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Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JENNIFER HICKERSON,

Case No.:

Plaintiff,

Dept. No.:

v.

COMPLAINT

UPRISE, LLC and DOE DEFENDANTS 1 –
10, inclusive.

Defendants.

Comes now, Plaintiff, Jennifer Hickerson (“Plaintiff”), by and through her attorneys of record, Woodburn and Wedge, and alleges as follows:

PARTIES

1. Plaintiff Jennifer Hickerson is a resident of Oregon.
2. Defendant Uprise, LLC (“Uprise”) is a Nevada limited liability company doing business in Washoe County, Nevada.
3. The true names, capacities, and status, whether individual, corporate, association, partnership, or otherwise, of DOE defendants 1-10 are unknown to Plaintiff, and Plaintiff therefore sues said defendants by fictitious names. Plaintiff is informed and believes, and on that basis alleges, that each of the Defendants designated as a DOE Defendant are in some manner responsible for some or all of the damages and injuries sustained by Plaintiff. Plaintiff requests leave of the Court to amend this Complaint to insert the true names and capacities of said defendants, when the same have been ascertained, to join such defendants in this action, and to assert the appropriate charging allegations.

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JURISDICTION AND VENUE

4. This Court has jurisdiction over all causes of action asserted herein pursuant to the Constitution of the State of Nevada. This Court has jurisdiction over the Defendant named herein and the Second Judicial District Court is the proper forum because Defendant does business in Washoe County, Nevada.

5. The amount in controversy at issue exceeds \$15,000.00.

GENERAL ALLEGATIONS

6. Ms. Hickerson is an independent contractor.

7. The United States Department of Agriculture ("USDA") implements a national program called the "Reconnect Program" which offers loans, grants, and/or loan-grant combinations to facilitate broadband deployment in areas of rural America that currently do not have sufficient access to broadband.

8. Applicants to the Reconnect Program may request funding up to \$35,000,000 to be awarded as a grant and/or loan for a designated service area.

9. Uprise is an internet service provider that purports to deliver residential fiber internet service in Nevada, Oregon, Washington, and California.

10. In 2022, Uprise sought to apply for financial assistance under the USDA Reconnect Program to fund among other things, construction of a trench and installation of telecommunications infrastructure within the Nevada Department of Transportation's right of way along 1-80 in Lovelock, Nevada (the "Lovelock Project").

11. The then employees of Uprise lacked experience in grant applications, so Uprise contacted Ms. Hickerson to assist as an experienced grant applications manager.

12. In December of 2021, Ms. Hickerson began working with Uprise as an independent contractor.

13. The December 2021 agreement between the parties was for a 3-month period, wherein Uprise agreed to pay Ms. Hickerson \$15,000 plus grant share of 0.5% of grant awards managed.

1 14. Ms. Hickerson then began working with Uprise on the application for Round 3 of
2 the USDA's Reconnect Program.

3 15. In March of 2022, final application is submitted for a 5-year \$36,000,000 total
4 project cost with a requested \$27,000,000 in grant funding request and a \$9,000,000 match
5 agreed to by NDOT and Kromer. Ms. Hickerson and Uprise then agreed to continue their
6 working relationship to continue to identify, manage, and apply for grant funding opportunities.

7 16. This subsequent agreement was memorialized in a written contract (the
8 Contract"), wherein Uprise agreed to pay Ms. Hickerson a \$5,000 per month and reiterated the
9 previous agreement that Ms. Hickerson would receive of 0.5% of grant awards managed. The
10 Contract was signed on May 24, 2022.

11 17. The Contract specifically noted that the "initial term," of the Contract commenced
12 on December 15, 2021.

13 18. In July of 2022, Uprise was notified by the USDA that the proposal for Reconnect
14 Round 3 was approved, and that funding would be granted upon environmental review.

15 19. Ms. Hickerson then spent the later half of 2022 until November of 2022 ensuring
16 that the Round 4 application was submitted.

17 20. Also during her time with Uprise, Ms. Hickerson managed the application for a
18 grant which was awarded by the Elko County School District on March 21, 2022.

19 21. On or about April 20, 2023, Ms. Hickerson was notified via email that Uprise no
20 longer needed her services and Uprise was terminating her contract.

21 22. Ms. Hickerson accepted this and sent Uprise an invoice for the amounts owed to
22 her for her work performed under contract. Specifically, she requested she be paid \$5,000.00 for
23 her final retainer for the April 15-May 14, 2023 billing cycle; \$135,772.98 for the grant funding
24 share awarded in the USDA's Reconnect Round 3; and \$4,062.77 for the grant funding share
25 awarded by the Elko County School District.

26 23. Only the monthly retainer was paid in response. Uprise refused to pay Ms.
27 Hickerson her percentage of the grant awards.
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24. In July of 2023, the undersigned counsel contacted Uprise to demand the remaining \$139,835.75 pursuant to the contract.

