

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

Remote Year, Inc.,	:		
	:		
	:		
	:		
v.	:		CIVIL ACTION
	:		NO. 1:17-cv-00142-RGA
We Roam, LLC,	:		
	:		
	:		
	:		
	:		

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT  
OF MOTION FOR PRELIMINARY INJUNCTION**

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Plaintiff Remote Year, Inc. (“Plaintiff” or “Remote Year”) respectfully requests that this Court issue a preliminary injunction against Defendant We Roam, LLC (“Defendant” or “We Roam”) because the documents produced by We Roam and Remote Year’s declarations provide overwhelming evidence that Defendant: (1) knowingly contracted with an ex-Remote Year employee, Erika Liston (“Liston”), based on her representations that she possessed confidential and trade secret information from Remote Year including a qualified applicant list with *over 7,000* Remote Year clients and potential Remote Year clients (the “Client List”); (2) used Remote Year’s Client List to solicit and, in We Roam’s own words, “snipe” Remote Year clients and potential Remote Year clients; (3) continued to solicit Remote Year clients and potential Remote Year clients, after receiving a cease and desist letter from Remote Year; (4) disparaged Remote Year to Remote Year clients and potential Remote Year clients; (5) has possessed, copied and misappropriated Remote Year’s confidential and proprietary information that was taken by Liston as an agent of We Roam; (6) has tortuously interfered with Remote Year’s confidentiality agreement with Liston; (7) has tortuously interfered with Remote Year’s prospective client relationships; and (8) has taken possession of Remote Year’s login information for paid subscription services.

The documents produced by We Roam establish that Nathan Yates (“Yates”), We Roam’s other co-founder and CEO, and Sean Harvey (“Harvey”), We Roam’s co-founder, hired Liston because she told Yates and Harvey that she had taken valuable information from Remote Year that We Roam could use to solicit Remote Year’s clients. For example, in an October 20, 2016 email Liston told Yates, “I want to reach out to my existing contact list before anyone submits down payments [to Remote Year] who were approved by their company to [] essentially

‘jump ship.’” Declaration of Justin K. Victor (“Victor Decl.”) Ex. 8. Documents produced by We Roam further establish that it was Yates and Harvey who directed We Roam employees or contractors to use Remote Year’s confidential information to solicit not hundreds, but *thousands*, of Remote Year clients and potential Remote Year clients using a document taken from Remote Year. Victor Decl. ¶ 10, Exs. 2 and Ex. 5; Defendant’s Answer at ¶ 79 (“Admit that We Roam Obtained Remote Year client contact information from Ms. Liston”) (Dkt. # 21).

Remote Year has already suffered and continues to suffer significant and real damages as a direct result of We Roam’s conduct. Already, at least thirteen (13) individuals that have provided down payments to We Roam are individuals who were solicited by Liston or individuals from Remote Year’s Client List. Further, at least fifty-five (55) individuals in We Roam’s prospective client pipeline are individuals We Roam solicited using Remote Year’s Client List and other confidential information. If an injunction is not granted, We Roam will continue to be unjustly enriched through its blatant misappropriation of Remote Year’s trade secrets and improper “sniping” of Remote Year’s market share.

We Roam used the information from Liston to improperly try and advance the development of its nascent business. As the first leader in the development of the remote travel space, Remote Year has invested significant time and money to develop its model and methods for identifying and then engaging its customers and their respective employers. Rather than invest the time and money to legitimately build their business, We Roam and its co-founders have shown they are willing to steal information (including Remote Year’s Client List), lie to competitors when confronted with a cease and desist letter, and lie to and mislead Remote Year clients and potential Remote Year clients.

**I. STATEMENT OF FACTS<sup>1</sup>**

**A. The Parties**

Remote Year is a pioneer in the emerging remote work/travel services industry. Compl. ¶¶ 4, 21. (Dkt. #1). Remote Year provides its clients with the ability to work remotely and an opportunity to work and travel for up to a year within a cohort of other remotely working professionals. Compl. ¶¶ 21-22. Over the course of that year, Remote Year participants (“Remotes”) travel and live together in twelve different cities. Compl. ¶¶ 21-22. Remote Year’s services include providing the “Remotes” communal workspace with high-speed internet, housing with high-speed internet, airfare/travel, cultural immersion events, learning and professional development opportunities, speaking events, social events, and social impact volunteer opportunities. Compl. ¶ 22.

In Remote Year’s first full year in operation, 2015, through its business strategy and contacts generated through thousands of one-on-one phone calls with potential clients, Remote Year received over 100,000 applications. Compl. ¶ 24. Remote Year currently has seven actively traveling cohorts, representing 400 individuals from hundreds of companies. Compl. ¶ 24. Remote Year has nine additional cohorts planned for 2017 and is working with over 400,000 currently cultivated applications. Compl. ¶ 22.

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<sup>1</sup> Declarations of A-H attached are attached lettered exhibits to the Victor Decl.: Exhibit A, Declaration of Remote Year’s Vice President of People Operations, Jeremy Payne (“Payne Decl.”); Exhibit B, Declaration of Remote Year’s Community Manager, Emily Moyer (“First Moyer Decl.”); Exhibit C, Declaration of Remote Year’s Director of Public Policy, Samuel Matthew (“Mathew Decl.”); Exhibit D, Declaration of Remote Year’s Lead Network Engineer, Francisco Martinez (“Martinez Decl.”); Exhibit E, Declaration of Remote Year’s Vice President of Experience, Tricia Kennelly (“Kennelly Decl.”); Exhibit F, Declaration of Remote Year admission team member, Nicole Cahill (“Cahil Decl.”); Exhibit G, Second Declaration of Emily Moyer (“Second Moyer Decl.”); and Exhibit H, Declaration of Zeke Daniels-Shpall (“Daniels-Shpall Decl.”).

