UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

EDWARD D. JONES & CO., L.P., Plaintiff, -against- JOHN KERR, Defendants.	1:19-cv-03810-SEB-DML Judge Sarah Evans Baker Magistrate Judge Debra McVicker Lynch

DEFENDANT JOHN KERR'S MEMORANDUM OF LAW
IN OPPOSITION TO PLAINTIFF EDWARD JONES'S MOTION
FOR AN ORDER TO SHOW CAUSE GRANTING A
TEMPORARY RETRAINING ORDER AND/OR A PRELIMINARY INJUNCTION

PRELIMINARY STATEMENT

Defendant John Kerr ("Defendant" or "Mr. Kerr") hereby submits his opposition to Plaintiff Edward D. Jones & Co., L.P.'s ("Plaintiff" or "Edward Jones") Motion for Temporary Restraining Order and/or Preliminary Injunction. Edward Jones' request for relief is wholly unsupported by the evidence, predicated upon inadmissible evidence including hearsay statements and opinion, contain inappropriate inferences by the affiants and make no suggestion of any supposed irreparable harm. As a result. Mr. Kerr respectfully asserts that the Edward Jones' Motion for Temporary Restraining Order and/or Preliminary Injunction should be summarily denied by this Court.

SUMMARY OF RELEVANT FACTS

Mr. Kerr is a financial advisor, formerly employed by Edward Jones.[1] On August 1, 2019, Mr. Kerr was forced to resign from Edward Jones. *Id.*, ¶ 22.[2] ***Over a month later***, on September 6, 2019, Edward Jones commenced an action in this Court against Mr. Kerr seeking a Temporary Restraining Order and Preliminary Injunction. With no basis in fact whatsoever, Edward Jones alleges that Mr. Kerr took trade secrets or other confidential information from Edward Jones and solicited his former clients, clients that Mr. Kerr introduced to Edward Jones, to join him at Thurston Springer Financial, an Indianapolis-based firm (hereinafter "TSF").

Mr. Kerr, who is a financial advisor and attained the Certified Financial Planner accreditation, has had an illustrious twenty-year career in the financial services industry. He resides in Indianapolis, Indiana and is the primary source of income for his family, including his

[1] *See* Affidavit of John Kerr, sworn to on October 14, 2019, hereinafter "Kerr Affidavit," ¶¶ 1, 3.
[2] *See also* Plaintiff's Memorandum of Law in Support of its Motion for Temporary Restraining Order and/or Preliminary Injunction filed with the Court on September 6, 2019, hereinafter "Plaintiff's Memorandum," p. 3.

two daughters. *Id.* ¶ 2. Since 1998, Mr. Kerr has successfully built strong client relationships through his individual marketing efforts within his community. *Id.*, ¶ 3.

Mr. Kerr's marketing efforts have been ongoing for over two decades and have consisted of identifying prospective clients from family, friends, and various local community organizations that he is personally affiliated with, including local business owners. *Id.*, ¶¶ 5-6. As a result of his individual efforts, Mr. Kerr grew his business to approximately $113 million in assets under management for about 400 households. *Id.* ¶ 5.

Mr. Kerr began his career at Edward Jones in July 1998. *Id.* ¶ 1. Critical to the Court's understanding of the circumstances here, the Edward Jones business model, unlike many competitors in the industry, consists of small individual offices, such as Mr. Kerr's former office in Westfield, Indiana, where advisors work with their clients exclusively. *Id.*, ¶ 4. Indeed, Mr. Kerr was the only financial advisor in his individual branch. *Id*. In or about July 2011, Mr. Kerr attained a Certified Financial Planner (CFP) accreditation, placing upon him a higher burden and responsibility than just a financial advisor. *Id.*, ¶ 10. As a CFP professional, he is bound by the CFP Board code of ethics and standards of conduct, which requires he act as a fiduciary, placing the client's interest ahead of his own interests or the interests of Edward Jones, as well as any other individual or entity other than the client, which is a higher standard or care than the common financial advisor "suitability" standard. *Id.*

