATION OF FLSA
(BROUGHT BY CHOBOT)**

74. Chobot incorporates by reference paragraphs 1-50 of the counterclaims above.

75. By his signature below, Chobot consents to join this action.

76. Through the actions described above, the Diversified Parties violated the FLSA.

77. The Diversified Parties' violations of the FLSA were knowing, willful, and not in good faith.

78. As a result of the Diversified Parties' actions, Chobot has suffered damages.

79. As a result of the Diversified Parties' actions, Chobot has incurred attorneys' fees and costs.

80. Chobot is entitled to an award of damages, liquidated damages, attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

Accordingly, Chobot respectfully requests that the Court enter judgment in his favor and against the Diversified Parties, and award him damages, liquidated damages, interest, costs, attorneys' fees and such other relief as the Court deems proper and just.

**COUNT 7 - VIOLATION OF FDUTPA
(BROUGHT BY QUINN)**

81. Quinn incorporates by reference paragraphs 1-50 of the counterclaims above.

82. Through the actions described above, the Diversified Parties violated FDUTPA.

83. As a result of the Diversified Parties' actions, Quinn has suffered damages.

84. As a result of the Diversified Parties' actions, Quinn has incurred attorneys' fees and costs.

85. Quinn is entitled to a declaratory judgment that the Diversified Parties violated FDUTPA pursuant to Fla. Stat. § 501.211.

86. Quinn is entitled to an award of actual damages, attorneys' fees and costs pursuant to Fla. Stat. §§ 501.211 and 501.2105.

Accordingly, Quinn respectfully requests that the Court enter judgment in his favor and against the Diversified Parties, and award him declaratory judgment, actual damages, interest, costs, attorneys' fees and such other relief as the Court deems proper and just.

DEMAND FOR JURY TRIAL

Defendants/Counterclaim-Plaintiffs demand a jury trial on all claims, defenses, and counterclaims set forth in the pleadings.

WRITTEN CONSENT TO JOIN IN ACTION

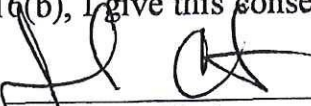
Pursuant to the provisions of 29 U.S.C. § 216(b), I give this consent to be a party-plaintiff to the above counterclaims.



James P. Quinn

WRITTEN CONSENT TO JOIN IN ACTION

Pursuant to the provisions of 29 U.S.C. § 216(b), I give this consent to be a party-plaintiff to the above counterclaims.



Joseph B. Chobot

ROGERS TOWERS, P.A.

By: /s/ J. Scott Slater

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CERTIFICATE OF SERVICE

I certify that the foregoing document has been filed with the Court and that a copy has been served on Daniel C. Johnson and Christopher M. Sacco, Carlton Fields Jordan Burt, P.A., 450 S. Orange Avenue, Suite 500, Orlando, FL 32801 via email at djohnson@cfjblaw.com and csacco@cfjblaw.com, this 8th day of January, 2016.

/s/ J. Scott Slater
Attorney