Defendant We Roam is a direct competitor of Remote Year within the remote work/travel services industry preparing for its “first trip.” *See* Defendant’s Answer ¶ 11 (Dkt. # 21); Victor Decl. Ex. 8. Non-party Liston is a former Remote Year employee who was terminated in October 2016. First Moyer Decl. ¶ 8. She is currently listed on We Roam’s website as the person in charge of We Roam’s admissions. Victor Decl. Ex. 1. Yates is an attorney and Defendant’s co-founder. Victor Decl. Ex. 1. Harvey is a co-founder of Defendant. Victor Decl. Ex. 1. Phillip Belleau is Defendant’s as the person in charge of We Roam’s partnerships. Victor Decl. Ex. 1.

**B. Liston’s Confidentiality Agreement**

In April 2015, Remote Year engaged Liston as a member of Remote Year’s admission team. First Moyer Decl. ¶ 4. As a member of the admissions team her job was to interview potential clients and assist potential clients in making a “Business Case” to their employer for attending the Remote Year program. First Moyer Decl. ¶¶ 29-30.

Prior to commencing her engagement as a contractor with Remote Year, Liston – just like every other individual hired or retained by Remote Year – was required to execute a confidentiality agreement with Remote Year. Payne Decl. ¶¶ 3-11; First Moyer Decl. ¶ 5. Pursuant to her confidentiality agreement, Liston is currently obligated to, among other things, “refrain from seeking employment with a business competitive to Remote Year for a period of one (1) year following the date of her termination from Remote Year” and from using Remote Year’s Confidential Information to “solicit the business of any participants, potential participants, clients or customers of the Company who were participants or potential participants within one (1) year prior.” Payne Decl. ¶ 11. The confidentiality agreement further provides that Liston “will not do anything to compete with the Company’s present or contemplated business.” Payne Decl. ¶ 11.

Liston's confidentiality agreement also provides that after her arrangement with Remote Year ends for any reason she "agrees to keep confidential, and not disclose to any third party or make any use of the Confidential Information of the Company, except for the sole benefit of the Company and in the course of his or her engagement with the Company." Payne Decl. ¶ 11. The confidentiality agreement defines "Confidential Information" to include all information and data concerning its "**customers, participants and potential participants**" as well as all "processes, methods" and "techniques acquired, developed or used by the Company relating to its businesses, operations . . ." Payne Decl. ¶ 11 (emphasis added).

At the latest, We Roam was made aware of Liston's ongoing obligations to Remote Year on January 20, 2017. *See* Victor Decl. Ex. 3 and Ex. 4.

**C. Remote Year's Measures to Safeguard its Confidential and Trade Secret Information**

Remote Year uses numerous measures to protect and maintain the secrecy of its confidential business information and trade secrets. First Moyer Decl. ¶¶ 11-13, 16; Martinez Decl. ¶ 6. As discussed above, before Remote Year engages any independent contractor or employee, they are required to sign a confidentiality agreement. Payne Decl. ¶¶ 3-8. Further, Remote Year's confidential business information and trade secrets are stored in a credentialed online database to which only certain Remote Year employees are provided access. First Moyer Decl. ¶¶ 10-14; Martinez Decl. ¶¶ 3-6. Because not all Remote Year employees access to the same information, Remote Year must first provide credentialed employees a specific link before they can access the sensitive documents. First Moyer Decl. ¶¶ 10-14; Martinez Decl. ¶¶ 3-6.

Someone without a Remote Year account must specifically be granted access in order to view Remote Year documents. Daniels-Shpall Decl. ¶¶ 8-18. If someone without a Remote Year account tries to access to a Remote Year document, they will receive a pop-up telling them

that they need to request access. Daniels-Shpall Decl. ¶ 10. Once they request access, the person at Remote Year who “owns” the document receives an email notification that someone has requested access. Daniels-Shpall Decl. ¶ 12.

As a member of Remote Year’s admissions team, Liston was authorized to access Remote Year’s confidential business information and trade secrets and was credentialed through her Remote Year email address. First Moyer Decl. ¶¶ 10-13. These confidential business and trade secret documents included:

- **Remote Year’s Client Data (the “Client List”)** – a client list with detailed information for over 7000 qualified clients and potential clients (some of which became We Roam clients after the list was stolen) that includes important identifying information such as contact information and reasons for interest in Remote Year. We Roam took possession of this list from Liston, changed the name to We Roam Master List, and produced it in discovery admitting it was taken from Remote Year. Victor Decl. Ex. 5 (FILED UNDER SEAL); Defendant’s Answer ¶ 79 (“Admit that We Roam Obtained Remote Year client contact information from Ms. Liston”); Second Moyer Decl. ¶¶ 4-14.
- **Remote Year’s External Communications FAQ (the “FAQs”)** – an internally developed roadmap for Remote Year’s admissions team to identify, manage and answer all of the assorted questions and concerns that a potential Remote (or a Remote’s employer) might have during the interview process. The FAQ is not for external use and employees are prohibited from providing the FAQ to clients or third-parties. Victor Decl. Ex. 6, (FILED UNDER); Second Moyer Decl. ¶¶ 15-19.
- **Remote Year’s Business Case Process** – a specific documented process that admissions employees are trained to follow to help potential clients present a “business case” to their employer. Only employees on Remote Year’s admission team are trained to assist customers using Remote Year’s Business Case Process and provided documents to support this process. Victor Decl. Ex. 7 (FILED UNDER SEAL); Victor Decl. Ex. 8; Second Moyer Decl. ¶¶ 20-25.