As a direct result of his personal network and reputation in the community, with little input or assistance from Edward Jones, Mr. Kerr continually expanded his referral sources through family and friends and his longtime participation in various social organizations and community groups, and referrals from people in complementary industries. *Id.*, ¶ 6. In the twenty years that Mr. Kerr worked for Edward Jones, no other advisors at the firm worked with his clients with the

limited exception of a handful of clients who were assigned to him on a short-term basis when their previous Edward Jones advisor left the firm. *Id.*, ¶ 4. Mr. Kerr built his practice through organizations to which he has belonged to for many years and which have led to the development of his local client base. They include: (i) The Board of the Chamber of Commerce of Westfield, for which he was on the Board of Directors and served as President (*id.*, ¶ 7); (ii) The first start-up Rotary Club of Westfield, for which he served as Charter Vice President (*id.*, ¶ 8); (iii) and the second Rotary Club of Westfield where he served as Charter President (*id.*, ¶ 9). In fact, Mr. Kerr was chosen to manage both Rotary Clubs' assets. *Id.*, ¶¶ 8-9. Mr. Kerr has worked tirelessly to establish himself as a community leader, and his leadership positions in these organizations throughout the years have provided him the unique opportunity to build a network with a diverse group of community and industry leaders and professionals.

Contrary to the Plaintiff's assertions in its pleadings, as a direct result of *Mr. Kerr's substantial individual effort* over the last twenty years, he has created a substantial book of business in his community without the benefit of referrals, introductions, team arrangements or succession agreements from Edward Jones. *Id.*, ¶ 6. During the time he was employed by Edward Jones, however, Mr. Kerr was a loyal and profitable producer for Edward Jones who generated significant revenue for the firm due to his own diligent marketing efforts in his community. *Id.*, ¶ 5. Indeed, in 2008 and again in 2014-2015, Mr. Kerr gave away approximately 300 client households from his book of business, with assets totaling over $15 million, to two new Edward Jones advisors in the area, helping them to build their assets and being a good Edward Jones "team player." *Id.* Furthermore, Mr. Kerr also served as a "Growth Leader" for Edward Jones for 3 years. *Id.*, ¶ 11. By way of explanation, Edward Jones divides its territory into regions that are overseen by a Regional Leader. The Regional Leader oversees several team leaders, including a Growth Leader,

who is responsible for recruiting advisors and growing Edward Jones' footprint within the industry.

From July 16, 2019 to July 27, 2019, Mr. Kerr was in Ireland on business for Edward Jones. During that time, Edward Jones reassigned many of his clients to the Edward Jones Connection program, compelling him to give up clients that he had developed, negatively impacting his profitability. *Id.*, ¶ 14. Mr. Kerr was not compensated by Edward Jones for the transfer of these clients. *Id.* Upon his return to the office, on July 29, 2019, at approximately 4:00 p.m., he learned that Edward Jones was requiring him to travel to St. Louis to meet with Human Resources on August 1, 2019 regarding an on-going dispute with his long-time branch office administrator, Kennetta White. *Id.*, ¶ 15. After learning of this meeting, on July 29, 2019, Mr. Kerr contacted a friend who had familiarity with Edward Jones to discuss the problems that he was having with Ms. White. His friend informed Mr. Kerr that there may be a potential job opportunity for him at TSF. This was the first that Mr. Kerr became aware of any potential employment opportunities at TSF. *Id.*, ¶ 33.

Prior to the Ireland trip or Human Resources meeting being scheduled, Mr. Kerr had previously scheduled a branch meeting for July 30, 2019 at 9:00 a.m. *Id.*, ¶ 16. On July 30th, in advance of the meeting, Mr. Kerr printed three reports from his office computer: a household rank commission report, an assets under care total value sequence report, and an assets under care total value sequence summary report, none of which contained any client contact information. *Id.* Because Mr. Kerr was the only financial advisor in the branch and his practice had just undergone an involuntary and material change, he sought to review these materials to fully understand the challenges facing the practice. Mr. Kerr printed these materials openly, in the ordinary course of business and ultimately used the information during the branch meeting on July 30th. *Id.*, ¶¶ 16-

17. After the branch meeting, Ms. White attempted to instigate an argument with Mr. Kerr by raising the subject of the August 1st Human Resources meeting as a result of a complaint that she filed. In response, Mr. Kerr maintained his composure and advised Ms. White that regardless of the outcome, his future as a financial advisor would be secure because of his excellent reputation in the industry. *Id.*, ¶ 18.

On August 1, 2019, Mr. Kerr drove from Indianapolis to St. Louis with the three reports in his possession. Unsure as what the Human Resources meeting would entail, he wanted to be fully prepared, and these three reports reflected the continued growth and success of his branch and practice. *Id.*, ¶ 19. During that meeting, it became clear that Edward Jones was no longer interested in Mr. Kerr's practice or continued employment. *Id.*, ¶ 20. Contrary to assertions in Edward Jones' motion, prior to the meeting, Mr. Kerr had no intention of resigning from Edward Jones. Indeed, at that point, he had a full calendar that was solidly booked with client meetings extending at least two weeks out. Instead, he was forced to resign at that meeting. *Id.*, ¶¶ 20, 22.

