

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

TEKsystems, Inc.,

Civil File No. 10-CV-00819 (PJS-SRN)

Plaintiff,

v.

**DEFENDANTS' JOINT AND
SEPARATE ANSWER TO
COMPLAINT AND
COUNTERCLAIMS**

Brelyn Hammernick, f/k/a Brelyn Kritz,
Quinn VanGorden, Michael Hoolihan, and
Horizontal Integration, Inc.,

Defendants.

TO: Plaintiff above-named and its attorney, George R. Wood, LITTLER MENDELSON, P.C., 1300 IDS Center, 80 South 8th Street, Minneapolis, MN 55402-2136.

Defendants Brelyn Hammernik, f/k/a Brelyn Kritz (“Hammernik”), Quinn VanGorden (“VanGorden”), Michael Hoolihan (“Hoolihan”), and Horizontal Integration, Inc. (“Horizontal”) make the following Answer to the Complaint of TEKsystems, Inc. (“TEKsystems”). Defendants deny each and every allegation contained in the Complaint unless hereafter admitted, qualified, or otherwise answered.

PARTIES AND JURISDICTION

1. Upon information and belief, Defendants admit the allegations contained in paragraph 1 of Plaintiff’s Complaint.

2. Defendants admit the allegations contained in paragraph 2 of Plaintiff’s Complaint except state that Defendant’s last name is Hammernik, not “Hammernick.”

3. Defendants admit the allegations contained in paragraph 3 of Plaintiff's Complaint, except deny that VanGorden resides in Minneapolis, Minnesota.

4. Defendants admit the allegations contained in paragraph 4 of Plaintiff's Complaint, except deny that Hoolihan lives in Burnsville, Minnesota.

5. Defendants admit the allegations contained in paragraph 5 of Plaintiff's Complaint.

6. Answering paragraph 6, Defendants admit jurisdiction is proper.

7. Answering paragraph 7, Defendants admit that venue is proper.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

8. Defendants lack sufficient information or knowledge to admit or deny the allegations contained in paragraph 8 of Plaintiff's Complaint.

9. Defendants lack sufficient information or knowledge to admit or deny the allegations contained in paragraph 9 of Plaintiff's Complaint and thus deny the same.

10. Defendants deny that the information described in paragraph 9 of Plaintiff's Complaint is confidential or proprietary, as alleged in paragraph 10 of Plaintiff's Complaint, and further asserts that this information is found and/or known in the public domain.

11. Defendants Hammernik, Hoolihan and VanGorden admit that individuals involved in recruitment of potential candidates and placement gain some knowledge regarding TEKsystems' clients' needs and rates, and also admit individuals involved in recruitment gain knowledge regarding candidates TEKsystems may have to fill those

client needs as alleged in paragraph 11 of Plaintiff's Complaint, but otherwise deny the allegations contained therein.

12. Defendants lack sufficient information or knowledge to admit or deny the allegations contained in paragraph 12 of Plaintiff's Complaint and thus deny the same.

13. Defendants admit that Hammernik, VanGorden and Hoolihan signed agreements (attached to Plaintiff's Complaint as Exhibits A, B and C, the "Agreements"), and state those documents speak for themselves. Defendants otherwise lack sufficient information or knowledge to admit or deny the allegations contained in paragraph 13 of Plaintiff's Complaint and thus deny the same.

14. Answering paragraph 14 of Plaintiff's Complaint, Defendants admit that prior to their employment with TEKsystems, Hammernik, VanGorden and Hoolihan had little or no knowledge of the identity of most of TEKsystems' clients, its contacts for those clients, pricing for various clients, its clients' needs or its data bank of information, but deny that this information constitutes trade secrets or is confidential. Defendants deny any remaining allegations contained in paragraph 14 of Plaintiff's Complaint.

15. Defendants Hammernik, VanGorden and Hoolihan admit that they had access to certain information contained in paragraph 15 of Plaintiff's Complaint, but deny that this information is proprietary or confidential. Defendants Hammernik and Hoolihan deny that they participated in meetings to discuss current or target accounts as alleged therein, but Defendant VanGorden admits that he participated in such sales meetings. Defendants affirmatively state that TEKsystems' and its employees' use of LinkedIn and

Facebook for recruiting, promotional or other purposes voids any claim that any information posted therein is trade secret or confidential.

16. Defendants Hammernik and Hoolihan admit that they gained familiarity with candidates, evaluated candidates, developed lists of candidates and otherwise worked diligently to develop the business for TEKsystems as alleged in paragraph 16 of Plaintiff's Complaint, but otherwise deny the allegations contained therein. Defendant VanGorden admits that he became aware of and familiar with certain clients with whom he worked, developed new clients and lists of clients, maintained business relationships with existing clients with whom he worked, and otherwise worked diligently to develop the business for TEKsystems as alleged in paragraph 16 of Plaintiff's Complaint, but otherwise deny the allegations contained therein.

17. Defendants Hammernik and Hoolihan admit that they developed and maintained relationships with certain candidates in TEKsystems' database as alleged in paragraph 17 of Plaintiff's Complaint, but otherwise deny the allegations contained therein. Defendant VanGorden admits that he developed and maintained relationships with certain clients in TEKsystems' database with whom he worked, as alleged in paragraph 17 of Plaintiff's Complaint, but otherwise deny the allegations contained therein.