Remote Year’s Client Data, FAQ, and Business Case Process are protected from disclosure and not known or available to the public, nor could they be “reverse engineered” through public sources. First Moyer Decl. ¶¶ 10, 13; Second Moyer Decl. ¶ 26. During the course of her employment with Remote Year, Liston’s direct manager repeatedly reminded her and other employees that the Client List was confidential business information that should not be disclosed externally to anyone outside of Remote Year’s admissions team. First Moyer Decl. ¶

12; Second Moyer Decl. ¶ 26. During the course of her employment with Remote Year, Liston's direct manager repeatedly reminded her and other employees that the FAQ and Business Case Process constituted confidential business information that should not be shared externally. First Moyer Decl. ¶ 12; Second Moyer Decl. ¶ 26.

**D. Remote Year's Termination of Liston's Employment**

On September 27, 2016, Remote Year informed Liston her employment would terminate effective on or about October 7, 2016. First Moyer Decl. ¶ 8. We Roam formally contracted Liston on or around November 1, 2016. *See* Answer ¶ 65.

**E. We Roam's Contracting of Liston**

On or around October 18, 2016, Yates and Liston began discussing the prospect of Liston working for We Roam. Victor Decl. Ex. 8. For example, on October 20, 2016, in an email to Yates, Liston notified We Roam of the following:

(1) that she wanted to reach out to her existing Remote Year contact list of qualified Remote Year candidates, "the kind that [We Roam] is targeting," to try to convince them to "jump ship" before they submit down payments to Remote Year;

(2) that she had stolen (in her words, "scrapped") over 4,000 email addresses from Remote Year, and she was willing to share them with We Roam;

(3) that she had business case documents, developed while working with Remote Year, that she was willing to share with We Roam.

*See* Victor Decl. Ex. 8.

On October 20, 2016, Yates forwarded the email in which Liston shared all of this information to his We Roam co-founder, Harvey, stating, "wow." *Id.* We Roam, with full knowledge that Liston had taken confidential information from Remote Year, and was planning on sharing this information with We Roam, then proceeded to enter into a contract with Liston

on or around November 1, 2016. *See* Answer ¶ 65; Answer at ¶ 79 (“Admit that We Roam Obtained Remote Year client contact information from Ms. Liston”).

On or around November 6, 2016, almost immediately after engaging Liston, We Roam provided Liston a “to-do” list. Victor Decl. Ex. 11. The to-do list drafted by Yates instructed Liston to “**Snipe** [Remote Year] candidates.” *Id* (emphasis added). The priority level on this task was listed as “**high**.” *Id* (emphasis added).

**F. Evidence of Liston’s and We Roam’s Multiple Efforts to Access and Misappropriate Remote Year’s Confidential Business Information**

On or around November 8, 2016, select members of Remote Year’s admissions team credentialed to access the Remote Year FAQ received email notifications that former employee Liston had accessed a document on Remote Year’s database and retitled the document “We Roam External Communication FAQ.” Matthew Decl. ¶¶ 4-5; First Moyer Decl. ¶ 20. Acting as an agent of We Roam, Liston improperly accessed Remote Year’s document database, copied Remote Year’s FAQ and then shared with We Roam and retitled the document as a We Roam document. Moyer Decl. ¶¶ 20-23; Martinez Decl. ¶¶ 7-10; Victor Decl. Exs. 12A and 12B.

Although Remote Year reset Liston’s password at the time of her separation, her account was left active so that incoming communications from potential clients Liston had been communicating with would not be lost. Payne Decl. ¶¶ 17-20; First Moyer Decl. ¶¶ 24-26. As a result, Liston was able to access Remote Year’s confidential documents and database by using her computer or phone, if that device had been used by her to log in prior to the password being reset, between the date of the password reset and November 10, 2016, when Remote Year forced a logout of Liston’s account. Payne Decl. ¶¶ 17-20; Martinez Decl. ¶¶ 7-10.

Following an investigation of this incident by Remote Year, on or around November 19, 2016, Remote Year emailed Liston, demanding that she stop attempting to access and/or use

Remote Year's proprietary information in violation of her confidentiality agreement. Matthew Decl. ¶ 11. The email also stated "[i]f you have shared any of Remote Year's proprietary information with one of our competitors, please inform us immediately so that we can request that they destroy said information as well." *Id.* On November 20, 2016, Liston responded to Remote Year by email stating that she "[hadn't] accessed [Remote Year's] information," and denying that she "shared anything with anyone." Matthew Decl. ¶ 12. Liston further represented "I am not in violation of any agreement because all documents and e-mails have been cleared from my computer and phone." Matthew Decl. ¶ 12. This was untrue. Defendant's document production establishes that Liston and We Roam were in possession and were (and still are) misappropriating Remote Year's Client List. *See* Victor Decl. Exs. 2 and 5 (FILED UNDER SEAL). Further, We Roam's Response to Remote Year's first set of document requests acknowledges that Remote Year's FAQ had been copied onto We Roam's computer system, and that Liston "deleted the Remote Year FAQ from We Roam's shared drive upon receiving a cease and desist e-mail from Remote Year." *See* Victor Decl. Ex. 12A. We Roam's document production has also established that We Roam copied portions of Remote Year's FAQ and Remote Year's business case documents, often verbatim, into its own documents. Second Moyer Decl. ¶¶ 7, 19, 25.