Notwithstanding the fact that he was in a Human Resources meeting that just concluded, no Edward Jones employee demanded or even requested that he return any security access, identification, branch keys or any other Edward Jones materials that were in his possession at he time. At the end of the meeting, he was provided only with an assistance line for departing employees and information regarding his benefits and did not have any of his Edward Jones agreements in his possession. *Id.*, ¶ 21. Mr. Kerr did not return to his branch office again after the Human Resources meeting in St. Louis (with the exception of later returning to collect his personal property with Edward Jones consent and witnesses present) and was not instructed to return any of Edward Jones' documents or materials. *Id.*, ¶ 34. Accordingly, Mr. Kerr returned home and

destroyed all of the Edward Jones documents and materials in his possession, including the three reports, on or about the day of his resignation, believing this to be the proper course of action. *Id.*

On August 2, 2019, after Edward Jones forced him to resign, Mr. Kerr joined TSF, an Indianapolis-based firm, as a financial advisor. *Id.*, ¶ 23. After Mr. Kerr's forced resignation, Edward Jones sent a letter dated August 2, 2019 with an enclosed FINRA notice called an Informed Investor Communication to his clients to notify them of what to do when a financial advisor changes firms and specifically encouraging them to consider the FINRA flier when deciding where to keep their assets. *Id.*, ¶ 28. *See* August 2, 2019 letter annexed to Mr. Kerr's Affidavit as Exhibit D. The flier is required by FINRA Rules to be sent when an advisor changes firms. Kerr Aff., ¶ 27. The FINRA flier instructed clients to contact Mr. Kerr and ask various questions regarding his new firm and the impact of the transition on the client relationship. *See* Ex. D to Kerr Aff. In the letter, Edward Jones advised Mr. Kerr's clients that he was no longer with the firm. Kerr Aff., ¶ 28.

After joining TSF, Mr. Kerr contacted his clients in order to announce that he was no longer at Edward Jones and to infrom the client of his new affiliation (the "Announcement"). *Id.*, ¶ 24. The Announcement is standard industry practice, and Edward Jones employs this practice when they recruit experienced advisors who join the company with their clients. *Id.*, ¶ 25. As Mr. Kerr attests, the content of the Announcement that he made to his clients was virtually idnetical to the telephone script that Edward Jones instructs its own advisors to use.[3] *Id.* Indeed, during his aforementioned tenure as a Growth Leader, Mr. Kerr learned that Edward Jones is actively recruiting experienced advisors and, accordingly, was privy to the policies and Announcement

[3] Indeed, Edward Jones is well-known within the financial services industry for being an aggressive recruiter of advisors from other broker dealers. *See* https://www.thinkadvisor.com/2018/01/03/edward-jones-seeking-seasoned-fas-gets-a-recruitin/. A copy of this article is annexed to the Kerr Aff. as **Exhibit B** for the Court's reference.

strategies that Edward Jones employed in furtherance of this goal. *Id.*, ¶¶ 11-12. Those strategies that he learned while he was a Growth Leader, including the Announcement strategy used by Edward Jones, are similar to, if not the same as, those that he employed with his clients when he was forced to resign. Furthermore, Mr. Kerr did not possess, rely or use any information developed at Edward Jones to assist him after his resignation from Edward Jones. *Id*., ¶ 35. He also did not solicit any of the clients to come to TSF. *Id*., ¶¶ 37, 42. He only sent clients additional information about TSF if the clients specifically requested it. *Id*., ¶ 42.

Pursuant to FINRA Rule 2273, Mr. Kerr is ***required*** to send an "educational communication" along with any individualized contact with the client, which provides the client guidance as to what to do if their advisor transitions between firms. Counsel for Edward Jones is well aware of this requirement, as its website contains a detailed article explaining the requirements of FINRA Rule 2273. A copy of the Client Alert: FINRA Rule 2273 on Education Communications from the website of the Greensfelder Law Firm is annexed to the Kerr Affidavit as Exhibit H.