18. Defendants do not respond to the allegations contained in paragraph 18 of Plaintiff's Complaint to the extent that the allegations call for legal conclusions. To the extent that a response is required, Hammernik, VanGorden and Hoolihan admit that they developed and maintained certain business relationships for TEKsystems while working

for TEKsystems, but otherwise deny the allegations contained therein. Defendants specifically deny that maintaining “personal” contacts was part of their job responsibilities. Hoolihan affirmatively asserts that even after his resignation, he has continued to route business contacts/candidates to TEKsystems’ recruiters, and affirmatively assists TEKsystems’ recruiters if they have questions relating to a particular candidate.

19. Answering paragraph 19 of Plaintiff’s Complaint, Defendants specifically deny that any of the allegations contained in the sub-paragraphs below constitute confidential information, and otherwise answer as follows:

- a. Defendants Hammernik, VanGorden and Hoolihan admit that they learned the identity of some of TEKsystems’ clients as alleged in paragraph 19 (a), but otherwise deny the allegations contained therein.
- b. Defendants Hammernik and Hoolihan deny the allegations contained in paragraph 19 (b). Defendant VanGorden admits that he learned certain information regarding clients with whom he worked while employed with TEKsystems, but otherwise denies the allegations contained therein.
- c. Defendants Hammernik, VanGorden and Hoolihan admit that they learned the billing rates charged by certain of TEKsystems’ clients as alleged in paragraph 19 (c), but affirmatively assert that this information is readily available from the clients, and otherwise deny the allegations contained therein.

- d. Defendants Hammernik and Hoolihan admit that they learned some information relating to placement history/staffing needs relative to placements they made as alleged in paragraph 19 (d), and Defendant VanGorden admits that he learned placement history and current/future staffing needs for clients with whom he worked, but otherwise Defendants deny the allegations contained therein.
- e. Defendants Hammernik and Hoolihan admit that they learned some information relating to rate structures for placements they made as alleged in paragraph 19 (e), and Defendant VanGorden admits that he knew said rate information for clients with whom he worked as alleged therein, but otherwise deny the allegations contained therein.
- f. Defendants Hammernik, VanGorden and Hoolihan admit that they learned certain information regarding sales, marketing, recruiting, pricing as alleged in paragraph 19 (f), but otherwise deny the allegations contained therein.
- g. Defendants Hammernik and Hoolihan deny the allegations contained in paragraph 19 (g). Defendant VanGorden admits that he gained certain knowledge with regard to recruiting preferences about certain clients with whom he worked, but otherwise denies the allegations contained therein.
- h. Defendants Hammernik and Hoolihan admit the allegations contained in paragraph 19 (h) as to candidates, and Defendant VanGorden admits the allegations contained therein as to clients' requirements, but Defendants otherwise deny the allegations contained therein.

20. Defendants deny the allegations contained in paragraph 20 of Plaintiff's Complaint.

21. The allegations contained in paragraph 21 of Plaintiff's Complaint are legal conclusions to which no response is required.

HAMMERNIK'S EMPLOYMENT WITH TEKSYSTEMS

22. Answering paragraph 22 of Plaintiff's Complaint, Defendants admit that Hammernik started employment with TEKsystems on or about January 8, 2007 as a Recruiter, but affirmatively state that Hammernik was hired in Brookfield, Wisconsin, two weeks before she started employment.

23. Defendants admit the allegations contained in paragraph 23 of Plaintiff's Complaint, but affirmatively allege this was only for a six month period.

24. Defendants deny the allegations contained in paragraph 24 of Plaintiff's Complaint except admit that Hammernik was involved in searches to identify qualified candidates, developed familiarity with candidates and oversaw the placement process.

25. Defendants admit the allegations contained in paragraph 25 of Plaintiff's Complaint and state that the document speaks for itself. Defendants affirmatively assert said Agreement is unenforceable against Defendant Hammernik.

26. Defendants admit the allegations contained in paragraph 26 of Plaintiff's Complaint and state that the document speaks for itself.

27. Answering paragraph 27 of Plaintiff's Complaint, Defendants state that the document speaks for itself.

28. Answering paragraph 28 of Plaintiff's Complaint, Defendants state that the document speaks for itself.

29. Answering paragraph 29 of Plaintiff's Complaint, Defendants state that the document speaks for itself.

30. Defendants admit the allegations contained in paragraph 30 of Plaintiff's Complaint and state that when Hammernik gave TEKsystems notice of her resignation, Jay Dosan ("Dosan"), TEKsystems' Regional Manager - Midwest Region, and Russ Orning ("Orning"), TEKsystems' Executive Director, both expressed that they were sad to see her go and wished her the best of luck in the future. Dosan also said he understood Hammernik's frustrations with TEKsystems and why she was leaving.

31. Defendants deny the allegations contained in paragraph 31 of Plaintiff's Complaint and state that general industry knowledge and experience do not constitute confidential, proprietary or trade secret information.

32. Defendants deny the allegations contained in paragraph 32 of Plaintiff's Complaint and state that general industry knowledge and experience do not constitute confidential, proprietary or trade secret information.

HAMMERNIK'S POST-TERMINATION CONDUCT

33. Defendants admit the allegations contained in paragraph 33 of Plaintiff's Complaint, but affirmatively assert that Defendant Hammernik is not performing the same duties, nor working with the same clients and/or consultants with whom she worked while with TEKsystems.

34. Defendants admit the allegations contained in paragraph 34 of Plaintiff's Complaint with the qualification that recruitment and placement of employees is only a small part of Horizontal Integration's business, and that the only area in which Horizontal Integration competes with TEKsystems is Information Technology ("IT") application development and infrastructure staffing.

