UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN GREEN BAY DIVISION

AIA SERVICES, LLC

800 Winneconne Avenue

Neenah, Wisconsin 54956,

Plaintiff,

v.

MARKETING SOLUTIONS PROMOTIONAL PRODUCTS, LLC

1550 East 4160 South

Salt Lake City, Utah, 84124, AND

NANDRA COURTRIGHT

1550 East 4160 South

Salt Lake City, Utah, 84124,

Defendants.

Case No.: 16-cv-1635 Hon. William C. Griesbach

# COMPLAINT

Plaintiff AIA Services, LLC, by its attorney William E. Fischer of the law firm of von Briesen & Roper, s.c., hereby states its complaint against the defendants, Marketing Solutions Promotional Products, LLC and Nandra Courtright, as follows:

# PARTIES

1. Plaintiff AIA Services, LLC (“AIA”) is organized and existing under the laws of the State of Delaware, and is registered to do business in the State of Wisconsin, with its principal place of business located at 800 Winneconne Avenue, Neenah, Wisconsin 54956. AIA’s sole member, AIA Corporation, is organized and existing under the laws of the State of

Delaware, and is not a citizen of and does not reside in the State of Utah. AIA does business in the State of Wisconsin under the registered fictional name Adventures in Advertising.

1. Defendant Marketing Solutions Promotional Products, LLC (“Marketing Solutions”) is a limited liability company organized and existing under the laws of the State of Utah, with its principal place of business located at 1550 East 4160 South, Salt Lake City, Utah, 84124. Marketing Solutions’ registered agent is Defendant Nandra Courtright, with the registered agent address of 1550 East 4160 South, Salt Lake City, Utah, 84124. Defendant Nandra Courtright is the managing member of and, upon information and belief, is the sole member of Marketing Solutions.
2. Defendant Nandra Courtright (“Courtright”) is an adult citizen of the State of Utah, residing upon information and belief at 1550 East 4160 South, Salt Lake City, Utah, 84124.

# JURISDICTION and VENUE

1. Jurisdiction in this case is proper pursuant to 28 U.S.C. § 1332(a)(1). The amount in controversy exceeds $75,000, and there is complete diversity between the parties. Defendant Courtright resides in Utah, and upon information and belief is the only member of Defendant Marketing Solutions, which is a Utah entity, and which has its principal place of business in Utah. AIA is a Delaware entity, has its principal place of business in the State of Wisconsin, and is not a resident of the State of Utah.
2. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claim occurred in this district.

# FACTS

1. AIA is in the business of distributing promotional products, specialty advertising items, business gifts and other items to a wide variety of customers. AIA accomplishes its business by engaging Sales Affiliates in various locations throughout the country through the use of Sales Affiliate Agreements. Pursuant to those agreements, AIA provides “back office” support to those Sales Affiliates, which includes (but is not limited to) order processing, invoicing, and tax services. The Sales Affiliates work as independent contractors to solicit promotional product sales and related orders from customers for submission to AIA. In exchange for those efforts, the Sales Affiliate is paid a commission by AIA, the amount of which is calculated pursuant to the terms of the Sales Affiliate Agreement.
2. On or about May 15, 2014, Marketing Solutions executed a Sales Affiliate Agreement with AIA, a true copy of which is attached hereto as Exhibit A. By its terms, the Sales Affiliate Agreement is subject to the laws of the State of Wisconsin.
3. Also on May 15, 2014, Courtright executed a document entitled “Joinder,” which is included in Exhibit A. The Joinder document makes Courtright jointly and severally liable for all liabilities that Marketing Solutions may incur pursuant to the Sales Affiliate Agreement.
4. The Sales Affiliate Agreement includes four appendices. Appendix A sets forth the method of calculation of commissions to be paid pursuant to the Sales Affiliate Agreement.
5. Appendix C of the Sales Affiliate Agreement is entitled “Agreement for the Sale of Receivables,” and transfers the rights of Marketing Solutions’ receivables to AIA, including the right to contact Marketing Solutions’ customers and suppliers and settle any disputes with them.
6. Pursuant to paragraph 2 of the Sales Affiliate Agreement, Sales Affiliates are required to forward all orders for products to AIA. The orders are processed by AIA, invoices

are then customarily generated by AIA and forwarded to the customer, and the customer then pays AIA directly for those sales. AIA then forwards commission to the Sales Affiliate.

