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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FMLASOURCE, INC.,

Plaintiff,

v.

RWJBARNABAS HEALTH INC.,

Defendant.

Civil Action No.:

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff, FMLASource, Inc. (“Plaintiff” or “FMLASource”), by way of Complaint against defendant RWJBarnabas, Inc. (“RWJB” or “Defendant”), alleges as follows:

INTRODUCTION

1. This action stems from RWJB’s unjustified breach of an agreement between it and FMLASource, pursuant to which FMLASource provided RWJB with FMLA and ADA leave administration services (the “Agreement”).

2. The Agreement, which commenced on October 20, 2019, stipulated an initial three-year term that was not to expire until October 19, 2022. Yet, despite this required term

of the contract, RWJB wrongfully, and without justification, terminated the Agreement as of December 15, 2020.

3. After the decision makers at RWJB made up their mind that they wanted to end the Agreement with FMLASource, but without justification to do so, they proceeded to engage in a plan to conjure up criticisms about FMLASource's services. This was done in an attempt to prematurely exit the Agreement under the auspices of a material breach without having to pay FMLASource for the remainder of the contract term, through October 19, 2022.

4. RWJB's conduct of engaging in a pattern of drumming up manufactured and pretextual complaints about FMLASource's services over the last several months, in order to make it appear that RWJB could terminate the contract without being responsible to pay FMLASource for the remaining term, demonstrates RWJB's bad faith in its performance of the Agreement.

5. As a direct result of RWJB's breaches of the Agreement and the implied covenant of good faith and fair dealing, Plaintiff has and will continue to suffer damages in excess of \$1 million that it would have otherwise received as a benefit from the contract.

PARTIES

6. FMLASource, Inc. is a corporation incorporated in Illinois, with its principal place of business located in Chicago, Illinois.

7. Upon information and belief, RWJB is a corporation incorporated in New Jersey, with its principal place of business located at 94 Old Short Hills Road, Livingston, New Jersey.

JURISDICTION AND VENUE

8. This Court has diversity jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a). Federal subject matter jurisdiction is conferred over Plaintiff's state law claims based on diversity of citizenship and because the amount in controversy exceeds the sum of Seventy-Five Thousand (\$75,000.00) dollars, exclusive of interest and costs.

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to these claims occurred in the District of New Jersey. Namely, RWJB has all of its locations – which FMLASource services – in New Jersey.

FACTS

A. FMLASource's History with Barnabas and Agreement with RWJB

10. FMLASource, an industry-leading leave administrator that services thousands of customers throughout the country, are experts in processing and monitoring its clients' employees' leaves of absence to which they are entitled under various federal and state laws, including, most notably, the Family and Medical Leave Act ("FMLA").

11. On or about July 1, 2016, FMLASource and RWJB's predecessor, Barnabas Health, Inc. ("Barnabas"), entered into a contract for leave administration services.

12. That same year, Barnabas announced that it had finalized a merger with Robert Wood Johnson Health System, the resulting entity of which was RWJB.

13. In recognition of the stellar job FMLASource did on behalf of the Barnabas account, RWJB entered into a new contract – the Agreement – with FMLASource on or about October 19, 2019, pursuant to which FMLASource would administer the leaves of all

employees -- approximately 33,000 -- of the merged entity, RWJB. Attached as **Exhibit A** is a true and correct copy of the Agreement.

14. Pursuant to the terms of the Agreement, the services which FMLASource was required to perform for RWJB (the “Services”) are encapsulated in Schedule I of the Agreement. Schedule I describes the Services which are comprised of the standard package of services offered to FMLASource’s customers, including a designated account management contact; access to FMLASource’s call center and online tools; leave administration; and reporting on program utilization, frequency of leaves, and absence history on a rolling 12-month basis.

15. The parties also agreed that fees were to be structured based on the number of employees covered under the Agreement. Specifically, RWJB agreed to pay a fee of \$1.43 per employee per month for FMLASource’s services outlined in Section I of the Agreement.

16. Upon information and belief, as of the date of this Complaint RWJB has at least 32,999 employees covered under the Agreement, resulting in an annual revenue to FMLASource of at least \$566,262.84.

17. Upon information and belief, it is likely that the number of employees covered under the Agreement will grow over the next two years, as RWJB has acquired or is in the process of acquiring and integrating at least two additional facilities. If this expansion occurs prior to October 2022, it will significantly increase RWBJ’s employee count, and consequently, the fees due under the Agreement.

18. Pursuant to the Agreement, RWJB and FMLASource agreed to a guaranteed three-year initial term of the Agreement.

19. Under the terms of the Agreement, RWJB is only permitted to terminate the Agreement if FMLASource “fails to perform any material service required to be performed” and if such failure is not cured within 30 days.

B. FMLASource Onboards RWJB and Meets or Exceeds its Contractual Obligations

20. After RWJB expressed its intention to move forward with FMLASource for its entire employee population, FMLASource began the re-implementation process with RWJB in May of 2019.

21. During this process, which took several months and for which FMLASource did not charge RWJB, the relevant teams within RWJB and FMLASource met on a weekly basis to discuss the Services and address any specific issues or concerns with leave administration.

22. This process ran smoothly and, after several months, on October 20, 2019, the Agreement “went live.”

23. During the initial months of the Agreement, RWJB and FMLASource held weekly teleconferences to monitor the Services and address any specific concerns.

24. During this time, RWJB made a variety of customization requests—that is, requests to modify the Services to fit RWJB’s specific needs, which were not requirements under the Agreement. For instance, RWJB requested a specific format for a leave report that it could use to process its payroll.

25. Though not included within the scheduled Services, and therefore, normally subject to an additional fee, FMLASource created a custom report that met RWJB’s needs beginning January 1, 2020, without charging any additional fee.

26. Another example, amongst others, of FMLASource customizing services for RWJB at no cost in reliance on RWJB acting in good faith with respect to the Agreement – and

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