35. Defendants deny the allegations contained in paragraph 35 of Plaintiff's Complaint, and affirmatively allege that the Hammernik Agreement is not enforceable against Hammernik.

36. Answering paragraph 36 of Plaintiff's Complaint, Defendants:

- a. Deny the allegations in paragraph 36(a).
- b. Deny the allegations in paragraph 36(b). Defendants state that Hammernik never had client relationships at TEKsystems. Defendants further state that Hammernik has not had any business with any of TEKsystems' current clients that benefit Horizontal Integration.
- c. Deny the allegations in paragraph 36(c).
- d. Deny the allegations in paragraph 36(d).

37. Answering paragraph 37 of Plaintiff's Complaint, Defendants admit that Hammernik "linkedin" with the listed individuals, but deny Hammernik otherwise communicated with them, and affirmatively state that Kevin Jordahl, Steve Wicks, Kazim Merchant, Srujana Pasunuri, Shailaja Grishakurti, Shawn Faber, Carl Boudreau, Tom Peterson, Seann Van Cleve, Bill Serverson, Claude Wallander and Brett Snaza are not employees of TEKsystems nor have they worked for TEKsystems in the past.

Defendants further affirmatively state that Claude Wallander, Seann Van Cleve and Tom Peterson initiated contact with Hammernik by inviting her to “linkin” with them and when Hammernik learned of this she provided the information to a TEKsystems recruiter, Elicaseth You. Defendants admit to Hammernik’s communications with Tom Peterson but state that the communications did not relate to staffing or soliciting IT business for Defendant Horizontal Integration. Defendants deny the remaining allegations contained in paragraph 37 of Plaintiff’s Complaint. Defendants affirmatively state that TEKsystems’ and its employees’ use of LinkedIn and Facebook for recruiting, promotional or other purposes voids any claim that any information posted therein is trade secret or confidential.

38. Defendants deny the allegations contained in paragraph 38 of Plaintiff’s Complaint.

39. Defendants deny the allegations contained in paragraph 39 of Plaintiff’s Complaint.

40. Defendants deny the allegations contained in paragraph 40 of Plaintiff’s Complaint except admit that Hammernik sent out an email announcing her departure from TEKsystems, which was approved by Dosan prior to its being sent, and admit that Hammernik, in the presence of and with the permission of Dosan, uploaded her “my documents” folder/personal documents and pictures to an external hard drive. Defendant Hammernik affirmatively asserts that if candidates contact her, she refers them back to Plaintiff.

41. Defendants deny the allegations contained in paragraph 41 of Plaintiff's Complaint.

VANGORDEN'S EMPLOYMENT WITH TEKSYSTEMS

42. Defendants admit the allegations contained in paragraph 42 of Plaintiff's Complaint.

43. Defendants admit the allegations contained in paragraph 43 of Plaintiff's Complaint, but affirmatively state Hammernik only worked with VanGorden for approximately six month period, under the direction of Russ Orning.

44. Defendants admit the allegations contained in paragraph 44 of Plaintiff's Complaint, with the condition that this applies only to those candidates and clients with whom he worked.

45. Defendants admit that VanGorden signed the Agreement referenced in paragraph 45 of Plaintiff's Complaint, state that the document speaks for itself, and affirmatively state the VanGorden Agreement is unenforceable against VanGorden.

46. Defendants admit the allegations contained in paragraph 46 of Plaintiff's Complaint and state that the document speaks for itself.

47. Answering paragraph 47 of Plaintiff's Complaint, Defendants state that the document speaks for itself.

48. Answering paragraph 48 of Plaintiff's Complaint, Defendants state that the document speaks for itself.

49. Answering paragraph 49 of Plaintiff's Complaint, Defendants state that the document speaks for itself.

50. Defendants admit the allegations contained in paragraph 50 of Plaintiff's Complaint.

51. Defendants deny the allegations contained in paragraph 51 of Plaintiff's Complaint and state that general industry knowledge and experience do not constitute confidential, proprietary or trade secret information.

52. Defendants deny the allegations contained in paragraph 52 of Plaintiff's Complaint and state that general industry knowledge and experience do not constitute confidential, proprietary or trade secret information.

VANGORDEN'S POST-TERMINATION CONDUCT

53. Defendants admit the allegations contained in paragraph 53 of Plaintiff's Complaint, but affirmatively assert Defendant VanGorden is not working with any of the clients with whom he worked while with TEKsystems.

54. Defendants admit the allegations contained in paragraph 54 of Plaintiff's Complaint except that Defendants deny that VanGorden is violating Section 3 of the VanGorden Agreement and Defendants make the qualification that recruitment and placement of employees is only a small part of Horizontal Integration's business, and that the only area in which Horizontal Integration competes with TEKsystems is Information Technology ("IT") application development and infrastructure staffing.

55. Answering paragraph 55 of Plaintiff's Complaint, Defendants:

- a. Deny the allegations contained in paragraph 55(a);
- b. Deny the allegations contained in paragraph 55(b) except admit that VanGorden has had conversations with long-time personal contacts since

leaving the employ of TEKsystems. VanGorden specifically denies any such contact is in violation of any Agreement.