1. In certain situations, AIA will agree to forward the invoices to its Sales Affiliate, with the understanding that the Sales Affiliate would forward the invoices in substantively unaltered form directly to their customers. In such instances, the invoices that are forwarded by the Sales Affiliate nevertheless require payment directly to AIA.
2. Defendants in this case had such an arrangement with AIA, whereby AIA would forward invoices for certain customers to Defendants, which invoices were supposed to be forwarded by Defendants to the customer in substantively unaltered form.
3. During the spring of 2016, payments for various orders from Defendants’ customers were becoming delinquent. When AIA contacted Defendants about such late payments, Defendants told AIA that the payments had not been received by the Defendants, and provided various excuses for the late payments, including such excuses that the customers were notoriously late payers, or that they would only pay via a certain Purchasing Card format, thereby delaying payment. AIA later discovered that Defendants’ statements that payments had not been received, and the excuses being offered by the Defendants for the fact that payments were not received, were not true.
4. AIA chose to trust in the veracity of the Defendants, and took no further collection action at that time. Additional time passed and no payments were forthcoming, either from the customers or from Defendants. During June of 2016, accounts began to become seriously delinquent, and AIA began contacting Defendants’ customers to secure payment, pursuant to paragraph 7 and Appendix C, § 6 of the Sales Affiliate Agreement.
5. Upon contacting Defendants’ customers, AIA learned that Defendants, unbeknownst to AIA and without AIA’s permission, were substantively altering the invoices forwarded by AIA, in order to redirect payment directly to Defendants, rather than to AIA. AIA further learned that, pursuant to those altered invoices, the customers had sent payment directly to the Defendants. However, Defendants had failed to forward those payments to AIA.
6. Generally, in instances where a customer mistakenly forwards payment to a Sales Affiliate, the Sales Affiliate is required to immediately notify AIA and forward the payment to AIA for processing. That is not what occurred here. Rather, Defendants purposefully redirected payments from customers to themselves, and then failed to notify AIA of that fact or to promptly forward the payments to AIA.
7. When AIA asked the Defendants about the missing payments, Defendants chose not to inform AIA of the truth. Instead, Defendants knowingly deceived AIA by giving AIA various excuses as to why the payments were late, including that the customers used Purchase Cards, or because the customers were notoriously slow payers. In fact, unbeknownst to AIA, the majority of the customers had already made the payments to the Defendants long before.
8. Specific examples of the Defendants’ deception include, but are not limited to, the following:
9. One of defendants’ primary customers is a large Salt Lake City, Utah based healthcare system, Intermountain Healthcare (“Intermountain”). During March, April and May of 2016, Defendants sold various AIA products to Intermountain, including such products as vests, lab coats, and lapel pins. Invoices for the products for Intermountain were forwarded by AIA to Defendants, who, unbeknownst to AIA, modified the invoices to direct payment to Marketing Solutions. When AIA did not

receive prompt payments on the Intermountain invoices, it first contacted Courtright, who told AIA that Intermountain was often late with their payments, and that Intermountain’s use of P-cards often caused their payments to be late. By June 24, 2016, the majority of the Intermountain invoices remained unpaid and seriously delinquent, so AIA contacted Intermountain representatives directly in a series of emails dated June 24 through June 28, 2016, asking for prompt payment on the unpaid invoices. In response, Intermountain representatives informed AIA that, contrary to Defendants’ representations, the invoices in question had been paid in full, directly to Marketing Solutions. In some instances, the invoices had been paid to Marketing Solutions months before. Intermountain also forwarded copies of the invoices that had been modified by the Defendants to direct payment directly to Marketing Solutions, as opposed to AIA. Further, Intermountain confirmed to AIA that it paid all invoices on a 30-45 day payment cycle, meaning that Courtright’s description of Intermountain as a habitual late-payer was false. On or about June 24, 2016, in an attempt to control the flow of information, Courtright emailed Intermountain representatives, telling Intermountain to forward all of AIA’s questions regarding delinquent payments to Courtright.

1. Similarly, on June 23, 2016, AIA contacted another of Defendants’ customers, Antelope Point Marina, regarding a seriously past-due invoice. Defendants had previously informed AIA that payment was yet to be received on this invoice. On June 23, 2016, in response to AIA’s email inquiry, Antelope Point informed AIA that, contrary to Defendants’ representations, the payment had been made to Marketing Solutions directly on March 31, 2016. Again, the customer forwarded a copy of the

invoice from Marketing Solutions, which had been altered to direct payment to Marketing Solutions, rather than to AIA.