Edward Jones also took several actions to try to stop Mr. Kerr's longtime clients from following him to TSF including its regular practice of assigning a "Transitional Financial Adviser" to the branch that the advisor left. Here, Jon Hermelbracht was assigned to the Westfield, Indiana branch. *See* Affidavit of Jon Hermelbracht, sworn to on September 3, 2019 (hereinafter the "Hermelbracht Affidavit"), ¶ 11. Mr. Hermelbracht appears to be an Edward Jones' financial advisor from Flagstaff, Arizona. A copy of Mr. Hermelbracht's webpage obtained on October 10, 2019 from the Edward Jones website is annexed to the Kerr Affidavit as Exhibit F. He had no prior contact with any of Mr. Kerr's longtime client base before his forced resignation from Edward Jones. Hermelbracht Aff., ¶¶ 11-12.

According to his Affidavit, Mr. Hermelbracht arrived at Mr. Kerr's former branch on the day of his forced resignation, which was August 1, 2019, and proceeded to contact his clients to notify them that he left Edward Jones and to advise them that their accounts will be serviced during the transition. *Id*. Mr. Hermelbracht had no personal knowledge about Mr. Kerr's clients or relationships with them prior to his assignment to the branch. Furthermore, many of the statements in the Hermelbracht Affidavit consist of inadmissible, inappropriate hearsay and/or opinion. *Id.*, ¶¶ 14-15, 17-20. Mr. Hermelbracht does not even identify any of the clients. *Id.*, ¶¶ 17-20.

The advisor who was chosen to permanently replace Mr. Kerr in his former branch, Mr. Doug Isaacs, only just recently joined Edward Jones in September 2019. A copy of Mr. Isaacs's FINRA Broker Check print out, obtained on October 10, 2019, is annexed to the Kerr Affidavit as Exhibit G. It appears that Mr. Isaacs has been at some 7 firms in the span of just 13 years, with tenures of only one and two years at many of those firms.

Not surprisingly, after Mr. Kerr's clients received calls from Mr. Hermelbracht, whom they had never spoken with before, some of them contacted Mr. Kerr to determine the status of their investments and to and/or request the opportunity to continue to work with Mr. Kerr. When the clients learned that Mr. Kerr had left Edward Jones, many sought further information from Mr. Kerr regarding their accounts and ability to join him at TSF.[4] Griffiths Aff., ¶ 6; O'Hara Aff., ¶ 6; Herbert Aff., ¶ 6; Daubenspeck Aff. ¶ 4. Some of those clients reached out to Mr. Kerr before he even had the opportunity to make his Announcement to them. Lohe Aff. ¶ 5; Sole Aff. ¶ 4.

[4] The Affidavits of Anne M. O'Hara (hereinafter "O'Hara Affidavit"), Michael Griffiths (hereinafter "Griffiths Affidavit"), Dr. Eric Lohe (hereinafter "Lohe Affidavit"), Julie Sole (hereinafter "Sole Affidavit"), Carole Daubenspeck (hereinafter "Daubenspeck Affidavit"), Patrick Rector (hereinafter "Rector Affidavit"), and Dorothy S. Herbert (hereinafter "Herbert Affidavit") are annexed to the Kerr Affidavit as Exhibits I, J, K, L, M, N, and O respectively.

As asserted in his Affidavit, on each occasion that Mr. Kerr spoke with clients, he provided at the clients' request truthful information regarding their choices and ability to continue to work with him as their financial advisor. Kerr Aff. ¶ 41. Mr. Kerr did not, under any circumstances, solicit any clients that he originated while employed with Edward Jones. *Id.*, ¶ 42. Instead, he simply informed his former clients about his transition to TSF according to the same Announcement script used by Edward Jones (*see* Ex. C to Kerr Aff.) and answered their questions as accurately as he could. *Id.*, ¶¶ 24-25.

As a CFP professional, Mr. Kerr is bound by the CFP Board code of ethics and standards or conduct which require him to place his clients' interest ahead of the interests of any person or entity other than the client, including Edward Jones. His fiduciary obligations also require a duty of candor in reporting all material events pertaining to his clients' accounts. In addition, as a CFP, Mr. Kerr has a requirement to comply with the *CFP Practice Standards* in documenting information and client files, as the facts and circumstances require, taking into account (1) the significance of the information, (2) the need to preserve the information in writing, (3) the obligation to act in the client's best interest. His resignation from Edward Jones is certainly material to the clients that he has cultivated in his twenty years of service. Further, Mr. Kerr also did not send any other information but the required FINRA information to clients unless they specifically requested that information from him. *Id*., ¶ 10.