- c. Deny the allegations contained in paragraphs 55(c) and 55(d) except admit that VanGorden has worked with UnitedHealth Group, a pre-existing Horizontal Integration client, and a few other accounts, none of which he worked with while employed at TEKsystems. Defendants affirmatively state that Russ Orning told VanGorden that he could stay in the staffing industry as a sales person, so long as he did not call on any accounts or clients he sold to while at TEKsystems. Defendants further state that VanGorden contacted both Dosan and Orning as soon as he began employment with Horizontal Integration, and during the nine months he has been employed with Horizontal Integration, he has been in contact with Orning and Dosan at a variety of events, they both knew he was working with UnitedHealth Group and expressed no concern or objection.
- d. Deny the allegations contained in paragraph 55(e) except admit that VanGorden has been working with UnitedHealth Group, a pre-existing Horizontal Integration client with which he never worked while employed with TEKsystems. Defendants state that TEKsystems knew VanGorden was working with UnitedHealth Group and expressed no concern or objection.

56. Defendants deny the allegations contained in paragraph 56 of Plaintiff's Complaint except admit that VanGorden has been working with UnitedHealth Group, a

pre-existing Horizontal Integration client, and a few other accounts, none of which he worked with while employed at TEKsystems. Defendants affirmatively state that VanGorden's actions complied with Orning's instruction to him that he could stay in the staffing industry as a sales person, so long as he did not call on any accounts or clients he sold to while at TEKsystems. Defendants further state that TEKsystems knew VanGorden was working with UnitedHealth Group and expressed no concern or objection.

57. Defendants deny the allegations contained in paragraph 57 of Plaintiff's Complaint.

58. Defendants deny the allegations contained in paragraph 58 of Plaintiff's Complaint.

59. Defendants deny the allegations contained in paragraph 59 of Plaintiff's Complaint.

HOOIHAN'S EMPLOYMENT WITH TEKSYSTEMS

60. Answering paragraph 60 of Plaintiff's Complaint, Defendants admit that Hoolihan was hired by TEKsystems on or about September 19, 1999, but deny that he was ever a salesperson for TEKsystems.

61. Defendants admit the allegations contained in paragraph 61 of Plaintiff's Complaint.

62. Defendants deny the allegations contained in paragraph 62 of Plaintiff's Complaint except admit that Hoolihan was involved in searches to identify qualified

candidates, developed familiarity with candidates, oversaw the placement process, and was responsible for developing recruiters and maintaining consultants.

63. Answering paragraph 63 of Plaintiff's Complaint, Defendants admit that Hoolihan signed the Hoolihan Agreement, state that the document speaks for itself, but otherwise deny the allegations contained therein. Defendants affirmatively state the Hoolihan Agreement is unenforceable against Hoolihan.

64. Defendants admit the allegations contained in paragraph 64 of Plaintiff's Complaint and state that the document speaks for itself.

65. Answering paragraph 65 of Plaintiff's Complaint, Defendants state that the document speaks for itself.

66. Answering paragraph 66 of Plaintiff's Complaint, Defendants state that the document speaks for itself.

67. Answering paragraph 67 of Plaintiff's Complaint, Defendants state that the document speaks for itself.

68. Defendants admit the allegations contained in paragraph 68 of Plaintiff's Complaint.

69. Defendants deny the allegations contained in paragraph 69 of Plaintiff's Complaint and state that general industry knowledge and experience do not constitute confidential, proprietary or trade secret information.

70. Defendants deny the allegations contained in paragraph 70 of Plaintiff's Complaint except admit that Hoolihan agreed to use his knowledge to continue to provide services for TEKsystems for the next six months by taking transitioning calls and emails

from TEKsystems sales and recruiters regarding current consultants – a service which he continues to provide to TEKsystems’ employees.

HOOLIHAN’S POST-TERMINATION CONDUCT

71. Defendants admit the allegations contained in paragraph 71 of Plaintiff’s Complaint, but affirmatively assert Defendant Hoolihan is not performing the same duties, nor working with the same clients and/or consultants with whom he worked while with TEKsystems.

72. Defendants admit the allegations contained in paragraph 72 of Plaintiff’s Complaint with the qualification that recruitment and placement of employees is only a small part of Horizontal Integration’s business, and that the only area in which Horizontal Integration competes with TEKsystems is Information Technology (“IT”) application development and infrastructure staffing.

73. Answering paragraph 73 of Plaintiff’s Complaint, Defendants:

- a. Deny the allegations contained in paragraph 73(a). Defendants affirmatively state that Hoolihan has only responded to or contacted individuals on TEKsystems’ behalf in order to comply with the agreed upon TEKsystems’ plan that Hoolihan provide transition services for TEKsystems and/or answer TEKsystems’ employees questions.
- b. Deny the allegations contained in paragraph 73(b) and state that Hoolihan’s job duties at TEKsystems did not include contacting or working with clients directly.

- c. Deny the allegations contained in paragraph 73(c) and state that Hoolihan's job duties at TEKsystems did not include soliciting business.
- d. Deny the allegations contained in paragraph 73(d).

74. Answering paragraph 74, Defendants admit that Hoolihan occasionally used Magna Systems, a competitor and partner of TEKsystems, to obtain candidates to fill positions for Horizontal Integration nationally – not in Minnesota - and that he sent the March 4, 2010 email referenced in paragraph 74, but deny the remaining allegations. Defendants specifically deny that Hoolihan's actions violate any obligations to TEKsystems but state that as a gesture of good faith, Hoolihan has stopped working with Magna Systems. Defendants specifically deny that Hoolihan is using any of TEKsystems' confidential information.