25. Counsel for Uprise responded with a clear and unequivocal refusal to pay Ms. Hickerson the percentage of grant awards, and even demanded Ms. Hickerson pay Uprise.

26. Upon information and belief, the Lovelock Project has begun, implying that Uprise has received grant funds from the USDA.

27. The Contract contains an arbitration provision, which states “filing a request for Arbitration will be made in Washoe Co. NV in accordance with the rules established for the Second Judicial District Court.” Further, “Judgment on the award rendered by the Arbitrator may be entered by any court having jurisdiction thereof.”

FIRST CAUSE OF ACTION

(Breach of Contract)

28. Ms. Hickerson realleges and incorporates by reference the allegations set forth in the paragraphs above as though fully set forth herein.

29. Ms. Hickerson and Uprise were parties to a valid contract.

30. Ms. Hickerson fulfilled all of her obligations under the Contract.

31. Uprise breached the Contract when it tendered a clear, unequivocal repudiation of its contractual obligations by refusing to pay the amounts owed to Ms. Hickerson under the Contract.

32. As a result of Uprise's breach, Ms. Hickerson suffered and will continue to suffer damages in an amount in excess of \$15,000.00 to be determined at trial.

33. Due to Uprise's conduct and breach, it has been necessary for Ms. Hickerson to engage the legal services of the law firm of Woodburn and Wedge to prosecute this action and she is entitled to an award of costs and reasonable attorney's fees in relation thereto.

SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

34. Ms. Hickerson realleges and incorporates by reference the allegations set forth in the paragraphs above as though fully set forth herein.

1 || 35. Ms. Hickerson and Uprise were parties to a valid contract.

2 || 36. Ms. Hickerson fulfilled all of her obligations under the Contract.

3 37. Uprise deliberately contravened the intention and spirit of the Contract by refusing
4 to pay Ms. Hickerson the amount owed under the Contract.

38. As a result of Uprise's breach, Ms. Hickerson suffered and will continue to suffer damages in an amount in excess of \$15,000.00 to be determined at trial.

39. Due to Uprise's conduct and breach, it has been necessary for Ms. Hickerson to engage the legal services of the law firm of Woodburn and Wedge to prosecute this action and she is entitled to an award of costs and reasonable attorney's fees in relation thereto.

10 THIRD CAUSE OF RELIEF

11 (Declaratory Relief)

40. Ms. Hickerson realleges and incorporates by reference the allegations set forth in the paragraphs above as though fully set forth herein.

14 41. An actual controversy has arisen between the parties as to the parties' rights, duties
15 and responsibilities under the Contract.

16 42. Ms. Hickerson seeks a judicial determination from this Court as to the parties’
17 rights, duties and responsibilities under the Contract.

43. Due to Uprise's conduct and breach, it has been necessary for Ms. Hickerson to engage the legal services of the law firm of Woodburn and Wedge to prosecute this action and she is entitled to an award of costs and reasonable attorney's fees in relation thereto.

21 FOURTH CAUSE OF ACTION

22 (Unjust Enrichment)

23 44. Ms. Hickerson realleges and incorporates by reference the allegations set forth in
24 the paragraphs above as though fully set forth herein.

25 45. Pursuant to the Contract, Ms. Hickerson worked to produce grants applications
26 that were awarded, thereby conferring a benefit upon Uprise.

27 46. Uprise accepted and appreciated a substantial benefit from Ms. Hickerson's work
28 promised to pay Ms. Hickerson for her work.

47. Uprise has retained a substantial benefit conferred by Ms. Hickerson even though Uprise has not conferred the promised consideration upon Ms. Hickerson. It is therefore inequitable and in violation of the fundamental principles of justice or equity and good conscience for Uprise to retain that benefit.

48. Should this Court determine that the Contract is invalid, void, or otherwise unenforceable, the Court should nevertheless award Ms. Hickerson damages under a theory of unjust enrichment.

49. Due to Uprise's conduct and breach, it has been necessary for Ms. Hickerson to engage the legal services of the law firm of Woodburn and Wedge to prosecute this action and she is entitled to an award of costs and reasonable attorney's fees in relation thereto.

WHEREFORE, Ms. Hickerson prays for relief as follows:

1. For judgment in her favor and against Uprise on all claims for relief;

2. For general and special damages in an amount in excess of \$15,000, to be determined at the time of trial;

3. For reasonable attorney's fees;

4. For costs of suit;

5. For such other relief as the Court may deem proper.

AFFIRMATION

The undersigned affirms that this document does not contain the Social Security number of any person.

Dated: March 6, 2024.

WOODBURN AND WEDGE

By: /s/ Patrick M. Kealy
Patrick M. Kealy, Esq.
Nevada Bar No. 13517

Attorneys for Plaintiff