Liston forwarded Remote Year's email asking her to stop accessing its confidential information and expressing concern that Liston had shared confidential information with competitors to Yates on November 21, 2016. Victor Decl. Ex. 13. As such, by at least November 21, 2016, We Roam was on put on notice that Remote Year believed Liston had been stealing confidential information and potentially sharing it with We Roam. *Id.* Yates forwarded Remote Year's email to Harvey, adding only, "lolz." *Id.*

**G. We Roam's Use of Remote Year's International SOS Membership**

Remote Year subscribes to International SOS – one of the largest security firms in the world – in order to maximize safety for its participants. Remote Year's International SOS login number is provided to employees so that they can access International SOS in times of emergency. In the to-do list that We Roam created for Liston on November 6, 2016, one of the tasks, under the heading "safety plan," told Liston "First step is to harass international sos until we have an agreement in place -- please also look into alternatives." Victor Decl. Ex. 11. Two days later, Liston and Yates discussed International SOS and Yates balked when Liston told him the cost of their services. Victor Decl. Ex. 10. Three days after that, Liston shared Remote Year's International SOS login number with Yates and Harvey and suggested that they use it. Victor Decl. Ex. 9.

**H. At the Direction of Yates and Harvey, We Roam Sends Out Over 4,500 Solicitations to Remote Year Clients and Potential Remote Year Clients Using the Remote Year's Client List that Yates and Harvey Knew was Improperly Taken from Remote Year**

We Roam engaged Liston as an independent contractor in November 2016 after she represented to Yates and Harvey that she was in possession of client information she had taken from Remote Year. Victor Decl. Ex. 8. We Roam's production has confirmed that once Liston was engaged We Roam happily accepted access to and sought to capitalize on Remote Year's Client List containing information concerning over 7,000 qualified applicants. Victor Decl. Ex. 5 (FILED UNDER SEAL). These are applicants that have made it almost all the way through the Remote Year application process and have been interviewed by the Remote Year admissions team. Second Moyer Decl. ¶¶ 4-13. We Roam's document production has established that We Roam is still in possession of this document, has re-titled it as "We Roam Master List," (only the title was changed, and it still contains a plethora of indications that it is a Remote Year

document), and has been using this list to solicit Remote Year clients and potential Remote Year clients. Victor Decl. ¶ 10, Ex. 2 and 5 (FILED UNDER SEAL); Second Moyer Decl. ¶ 7.

This Client List was not just possessed by We Roam, it was also actively used at the direction of Yates to send solicitations to *thousands* of Remote Year clients and potential Remote Year clients. Victor Decl. ¶ 10, Ex. 2. *First*, between November 9 and 11, 2016, We Roam sent numerous solicitations to Remote Year clients and potential Remote Year clients. *See e.g.* Victor Decl. Ex. 14 and Ex. 15. As a result of these solicitations, and other solicitations by Liston, Yates proclaimed that We Roam had achieved the “biggest 24 hours ever in terms of applications” and that Liston “[#]cking crushed it.” Victor Decl. Ex. 10.

*Second*, We Roam’s document production has affirmed that We Roam sent *over 4,500* email solicitations to Remote Year clients and potential Remote Year clients identified through Remote Year’s Client List. Victor Decl. ¶ 10, Ex. 2. For example, between January 18 and January 19, 2017 Liston and We Roam sent out over *2,200* solicitation emails to Remote Year clients and potential Remote Year clients. Victor Decl. ¶ 10, Ex. 2. Below is one example of the solicitation emails that were sent out:

From: Erika Liston <[REDACTED]@we-roam.com>  
Date: 19 January 2017  
To: REDACTED  
Subject: Hi REDACTED It's Erika (previously at Remote Year, now with We Roam)

Hi REDACTED

Last we spoke I was working for Remote Year, it’s been a little while! In November I left Remote Year to Join We Roam as an Admissions Manager. I have experienced first hand how We Roam is the only travel-while-working-program for talented professionals. The biggest difference? We Roam has high standards for its participants -- and actually requires all of its Roamers to have secured full-time remote work for the duration of the trip. This selectivity creates an environment where professionals of all backgrounds can collaborate and grow while

experiencing the world.

\* \* \* \*

No, this isn't just for freelancers/entrepreneurs: This is a common misconception. The majority of our Roamers are full-time employees of companies. **We help you with a proven process, build a business case together** and connect We Roam staff with your company's decision makers if needed.

**I am not sure where you are in the process of finalizing your spot with our competition**, but I would love to tell you more about the life-changing trips We Roam is creating for talented professionals like yourself. Why don't we schedule a video call-- please access my scheduling portal and select a "45 minute video interview" time that works for you.

Make 2017 count! I look forward to hearing from you.

Best,

Erika

*See e.g.* Victor Decl. Ex. 2 (emphasis added). Yates personally drafted or edited the templates for We Roam's solicitations. Victor Decl. Ex. 21 and Ex. 22.

The "proven" business case building process that Liston touted in the solicitation makes use of Remote Year's confidential Business Case Process that is protected from disclosure under Liston's confidentiality agreement and independently as a trade secret, and in most places is a verbatim copy of Remote Year's Business Case Process. Martinez Decl. ¶¶ 13-17; Moyer Decl. ¶¶ 29-30; Second Moyer Decl. ¶¶ 20-24.

Shortly after these thousands of solicitations were sent out by We Roam, several Remote Year clients and potential Remote Year clients forwarded emails to Remote Year stating concern that their personal contact information was improperly obtained by We Roam because they had never interacted with We Roam prior to We Roam's unwanted solicitations. Matthew Decl. ¶¶ 14-17.