75. Defendants deny the allegations contained in paragraph 75 of Plaintiff's Complaint.

76. Defendants deny the allegations contained in paragraph 76 of Plaintiff's Complaint.

77. Defendants deny the allegations contained in paragraph 77 of Plaintiff's Complaint.

ALLEGATIONS AGAINST HORIZONTAL INTEGRATION

78. Answering paragraph 78 of Plaintiff's Complaint, affirmatively state that that recruitment and placement of employees is only a small part of Horizontal Integration's business and that the only area in which Horizontal Integration competes

with TEKsystems is Information Technology (IT) application development and infrastructure staffing.

79. Defendants admit the allegations contained in paragraph 79 of Plaintiff's Complaint.

80. Defendants deny the allegations contained in paragraph 80 of Plaintiff's Complaint. Defendants affirmatively assert that the individual Defendants are not working in the same positions, nor with the same clients and/or consultants with whom they worked while with TEKsystems, nor using any confidential and/or trade secret information of TEKsystems in the performance of those duties.

COUNT I – BREACH OF CONTRACT
(AGAINST HAMMERNIK, VANGORDEN AND HOOLIHAN)

81. Answering paragraph 81, Defendants incorporate the responses set forth above.

82. Defendants deny the allegations contained in paragraph 82 of Plaintiff's Complaint.

83. Defendants deny the allegations contained in paragraph 83 of Plaintiff's Complaint.

84. The allegations contained in paragraph 84 of Plaintiff's Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

85. Defendants deny the allegations contained in paragraph 85 of Plaintiff's Complaint.

**COUNT II – BREACH OF CONFIDENTIALITY AGREEMENT
(AGAINST HAMMERNIK, VANGORDEN AND HOOLIHAN)**

86. Answering paragraph 86, Defendants incorporate the responses set forth above.

87. The allegations contained in paragraph 87 of Plaintiff's Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

88. Defendants deny the allegations contained in paragraph 88 of Plaintiff's Complaint. Defendants also affirmatively state that TEKsystems' and its employees' use of LinkedIn and Facebook for recruiting, promotional or other purposes voids any claim that any information posted therein is trade secret or confidential.

89. Defendants deny the allegations contained in paragraph 89 of Plaintiff's Complaint.

90. Defendants deny the allegations contained in paragraph 90 of Plaintiff's Complaint.

91. Defendants deny the allegations contained in paragraph 91 of Plaintiff's Complaint.

**COUNT III – TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
(AGAINST HAMMERNIK, VANGORDEN AND HOOLIHAN)**

92. Answering paragraph 92, Defendants incorporate the responses set forth above.

93. Defendants admit Hammernik, VanGorden and Hoolihan knew about certain client contracts as alleged in paragraph 93 of Plaintiff's Complaint, but otherwise deny the allegations contained therein.

94. Defendants deny the allegations contained in paragraph 94 of Plaintiff's Complaint.

95. Defendants deny the allegations contained in paragraph 95 of Plaintiff's Complaint.

96. Defendants deny the allegations contained in paragraph 96 of Plaintiff's Complaint.

97. Defendants deny the allegations contained in paragraph 97 of Plaintiff's Complaint.

98. Defendants deny the allegations contained in paragraph 98 of Plaintiff's Complaint.

COUNT IV – MISAPPROPRIATION OF TRADE SECRETS
(AGAINST HAMMERNIK, VANGORDEN AND HOOLIHAN)

99. Answering paragraph 99, Defendants incorporate the responses set forth above.

100. Defendants deny the allegations contained in paragraph 100 of Plaintiff's Complaint and affirmatively state that they are not in possession of any information which constitutes trade secrets. Defendants also affirmatively state that TEKsystems' and its employees' use of LinkedIn and Facebook for recruiting, promotional or other purposes voids any claim that any information posted therein is trade secret or confidential.

101. Defendants specifically deny that TEKsystems made reasonable efforts to maintain the confidentiality of the information outlined in paragraph 100 of Plaintiff's Complaint. Defendants also affirmatively state that TEKsystems' and its employees' use of LinkedIn and Facebook for recruiting, promotional or other purposes voids any claim that any information posted therein is trade secret or confidential.

102. Defendants deny the allegations contained in paragraph 102 of Plaintiff's Complaint.

103. Defendants deny the allegations contained in paragraph 103 of Plaintiff's Complaint.

104. Defendants deny the allegations contained in paragraph 104 of Plaintiff's Complaint.

105. Defendants deny the allegations contained in paragraph 105 of Plaintiff's Complaint.

106. Answering paragraph 106 of Plaintiff's Complaint, Defendants do not dispute this Court's jurisdiction or authority.

COUNT V – BREACH OF THE DUTY OF LOYALTY
(AGAINST HORIZONTAL INTEGRATION)(sic)

107. Answering paragraph 107, Defendants incorporate the responses set forth above.

108. The allegations contained in paragraph 108 of Plaintiff's Complaint are legal conclusions to which no response is required.

109. Defendants deny the allegations contained in paragraph 109 of Plaintiff's Complaint.

110. Defendants deny the allegations contained in paragraph 110 of Plaintiff's Complaint.

111. Defendants deny the allegations contained in paragraph 111 of Plaintiff's Complaint.

COUNT VI – TORTIOUS INTERFERENCE WITH CONTRACT
(AGAINST HORIZONTAL INTEGRATION)

112. Answering paragraph 112, Defendants incorporate the responses set forth above.

113. The allegations contained in paragraph 113 of Plaintiff's Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

114. Defendants admit that Horizontal Integration has knowledge of the agreements with Hammernik, VanGorden and Hoolihan, but denies the remaining allegations contained in paragraph 114 of Plaintiff's Complaint.