1. On June 27, 2016, AIA contacted the Utah Transit Authority, another of Defendants’ customers, regarding a past due invoice. Defendants had previously informed AIA that payment was yet to be received. However, in an email on June 28, 2016, the customer confirmed that payment on the invoice had been made in full on May 27, 2016. The customer forwarded proof of payment to AIA, along with a copy of the invoice which, again, had been modified by the Defendants to direct payment to Marketing solutions.
2. By altering invoices and redirecting payments for AIA products to Marketing Solutions, receiving and retaining the payments for their own use, and telling AIA that the payments had not been received when in fact they had, Defendants’ intentionally deceived AIA for their own financial gain, and to AIA’s detriment.
3. Upon learning of this deception, AIA confronted Defendants, inquiring as to where the payments were, why they were redirected to the Defendants rather than to AIA, and demanding the immediate return of the missing payments. Defendants have failed to do so.
4. AIA has conducted significant investigation into identifying the missing payments that are owed to it by the Defendants. On November 18, 2016, AIA forwarded to the Defendants a full accounting of all amounts owed to AIA. The accounting encompasses the missing payments, as well as various credits and other amounts owed to AIA by Defendants pursuant to the terms of the Sales Affiliate Agreement. As of the date of this filing, the outstanding amount owed to AIA by the Defendants is $241,884.30.
5. AIA has made due demand for the outstanding amount owed to it by the Defendants, but Defendants have failed to pay.
6. AIA has fulfilled all conditions precedent to payment.

# COUNT I

**BREACH OF CONTRACT**

1. AIA incorporates paragraphs 1 through 24 of this Complaint as if fully set forth

herein.

1. The May 15, 2014 Sales Affiliate Agreement is a valid contract for services between AIA and Marketing Solutions. By virtue of her Joinder, Nandra Courtright is bound by the Sales Affiliate Agreement as well.
2. The Defendants have breached the Sales Affiliate Agreement with AIA by, among other breaches, redirecting customer payments for AIA products to the Defendants, and by unlawfully retaining such payments.
3. The Defendants have further breached their duty of good faith and fair dealing, which is read into every contract.
4. Defendants’ breaches of the Sales Affiliate Agreement have damaged AIA in the amount of $241,884.30.

# COUNT II

**THEFT: WIS. STAT. §§ 943.20 AND 895.446**

1. AIA incorporates paragraphs 1 through 29 of this Complaint as if fully set forth

herein.

1. By their intentional redirecting of payments from AIA to themselves and by their retention of those payments, Defendants have intentionally taken and retained possession of

AIA’s property without AIA’s consent, and with intent to deprive AIA permanently of possession of AIA’s property, in contravention of Wis. Stat. § 943.20(1)(a).

1. By virtue of their position as an AIA Sales Affiliate, Defendants had possession of money belonging to AIA in the form of the customer payments, and Defendants have intentionally retained possession of such money, without AIA’s consent, contrary to AIA’s authority, and with the intent to convert the money to Defendants’ own use, in contravention of Wis. Stat. § 943.20(1)(b).
2. Defendants have refused to deliver the money belonging to AIA upon AIA’s demand. Pursuant to Wis. Stat. § 943.20(1)(b), Defendants’ refusal to deliver the money constitutes prima facie evidence of Defendants’ intent to convert the money to their own use.
3. AIA has suffered damages as a result of Defendants’ violation of Wis. Stat.

§ 943.20.

1. Pursuant to Wis. Stat. § 895.446(1), AIA has a cause of action against the Defendants as a result of their intentional conduct. Pursuant to Wis. Stat. § 895.446(3), plaintiff is entitled to (1) actual damages, (2) all costs of investigation and litigation that are reasonably incurred, including the value of the time spent by AIA employees or agents; and (3) exemplary damages of up to three times the amount of actual damages awarded.

# COUNT III

**CONVERSION**

1. AIA incorporates paragraphs 1 through 35 of this Complaint as if fully set forth

herein.