**I. Defendant We Roam Fails to Address Remote Year's Concerns**

On January 19, 2017, Remote Year forwarded an example of Liston's solicitations to We Roam's cofounders, Yates and Harvey, alerting them of We Roam's improper conduct. Matthew Decl. ¶ 18. On January 20, 2017, Remote Year sent We Roam both via email and overnight mail a cease and desist letter concerning Liston's conduct and a copy of the executed Confidentiality Agreement. Matthew Decl. ¶ 18. The cease and desist letter demanded that We Roam provide Remote Year, among other things, assurances that Liston did not bring with her to We Roam or share with anyone at We Roam any of Remote Year's confidential and/or proprietary information. Matthew Decl. ¶ 18.

On January 24, 2017, Yates responded to Remote Year's demand letter asserting that the confidentiality Agreement executed by Liston was unenforceable. Victor Decl. Ex. 17. Yates chose not to disclose to Remote Year that We Roam was in possession of Remote Year's confidential business information and trade secrets with We Roam. *Id.*

On January 25, 2017, Remote Year once again reached out to Yates in order to discuss his inadequate response and to prevent this matter from escalating further. Victor Decl. ¶ 5. Neither Yates nor any other We Roam representative ever responded to Remote Year's January 25, 2017. Victor Decl. ¶ 6.

**J. Defendant We Roam Attempts to Surreptitiously Continue To Solicit Remote Year Clients Even After Yates Represented to Remote Year that We Roam Had Stopped Doing So**

In his January 24, 2017 response to Remote Year's demand letter, Yates said, "as gesture of good faith, we have instructed [Liston] to refrain from intentionally initiating communication with any [Remote Year] applicants or potential applicants who she was in contact with during her time at [Remote Year]." Victor Decl. Ex. 17. While Yates told Remote Year one thing, he did another. In early February 2017, after receiving the cease and desist letter from Remote

Year, Yates instructed Liston to continue sending solicitation mail merges using the Remote Year's Client List, but to make them "generic" solicitations. Victor Decl. Exs. 18-20.

Yates himself ***demand***ed Liston send out at least another 200 emails from a Philip Belleau's (a different We Roam employee's) email address and another set of 200 from her own email address. Victor Decl. Ex. 19. When Liston expressed concern, and asked Yates if he was sure that she wouldn't "get in trouble," Yates, instructed Liston to continue, and acknowledged that a lot of people that Liston would be emailing "will be [Remote Year] people." Victor Decl. Ex. 19. Moreover, when Liston suggested that she take the time and effort of using LinkedIn to generate 200 new (not stolen) leads, Yates stated that he wanted to prioritize reaching out people on Remote Year's Client List. *Id.*

We Roam's initial production evidences that We Roam used Remote Year's Client List to send out ***over 4,500*** solicitations to Remote Year clients and potential Remote Year clients. Victor Decl. ¶ 10, Ex. 2. ***Over 2,200*** of these solicitations were sent out by We Roam ***after*** Remote Year sent a cease and desist letter to We Roam and ***after*** Yates informed Remote Year that these actions would not continue. Victor Decl. ¶ 10, Ex. 2.

#### **K. We Roam's Facebook Solicitations and Other Solicitations**

We Roam's improper solicitations using Remote Year's Client List is not just confined to emails. For example, on January 15, 2017, We Roam created a list of ***over 7000*** individuals to be solicited through messages on Facebook based on information curated from Remote Year's Client List. Victor Declaration Ex. 23; Ex. 24 (FILED UNDER SEAL). We Roam's production suggests that in addition to these messages, We Roam sent out "***10,000***" Facebook solicitation messages using information from a list compiled copying information from Remote Year's Client List. Victor Decl. Exs. 23, 24 and 25 (emphasis added).

We Roam also solicited Remote Year clients and potential Remote Year clients from Remote Year's Client List through other mediums such as Skype and Slack. Victor Decl. Ex. 26 and 27. Further, Defendant admits that there are numerous unproduced solicitations to Remote Year clients and potential Remote Year clients that We Roam claims were deleted. Victor Decl. Ex. 12A (Response to Plaintiff's Document Request 3).

**L. We Roam Misleads Remote Year Clients and Potential Remote Year Clients**

In addition to misleading Remote Year, We Roam also directly mislead numerous Remote Year clients and potential Remote Year clients who asked how We Roam had obtained their contact information. *See* Victor Decl. Ex. 28. Rather than admit that We Roam had obtained Remote Year's client information from Remote Year, We Roam made up multiple sources for the information. *See e.g.* Victor Decl. Ex. 28 ("I got your email through a program called 'email hunter' it's a software plugin program that helps with lead generation attached to LinkedIn or different mediums," or "We got it from searches on google for platforms that are similar to ours or clicking on facebook ad's, Instagram ad's etc.")).

**M. We Roam's Conduct Has Already Caused Significant Damage to Remote Year and Remote Year Will Continue to be Damaged if We Roam's Conduct Is Not Stopped**

We Roam's document production evidences that We Roam's unlawful conduct has already caused Remote Year to suffer significant monetary damages. First, at least thirteen (13) individuals that have signed up and paid for We Roam's services were improperly solicited by Liston or were solicited by another We Roam employee using Remote Year's Client List. Victor Decl. Ex. 29 (FILED UNDER SEAL). Second, at least fifty-five (55) individuals on We Roam's "active pipeline" list are individuals from Remote Year's Client List who were improperly solicited by We Roam using Remote Year's Client List and other confidential business information. Victor Decl. Ex. 30. Third, many of We Roam's solicitations disparage Remote

Year and have agitated or confused Remote Year clients and potential Remote Year Clients. *See e.g.* Victor Decl. Exs. 14, 15, and 28. Fourth, We Roam misappropriated Remote Year's FAQs and Business Plan Documents to help secure solicitations for individuals who were on and not on Remote Year's Client List. Second Moyer Decl. ¶¶ 15-26; Victor Decl. Ex. 15 at 4 (We Roam attaching stolen Remote Year Business Case and titling it "We Roam Business Case"). These highly confidential documents, which were improperly taken from Remote Year and used by We Roam to directly compete with Remote Year, were expensive and time-consuming to draft and fine-tune. Second Moyer Decl. ¶¶ 15-26.