115. Defendants deny the allegations contained in paragraph 115 of Plaintiff's Complaint.

116. Defendants deny the allegations contained in paragraph 116 of Plaintiff's Complaint.

117. Defendants deny the allegations contained in paragraph 117 of Plaintiff's Complaint.

COUNT VI (sic) – EQUITABLE ACCOUNTING

118. Answering paragraph 118, Defendants incorporate the responses set forth above.

119. Defendants deny the allegations contained in paragraph 119 of Plaintiff's Complaint.

120. Answering paragraph 120 of Plaintiff's Complaint, Defendants state that the documents speak for themselves.

121. Defendants are without knowledge or information as to TEKsystems' beliefs but otherwise deny the allegations contained in paragraph 121 of Plaintiff's Complaint.

STATEMENT OF IRREPARABLE INJURY TO PLAINTIFF

122. Defendants deny the allegations contained in paragraph 122 of Plaintiff's Complaint.

123. Defendants deny the allegations contained in paragraph 123 of Plaintiff's Complaint.

124. Defendants deny each of the demands in the WHEREFORE clause of Plaintiff's Complaint.

SEPARATE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted.
2. Any damages sustained by Plaintiff, as alleged in the Complaint, were caused or contributed to by its own actions or inaction.
3. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, laches, and equitable estoppel.
4. Plaintiff's contract claims are barred by the doctrine of selective enforcement.

5. Plaintiff's claims fail, in whole or in part, because the restrictive covenants with Hammernik, Hoolihan and VanGorden are unenforceable.

6. Plaintiff's claims are barred because it has no damages.

7. Plaintiff's claims as to Hammernik and Hoolihan fail for lack of consideration.

8. Plaintiff has failed to use reasonable care to mitigate, minimize, or avoid injury or loss, if any, it may have sustained as alleged in its Complaint.

9. Plaintiff's claims fail, in whole or in part, because Defendants acted in the good faith belief that their actions were lawful and justified.

10. Plaintiff's claims fail, in whole or in part, because Plaintiff failed to take reasonable steps to maintain the confidentiality of trade secrets and/or other confidential information.

11. Plaintiff's claims that relate in anyway to customer and/or client information fail to the extent that Plaintiff, or its employees, have thrust said information into the public domain through the use of sites such as, LinkedIn and Facebook, and/or to the extent Plaintiff encouraged its employees to place said information into the public domain.

12. Plaintiff is not entitled to injunctive relief because there is an adequate remedy at law for Plaintiff's alleged damages, if any.

13. Plaintiff is not entitled to liquidated damages because the liquidated damages provisions are void as a penalty.

COUNTERCLAIMS AGAINST PLAINTIFF TEKSYSTEMS, INC.

Come now the Defendants, by and through their undersigned attorneys, and for their Counterclaims against Plaintiff TEKsystems, Inc. state and allege as follows:

FACTS RELEVANT TO ALL COUNTERCLAIMS

1. By reference herein, Defendants incorporate each and every factual assertion and defense set forth above.

2. Defendant Hammernik worked for TEKsystems as a recruiter between January 8, 2007, and November 13, 2009. On or about January 8, 2007, Hammernik signed the Hammernik Agreement (attached as Exhibit A to Plaintiff's Complaint).

3. Defendant VanGorden worked for TEKsystems as a sales person between January 23, 2005, and June 30, 2009. On or about January 13, 2005, VanGorden signed the VanGorden Agreement (attached as Exhibit B to Plaintiff's Complaint).

4. Defendant Hoolihan worked for TEKsystems as a recruiter between September 19, 1999, and February 23, 2010. On or about September 20, 1999, Hoolihan signed the Hoolihan Agreement (attached as Exhibit C to Plaintiff's Complaint).

5. When VanGorden resigned from TEKsystems in June 2009, he provided proper notice and helped to transition accounts. He also spoke with Russ Orning regarding his Agreement. Orning told VanGorden that he could stay in the staffing industry as a sales person, so long as he did not call on any accounts or clients he sold to while at TEKsystems. In reliance upon that representation, VanGorden went to work for Horizontal Integration.

6. In further reliance upon that representation, immediately after beginning employment with Horizontal Integration, VanGorden contacted both Dosan and Orning to let them know he was working there.

7. Horizontal Integration had already been working with UnitedHealth Group prior to VanGorden's employment. When VanGorden joined Horizontal Integration, it placed VanGorden into the UnitedHealth Group position because he had not worked with UnitedHealth Group while employed with TEKsystems.

8. Since joining Horizontal Integration, VanGorden has not worked on any accounts which he serviced while working for TEKsystems. He works on existing Horizontal Integration accounts and has not taken any revenue from TEKsystems.

9. During the nine months he has been employed with Horizontal Integration, he has been in contact with Orning and Dosan at a variety of events, they both knew he was working with UnitedHealth Group, and neither expressed any concern or objection.

10. In or about August 2009, Hammernik was on maternity leave following the birth of her first child. During her leave, Hammernik approached VanGorden to inquire about jobs at Horizontal Integration. VanGorden responded that Jeremy Langevin was in charge of hiring and she could talk to him if she wanted to.

11. During the next few months, Hammernik looked at all possible options, including, staying with TEKsystems, working for Horizontal Integration, or working for some other Minnesota company. When she decided to leave TEKsystems, she gave proper notice and helped to transition consultants. Since joining Horizontal Integration, she has been working in the capacity of business development, a position she never held

at TEKsystems. Hammernik has not pulled any consultants from TEKsystems and has not placed any consultants for Horizontal Integration that were working with TEKsystems. She has taken no revenue from TEKsystems.