1. By altering AIA’s customer invoices and intentionally redirecting customer payments to themselves, Defendants have intentionally taken control of and wrongfully used and retained property belonging to AIA.
2. Defendants took AIA’s property without AIA’s consent and under circumstances where Defendants actively sought to hide the taking of AIA’s property from AIA.
3. Defendants’ actions have resulted in serious interference with the rights of AIA to possess the property.
4. Defendants’ wrongful conversion of AIA’s property was purposeful, willful and malicious, or was in intentional disregard of the rights of AIA.
5. Defendants’ unlawful conversion of AIA’s property has damaged AIA in an amount to be determined at trial.

# COUNT IV

**INTENTIONAL MISREPRESENTATION**

1. AIA incorporates paragraphs 1 through 41 of this Complaint as if fully set forth

herein.

1. As detailed in paragraphs 14 through 20 above, Defendants made representations of fact to AIA that customer payments had not been made on various delinquent accounts, because certain customers preferred using Purchase Cards, or because certain customers were notoriously late in making their payments.
2. The representations of fact made by Defendants to AIA were untrue. Specifically, payments had been made to and received by Defendants on the delinquent accounts, but Defendants failed to forward those payments to AIA, instead choosing to cover up that failure by concocting excuses for the supposedly late payments.
3. Defendants made these untrue representations, knowing the representations were untrue, or recklessly without caring whether they were true or false.
4. Defendants made the untrue representations with the intent to deceive and induce AIA to act upon them to AIA’s pecuniary damage.
5. AIA believed Defendants’ representations to be true and relied upon them.
6. Defendants’ deceit of AIA was purposeful, willful and malicious, or was in intentional disregard of the rights of AIA.
7. AIA has been damaged by Defendants’ intentional misrepresentations in an amount to be determined at trial.

# COUNT V

**NEGLIGENT MISREPRESENTATION**

1. AIA incorporates paragraphs 1 through 49 of this Complaint as if fully set forth

herein.

1. As detailed in paragraphs 14 through 20 above, Defendants made representations of fact to AIA that customer payments had not been made on various delinquent accounts, because certain customers preferred using Purchase Cards, or because certain customers were notoriously late in making their payments.
2. The representations of fact made by Defendants to AIA were untrue. Specifically, payments had been made to and received by Defendants on the delinquent accounts, but Defendants failed to forward those payments to AIA, instead choosing to cover up that failure by concocting excuses for the supposedly late payments.
3. Defendants failed to exercise ordinary care in making these misrepresentations, and were therefore negligent.
4. AIA believed Defendants’ representations to be true and relied upon them.
5. AIA has been damaged by Defendants’ misrepresentations in an amount to be determined at trial.

# COUNT VI

**STRICT RESPONSIBILITY MISREPRESENTATION**

1. AIA incorporates paragraphs 1 through 55 of this Complaint as if fully set forth

herein.

1. As detailed in paragraphs 14 through 20 above, Defendants made representations of fact to AIA that customer payments had not been made on various delinquent accounts, because certain customers preferred using Purchase Cards, or because certain customers were notoriously late in making their payments.
2. The representations of fact made by Defendants to AIA were untrue. Specifically, payments had been made to and received by Defendants on the delinquent accounts, but Defendants failed to forward those payments to AIA, instead choosing to cover up that failure by concocting excuses for the supposedly late payments.
3. The representations of fact were made based on Defendants’ own personal knowledge, or in circumstances in which Defendants necessarily ought to have known the truth or untruth of the statement.
4. Defendants had an economic interest in the transaction.
5. AIA believed Defendants’ representations to be true and relied upon them.
6. AIA has been damaged by Defendants’ misrepresentations in an amount to be determined at trial.

**WHEREFORE**, AIA demands judgment against Defendants Marketing Solutions and Nandra Courtright, jointly and severally as follows:

1. Actual damages in the amount of $241,884.30;
2. Pursuant to Wis. Stat. § 895.446(3)(b), all costs of investigation and litigation that are reasonably incurred, including the value of the time spent by AIA employees or agents;
3. Pursuant to Wis. Stat. § 895.446(3)(c), exemplary damages of up to three times the amount of actual damages awarded;
4. Punitive damages pursuant to Wis. Stat. § 895.043;
5. Pre- and post-judgment interest at a rate allowable by law; and
6. Such other and further relief as allowable by law.

Dated this 9th day of December, 2016.

By: s/*William E. Fischer*

William E. Fischer Wisconsin Bar ID: 1045725

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