## **II. ARGUMENT**

A preliminary injunction requires that the Plaintiff establish four elements: "(1) the plaintiff is likely to succeed on the merits; (2) denial will result in irreparable harm to the plaintiff; (3) granting the injunction will not result in irreparable harm to the defendant; and (4) granting the injunction is in the public interest." *TP Group—CI, Inc. v. Vetecnik*, No. 1:16-CV-00623-RGA, 2016 WL 5864030, at \*1 (D. Del. Oct. 6, 2016) (citing *NutraSweet Co. v. Vit—Mar Enterprises, Inc.*, 176 F.3d 151, 153 (3d Cir. 1999)). Remote Year is able to establish each of these elements through Defendant's production and numerous declarations by Remote Year employees.

### **A. Remote Year is Likely to Succeed on the Merits of its Claims**

Remote Year has asserted claims against Defendant for violations of the Defend Trade Secrets Act ("DTSA"), Delaware Uniform Trade Secrets Act ("DUTSA"), Computer Fraud and Abuse Act ("CFAA"), Delaware Misuse of Computer System Information Act ("DMCSIA") and tortious interference with Remote Year's contractual and prospective business relations. Even at this early stage, the evidence submitted by Remote Year establishes that it is likely to succeed on its claims for violation of the DTSA and DUTSA and tortious interference claims, which directly

grants the Court the power to enjoin Defendant's misappropriation and continued use of Remote Year's trade secret information and interference with Remote Year's contractual and prospective relations.

**1. We Roam has violated the Defend Trade Secrets Act, 18 U.S.C. § 1836(b).**

Defendant's solicitation of Remote Year clients and potential Remote Year clients by a current We Roam employee who improperly accessed, copied, stole, and made numerous efforts to download Remote Year's confidential business information and trade secrets makes it likely that Remote Year will succeed in showing that Defendant violated the DTSA. This includes, but is not limited to, We Roam's use of Remote Year's Client List to send over 4,500 solicitations to Remote Year clients and potential Remote Year clients. *See supra* 2, 6, 10-14.

The DTSA provides trade secret owners with a private right of action for the misappropriation of their trade secrets if the "trade secret is related to a product or service used in...interstate or foreign commerce." 18 U.S.C. §1836(b)(1). Here, Remote Year's Client Data, FAQ and Business Case Process documents are related to interstate or foreign commerce due to the nature of Plaintiff's business, which focuses on soliciting customers globally and provides both interstate and international travel services. *See supra* 3.

The DTSA expressly allows courts to grant injunctive relief "to prevent an actual or threatened misappropriation. . ." and "if determined appropriate by the court, requiring affirmative actions to be taken to protect the trade secret." 18 U.S.C. § 1836(b)(3)(A)(i)–(ii).

Under the DTSA, a "trade secret" includes:

all forms and types of financial, business,...economic or [] information, including...compilations,...methods, techniques, processes, procedures, [or] program [], whether tangible or intangible...if – (A) the owner thereof has taken reasonable measures to keep such information secret; and (b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another

person who can obtain economic value from the disclosure or use of the information[.]

18 U.S.C. § 1839(3).

Here, Remote Year's Client List, FAQ and Business Case Process constitute "trade secrets" as defined by the DTSA. As previously discussed, the information includes non-public information regarding Remote Year's clients and Remote Year's sales tactics. *See supra* 5-7. This information was compiled by Remote Year from countless hours of work and hundreds of thousands of private applications. *See supra* 5-7. It is information that Remote Year took great care to keep secret by limiting access to Remote Year's employees and independent contractors and requiring its employees and independent contractors to sign confidentiality agreements. *See supra* 5-7. None of this trade secret information is generally known to the public, nor is it the type of information that could be reverse-engineered from publicly available information. *See supra* 5-7. This information has intrinsic economic value because it informs (and in fact did show) Defendant how to target and solicit away Remote Year's clients, using client data and client procedures compiled by Remote Year. *See supra* 5-7, 10-15.

"Misappropriation" is defined as "(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or (B) disclosure or use of a trade secret of another without express or implied consent by a person who (i) used improper means to acquire knowledge of the trade secret." 18 U.S.C. § 1839(5).

"Improper means" includes "theft...breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means." 18 U.S.C. § 1839(6). Here, We Roam was aware that the documents provided by Liston were Remote Year's and continued to possess and use Remote Year's confidential business information, despite knowing that Remote Year had demanded that Liston return or destroy the documents. *See supra* 6-8, 10-15. It was Yates,

We Roam's co-founder, who drafted and/or edited the solicitation templates and directed Liston to "snipe" Remote Year's clients using the Client List that Yates knew was improperly taken from Remote Year. *See supra* 6-8, 10-15. Defendant also misappropriated the trade secret information by accepting Remote Year's FAQ from Liston when both Yates and Harvey were aware as of November 2016, that Remote Year considered the information confidential through a Remote Year cease and desist email sent to Liston that was then forwarded to both Yates and Harvey. *See supra* 9-10. Liston, as an agent of We Roam, stole documents from Remote Year and improperly maintained documents, all while denying to Remote Year she had taken any of Remote Year's documents. *See supra* 9-10. We Roam and We Roam's co-founders were aware of Remote Year's concerns that documents had been improperly taken, but chose to privately laugh at Remote Year's concerns while secretly using the stolen documents to target Remote Year's business. *See supra* 9-15. For these reasons, at this stage it is highly likely that Remote Year will succeed in proving that Defendant intentionally and willfully violated the DTSA.