12. In February 2010, Hoolihan decided to leave TEKsystems to pursue other opportunities as he had no room for advancement at TEKsystems. Hoolihan immediately advised TEKsystems that he was going to work for Horizontal Integration to pursue management opportunities.

13. Following his notice, Hoolihan transitioned every one of his more than 2000 consultants to over 20 TEKsystems recruiters. Hoolihan worked on strategically transitioning the top 120 consultants which included TEKsystems' current and former consultants. The transition took about three weeks. Dosan advised Hoolihan that it was the most professional and diligent transition plan he had ever seen.

14. Following his notice and his disclosure that he was going to work with Horizontal Integration, Hoolihan also sat down with Orning and Dosan to discuss his Agreement. He relayed specifically that it was his understanding that his non-compete meant that he could not place consultants currently working for TEKsystems. He asked Orning, "is that correct?" Orning responded, "Yes, we don't own people." Neither Orning nor Dosan told Hoolihan that his pending employment violated his Agreement in any way.

15. In addition to this transition plan, Hoolihan also agreed to a six month transition plan (a plan that Horizontal Integration agreed to) following his resignation. This plan would permit any TEKsystems' salesperson, recruiter or consultant to call him

with any questions. Hoolihan met with 90% of the recruiters and salespersons to let them know they could call via his cell phone at any time for assistance.

16. Between February 25, 2010, and March 23, 2010, Hoolihan took in excess of 25 calls from TEKsystems' sales people, recruiters and consultants, and referred consultants to TEKsystems' recruiters, all resulting in revenue for TEKsystems during that period of time. Hoolihan was not paid for this additional work for TEKsystems in any way.

17. Hoolihan has not taken any revenue away from TEKsystems as a result of placing TEKsystems' consultants (to the contrary, he made them revenue), nor has he pulled any TEKsystems' consultants since joining Horizontal Integration.

COUNT I
(Negligent Misrepresentation)

18. By reference herein, Defendants incorporate each and every allegation and defense set forth above.

19. In discussing VanGorden's resignation from employment, TEKsystems acknowledged that VanGorden's Agreement with TEKsystems did not prevent him from working in sales in a competing business, so long as he did not call on TEKsystems accounts with which he had worked while with TEKsystems. VanGorden believed these representations to be true and relied upon them.

20. Based upon its current behavior in seeking to enforce its Agreement against VanGorden, TEKsystems made a misrepresentation of material fact regarding its interpretation and planned enforcement of VanGorden's Agreement.

21. In discussing Hoolihan's resignation from employment, TEKsystems acknowledged that his Agreement with TEKsystems only prevented him from placing consultants currently working for TEKsystems. Hoolihan believed these representations to be true and relied upon them.

22. Based upon its current behavior in seeking to enforce its Agreement against Hoolihan, TEKsystems made a misrepresentation of material fact regarding its interpretation and planned enforcement of VanGorden's Agreement.

23. VanGorden's and Hoolihan's reliance on TEKsystems' negligent misrepresentations was justifiable because the representations were made by Orning and Dosan - Directors of TEKsystems.

24. TEKsystems, in supplying such misinformation, failed to exercise reasonable care in communicating the information.

25. VanGorden and Hoolihan relied upon said information to their detriment resulting in their involvement in this litigation and the threatened loss of their employment.

26. As a direct and proximate result of TEKsystems' negligent misrepresentation, VanGorden and Hoolihan have been damaged in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to be proven with specificity at trial.

Count II
(Unfair Competition)

27. By reference herein, Defendants incorporate each and every allegation and defense set forth above.

28. TEKSystems knew or should have known that its Agreements with Hammernik, VanGorden and Hoolihan were not enforceable in whole or in part. Despite that knowledge, it commenced this action with the sole purpose to interfere with the individual defendants' employment with Horizontal Integration, and to prevent fair competition.

29. Plaintiff have also engaged in unfair competition with Defendants by negligently misrepresenting VanGorden's and Hoolihan's alleged obligations under their TEKsystems' Agreements, intending for VanGorden and Hoolihan to rely upon those representations to their detriment, tortiously interfering with Hammernik's, VanGorden's and Hoolihan's prospective business relationships and seeking to interfere with their employment with Horizontal Integration, and then bringing this action to seek to prevent them from working in their chosen field despite those representations.

30. Such conduct does not seek to protect any legitimate business interest and constitutes unfair competition.

31. As a direct and proximate result of Plaintiff's unfair competition, Hammernik, VanGorden, Hoolihan and Horizontal Integration have been damaged in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00) to be proven with specificity at trial.

COUNT III
(Tortious Interference with Contract and/or Prospective Business Relations)

32. By reference herein, Defendants incorporate each and every allegation and defense set forth above.

33. TEKSystems' managers knew or should have known that its Agreements with Hammernik, VanGorden and Hoolihan were not enforceable in whole or in part. Despite that knowledge, it commenced this action with the sole purpose to interfere with the individual defendants' employment with Horizontal Integration, and to prevent fair competition.

34. Moreover, based upon TEKsystems' representations (outlined above), VanGorden and Hoolihan have a reasonable expectation of economic advantage or benefit from their contracts with and/or relationships with Horizontal Integration, and Horizontal Integration has a reasonable expectation of continued economic advantage in its contracts and/or relationships with VanGorden and Hoolihan.

35. TEKsystems intentionally and improperly interfered with Hammernik's, VanGorden's and Hoolihan's contractual relations by seeking to induce or otherwise cause Horizontal Integration not to enter into or continue the contracts and/or prospective relations with Hammernik, VanGorden and Hoolihan.

36. TEKsystems' actions were unjustified and wrongful based upon their own prior representations and the unenforceability of their own agreements.

37. Without TEKsystems' wrongful actions, it is reasonably probable that Hammernik, VanGorden and Hoolihan will realize economic advantage or benefit from their contracts and/or relationships with Horizontal Integration.

38. As a direct and proximate result of Plaintiff's tortious interference Hammernik, VanGorden, Hoolihan and Horizontal Integration have been damaged in an

amount in excess of Seventy Five Thousand Dollars (\$75,000.00) to be proven with specificity at trial.

COUNT IV
(Unjust Enrichment)

39. By reference herein, Defendants incorporate each and every allegation and defense set forth above.

40. Hoolihan conferred a benefit upon TEKsystems by continuing to provide technical and transition services to TEKsystems following his resignation to assist TEKsystems' employees in the performance of their duties, and to provide revenue to TEKsystems.

41. TEKsystems knowingly accepted the benefit and received value from the benefit.

42. Despite accepting the benefit of Hoolihan's transition services, TEKsystems has brought suit against Hoolihan.

43. TEKsystems' retention of the benefit under these circumstances would be inequitable and constitutes unjust enrichment.

44. As a direct and proximate result of TEKsystems' unjust enrichment, TEKsystems should be required to disgorge all profits and revenues gained from the wrongful acceptance of Hoolihan's transition services.

COUNT V
(Promissory Estoppel)

45. By reference herein, Defendants incorporate each and every allegation and defense set forth above.

46. TEKSystems' managers knew or should have known that its Agreements with VanGorden and Hoolihan were not enforceable in whole or in part.

47. TEKsystems made a clear and definite promise to VanGorden that TEKsystems would not prevent him from working in sales in a competing business, so long as he did not call on TEKsystems accounts with which he had worked while with TEKsystems. VanGorden believed these statements to be true and relied upon them.

48. TEKsystems made a clear and definite promise to Hoolihan that his Agreement with TEKsystems only prevented him from placing consultants currently working for TEKsystems. Hoolihan believed these statements to be true and relied upon them.

49. TEKsystems intended to induce reliance on these promises and VanGorden and Hoolihan did in fact rely on TEKsystems' promises to VanGorden's and Hoolihan's detriment.

50. TEKsystems should reasonably have expected to induce VanGorden's and Hoolihan's reliance on TEKsystems' promises and should reasonably have expected VanGorden and Hoolihan to go to work for Horizontal Integration.

51. TEKsystems' promise must be enforced to prevent injustice.

COUNT VI
(Breach of Oral Contract)

52. By reference herein, Defendants incorporate each and every allegation and defense set forth above.

53. TEKsystems and Hoolihan entered into an oral contract defining his post-termination obligations in that TEKsystems agreed that his Agreement with TEKsystems

only prevented him from placing consultants currently working for TEKsystems. In recognition of this agreement, Hoolihan agreed to provide, and did in fact provide, to TEKsystems, transition services without pay for a period of six months following resignation.

54. Hoolihan performed his duties under the contract by providing the transition services and is in fact willing to continue to provide such services as he agreed.

55. TEKsystems breached the contract by filing suit and seeking to prevent him from working for Horizontal Integration despite the fact that Hoolihan has not placed consultants currently working for TEKsystems.

56. As a direct and proximate result of TEKsystems' breach, Hoolihan has been damaged in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to be proven with specificity at trial.

COUNT VII
(Request for Declaratory Relief)

57. By reference herein, Defendants incorporate each and every allegation and defense set forth above.

58. In its Complaint, TEKsystems alleges that many of the clauses in the Agreements referenced above are implicated by this lawsuit.

59. TEKsystems' Complaint alleges, in part, that Hammernik, VanGorden and Hoolihan have breached their Agreements with TEKsystems by accepting employment with Horizontal Integration.

60. Hammernik, VanGorden and Hoolihan assert that the Agreements and/or certain provisions of the Agreements are unenforceable against them.

61. TEKsystems, Horizontal Integration, Hammernik, VanGorden and Hoolihan dispute the rights and responsibilities under the terms of the Agreements, and said dispute has resulted in this litigation.

62. Therefore, an actual controversy of a justiciable nature presently exists between TEKsystems and all Defendants concerning the interpretation and enforcement of the Agreements. The controversy is of sufficient immediacy to justify the issuance of a declaratory judgment.

63. Accordingly, Defendants request that this Court issue a declaration stating the rights and obligations of the parties with respect to the Agreements signed by Hammernik, VanGorden and Hoolihan.

WHEREFORE, Defendants request the following relief:

1. That Plaintiff take nothing by its pretended claim for relief and that Defendants be given judgment dismissing Plaintiff's Complaint;
2. Awarding Defendants judgment in an amount to be determined at trial;
3. Awarding Defendants its attorneys' fees and costs incurred in this action;
4. Declaring the rights and obligations of the parties with respect to the Agreements signed by Hammernik, VanGorden and Hoolihan; and
5. For such other relief as the Court deems appropriate.

Dated: April 6, 2010

s/ Teresa M. Thompson

Teresa M. Thompson (#248940)

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