**2. We Roam has violated the Delaware Uniform Trade Secrets Act, 6 Del. Code. Ann. §§ 2001-2009.**

Remote Year is entitled to injunctive relief on its DUTSA claim for the same reasons it is entitled to injunctive relief for its DTSA claim. In Delaware, confidential client information and client data are frequently considered to be trade secrets. *See Liveware Publ'g, Inc. v. Best Software, Inc.*, 252 F. Supp. 2d 74, 85 (D. Del. 2003) (holding that customer lists are "precisely the type of business information which is regularly accorded trade secret status"); *see also Great Am. Opportunities, Inc. v. Cherrydale Fundraising, LLC*, No. 3718-VCP, 2010 WL 338219, \*20 (Del. Ch. Jan. 29, 2010) (finding certain customer lists "held independent economic value" and constituted protected trade secrets). Here, the detailed, curated, and non-public information within Remote Year's Client List is exactly the type of client list Delaware seeks to protect as

trade secrets. *See supra* 5-7. Additionally, the “DUTSA does not require . . . any showing that a former employee had a written employment contract or nondisclosure or noncompetition agreement to prove liability for misappropriation of a trade secret.” *Beard Research, Inc. v. Kates*, 8 A.3d 573, 590 (Del. Ch. 2010), *aff’d sub nom. ASDI, Inc. v. Beard Research, Inc.*, 11 A.3d 749 (Del. 2010).

For these reasons, Remote Year is likely to succeed in showing that Defendant intentionally and willfully violated the DUTSA.

**3. We Roam has tortuously interfered with Remote Year’s Confidentiality Agreement executed by Liston.**

Plaintiff’s claim for tortious interference with contract requires Remote Year to establish: “(1) a contract (2) about which defendant knew and (3) an intentional act that is a significant factor in causing the breach of such contract (4) without justification (5) which causes injury.” *Accenture Glob. Servs. GMBH v. Guidewire Software Inc.*, 631 F. Supp. 2d 504, 509 (D. Del. 2009).

Here, Plaintiff’s former contractor and employee Liston executed a confidentiality agreement with Remote Year on April 6, 2016. *See supra* 4-5. Pursuant to the terms of the Confidentiality Agreement, Liston has an ongoing duty to, among other things, refrain from seeking employment with a business competitive to Remote Year for a period of one (1) year following the date of her termination from Remote Year and from using Remote Year’s Confidential Information to “solicit the business of any participants, potential participants, clients or customers of the Company who were participants or potential participants within one (1) year prior.” The confidentiality agreement further provides that Liston “will not do anything to compete with the Company’s present or contemplated business.” *See supra* 4-5. Liston’s confidentiality agreement also provides that after her arrangement with Remote Year ends for

any reason she “agrees to keep confidential, and not disclose to any third party or make any use of the Confidential Information of the Company, except for the sole benefit of the Company and in the course of his or her engagement with the Company.” *Id.* On January 20, 2017, Remote Year sent We Roam both via email and overnight mail a cease and desist letter concerning Liston’s conduct and a copy of the executed confidentiality agreement. *See supra* 5. As a result, We Roam is aware of the confidentiality agreement.

Liston’s actions as an agent of We Roam constitute blatant breaches of her confidentiality agreement with Remote Year. *See supra* 4-5. Even if We Roam had not previously been provided the executed confidentiality agreement, as of January 20, 2017, there is no justification for We Roam to continue to interfere with Remote Year’s contractual agreement with Liston. *See supra* 5. Defendant’s production has provided evidence that We Roam has knowingly encouraged *thousands* of breaches of the confidentiality agreement between Liston and Remote Year after receiving the cease and desist letter. *See supra* 10-15. These breaches have resulted in the disclosure of Plaintiff’s trade secrets and the loss of both Remote Year clients and potential Remote Year clients. *See supra* 15-16.

“To be enforceable under Delaware law, a restrictive covenant must (1) meet general contract law requirements, (2) be reasonable in scope and duration, (3) advance a legitimate economic interest of the party enforcing the covenant, and (4) survive a balance of the equities.” Equities. *TP Group—CI, Inc. v. Vetecnik*, No. 1:16-CV-00623-RGA, 2016 WL 5864030, at \*2 (D. Del. Oct. 6, 2016) (citing *Tristate Courier & Carriage, Inc., v. Berryman*, No. C.A. 20574-NC, 2004 WL 835886, at \*10 (Del. Ch. Apr. 15, 2004).

Here, the restrictive covenants meet the requirements of contract law because Liston made promises not to compete, not to solicit, and not to reveal confidential information, and in

return she received consideration in the form of payments for services. *Id.* The restrictive covenants are reasonable in geographic scope because the restriction is limited to Plaintiff's competitive market. *Id.* at \*11. Furthermore, Delaware courts have routinely found that restrictive covenants with duration of less than two years to be reasonable in duration. *Id.* "Protecting a company's goodwill and confidential information are recognized as legitimate economic interests advanced by the restrictive covenants." *Id.* Finally, Liston's extensive knowledge of Plaintiff's confidential information would make her "'competition with plaintiff's business ... particularly effective and unfair,' tipping the balance of equities in favor of enforcement." *Id.*; (citing *McCann Surveyors, Inc. v. Evans*, 611 A.2d 1, 4 (Del. Ch. 1987)).

**4. We Roam has tortuously interfered with a prospective contractual relationship.**

Delaware recognizes the tort of interference with a prospective contractual relationship if a plaintiff proves: "(1) the existence of a valid business relationship or expectancy; (2) knowledge of the relationship or expectancy on the part of the interferer; (3) intentional interference which induces or causes a breach or termination of the relationship or expectancy; and (4) resulting damages to the party whose relationship or expectancy has been disrupted." *Enzo Life Scis., Inc. v. Digene Corp.*, 295 F. Supp. 2d 424, 429 (D. Del. 2003).

Here, all four elements are satisfied. First, Remote Year had the expectancy of thousands of business relationships with both current Remote Year clients and potential Remote Year clients on Remote Year's Client List. *See supra* 6. Second, We Roam had knowledge of this expectancy because they possessed and used Remote Year's Client List to in We Roam's own words "snipe" current and potential Remote Year Clients. *See supra* 7-8. Third, We Roam intentionally solicited Remote Year clients and potential Remote Year clients from the Remote Year' Client List, which they knew was improperly taken from Remote Year. *See supra* 6-15.

Even after receiving a cease and desist letter, We Roam continued to solicit individuals on Remote Year's Client List, at the direction of Yates, We Roam's co-founder. *See supra* 10-15. Fourth, Remote Year has already and will continue to suffer damages as a result of We Roam's conduct. *See supra* 15-16.

**B. Remote Year Is Threatened With Imminent, Irreparable Harm If We Roam Is Not Enjoined**

Plaintiff will continue to suffer irreparable harm if Defendant is permitted to continue accessing and using Remote Year's confidential business information and trade secrets to solicit actual and potential Remote Year clients. *See supra* 15-16. This threat is particularly acute given the evidence that Defendant's agent (Liston) has improperly accessed and copied Defendant's documents and has been actively soliciting Remote Year's clients and prospects that have articulated an interest in Remote Year's work and travel programs. *See supra* 7-15.

"Grounds for irreparable injury include loss of control of reputation, loss of trade, and loss of good will, intangible harms for which it is virtually impossible to ascertain the precise economic consequences." *Astrazeneca AB v. Dr. Reddy's Labs., Inc.*, 145 F. Supp. 3d 311, 319 (D. Del. 2015) (internal quotations omitted) (citing *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 726 (3d Cir. 2004)). Here, Plaintiff is in danger of losing its trade secrets if Defendant is not enjoined. *See Neo Gen Screening, Inc. v. TeleChem Int'l, Inc.*, 69 F. App'x 550 (3d Cir. 2003) (finding that the disclosure of trade secrets would result in irreparable harm that would not be remedied by monetary damages); *see also FMC Corp. v. Taiwan Tainan Giant Indus. Co.*, 730 F.2d 61, 63 (2d Cir. 1984) (holding that loss of trade secrets was an irreparable harm that could not be measured in money because "[a] trade secret once lost is, of course, lost forever").

Additionally, if not enjoined, Defendant through improper means and motive will continue to improperly acquire customers and market share to which it is not lawfully entitled,

and Plaintiff will lose customers, good will and resultant profits. *See supra* 15-16. Various Circuit Courts, including the Third, have recognized that a loss of customers and, consequently, future profits is an irreparable harm sufficient to justify issuance of injunctive relief. *See, e.g., Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharms. Co.*, 290 F.3d 578, 596 (3d Cir. 2002) (finding that loss of market share can constitute irreparable harm); *BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 970 (11th Cir. 2005) (recognizing loss of customers is an “irreparable injury”).

**C. Granting Remote Year’s Narrowly Tailored PI Will Not Result in Greater Harm to Defendant**

The harm that Plaintiff will suffer if the preliminary injunction is not granted far outweighs any harm that Defendant will incur. If Defendant is not enjoined, Plaintiff is in imminent danger of losing its trade secrets, confidential information and potential customers forever. In contrast, a preliminary injunction would merely prevent Defendant from doing what it is prohibited from doing under Federal and Delaware Law.

**D. The Public Interest Favors Granting a PI to Remote Year**

Finally, the public interest would not be served if Defendant is permitted to violate federal law, state law, and common law. The public interest would, however, be served by a preliminary injunction order being issued to prevent Defendant’s use of Remote Year’s confidential information and trades secrets until Defendant’s conduct can be further addressed in this action. The public interest in preventing the misappropriation of Remote Year’s confidential information and trades secrets outweighs the temporary restriction on Defendant’s ability to use confidential information obtained by Remote Year’s former employee to solicit Remote Year’s potential clients. *See SI Handling Sys., Inc. v. Heisley*, 753 F.2d 1244, 1265 (3d Cir. 1985)

(finding unnecessary an “extended analysis of the public interest [because] extensive precedent supports an injunctive remedy where the elements of a trade secret claim are established”).

### III. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court enter a narrowly-tailored preliminary injunction order, as follows:

(1) We Roam and all of its employees, subcontractors, affiliates, subsidiaries or agents are enjoined from maintaining, possessing, using, providing or disclosing any of Remote Year’s confidential business information, trade secrets, and/or proprietary data and documents that were obtained, directly or indirectly, by, through or from Liston—other than to forensically preserve the same as evidence.

(2) We Roam and all of its employees, subcontractors, affiliates, subsidiaries or agents are enjoined from soliciting, contacting, or signing up for services any individuals on Remote Year’s Client List.

(3) We Roam is enjoined from destroying any documents, records or information relating to this matter.

Dated: March 16, 2017

Respectfully submitted,

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