Nonetheless, a full ***five weeks*** after his resignation, Edward Jones now brings this action against Mr. Kerr. At all times, Mr. Kerr has complied with his post-employment to Edward Jones. Mr. Kerr is simply at a loss as to why, over a month after forcing his resignation, Edward Jones has opted to seek emergency relief via TRO.

Specifically, in support of its application, Edward Jones submits the following affidavits from its representatives: (i) the Affidavit of Jon Hermelbracht, the Transitional Financial Advisor who has zero knowledge of any confidential information supposedly misappropriated by Mr. Kerr. *See* Hermelbracht Aff., ¶¶ 12, 15; (ii) the Affidavit of Kennetta White (hereinafter "White Affidavit"), sworn to on September 3, 2019. Ms. White is the Branch Office Administrator who filed a complaint against Mr. Kerr. Like the Hermelbracht Affidavit, Ms. White's Affidavit is rife with hearsay and insinuations, without any assertion of any factual underpinnings; (iii) and the Affidavit of Jay Guetterman (hereinafter "Guetterman Affidavit"), sworn to on September 4, 2019. Mr. Guetterman is a "Leader in the Software Infrastructure Department" of Edward Jones. He has no knowledge of any confidential information that was allegedly misappropriated by Mr. Kerr. Again, all of these representatives base their allegations on impermissible hearsay, and none of these representatives allege that Mr. Kerr used any confidential information.

ARGUMENT

I.

LEGAL STANDARD

In considering a motion for a preliminary injunction, "a court should weigh the movant's probability of success on the merits, the threat of irreparable harm to the movant absent the injunction, the balance between this harm and the injury that the injunction's issuance would inflict on other interested parties, and the public interest." *State ex rel. Dir. of Revenue, State of Mo. v. Gabbert*, 925 S.W.2d 838, 839 (Mo. 1996). The grant of such an extraordinary remedy requires that a party "show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief." *Roudachevski v. All-Am. Care Centers, Inc*., 648 F.3d 701, 706 (8th Cir. 2011). Furthermore, each of the four elements must be met by the movant, or the claim will fail. *Solid State Circuits, Inc. v. U.S. E.P.A., No. 85-3101-CV-S-2*, 1985 WL 78, at *2

(W.D. Mo. Nov. 1, 1985), *aff'd,* 812 F.2d 383 (8th Cir. 1987) ("plaintiffs must carry the burden on all four of these elements"). Furthermore, genuine issues of material will preclude a court from ruling on a preliminary injunction without a hearing. *J.P. Morgan Sec. LLC v. Shields,* No. 118CV02788SEBMJD, 2018 WL 6426835, at *2 (S.D. Ind. Sept. 26, 2018). Clearly, Edward Jones cannot meet this heavy burden in the instant action, and injunctive relief should be denied.

This matter is governed by Missouri law. Edward Jones' decision to extensively cite to Indiana law in its Memorandum in Support of its Motion is both misleading and improper. As the Investment Representative Employment Agreement, which is attached to Plaintiff's Memorandum as Exhibit A, makes clear, "[t]his Agreement shall be deemed to be a Missouri contract and governed by the laws there." Accordingly, the Court should analyze this issue pursuant to established Missouri law.

II.

EDWARD JONES CANNOT SHOW "IMMEDIATE AND IRREPARABLE" HARM

It is undisputed that after being forced to resign by Edward Jones, Mr. Kerr joined TSF on August 2, 2019. *See* Kerr Aff., ¶ 23. Edward Jones did not commence this lawsuit seeking a temporary restraining order and a preliminary injunction until nearly ***over a month later*** on September 6, 2019. Having waited ***exactly five weeks*** to make an application to this Court for a temporary restraining order and preliminary injunction, Edward Jones cannot, as a matter of law, demonstrate that it will suffer "immediate and irreparable damage" if the Court does not grant its motion and in and of itself bars the injunctive relief that it seeks. Not surprisingly, Edward Jones wholly ignores this fatal flaw in its brief.

Plaintiff Edward Jones in this case inexplicably waited over a month before making the instant motion for temporary restraint, despite purportedly having knowledge of Kerr's alleged

conduct mere days after he left Edward Jones's employ. *See* Hermelbracht Aff., ¶¶ 12, 14; White Aff. ¶¶ 8-11. Indeed, by its own motion papers, the alleged solicitation and purported misuse of confidential information occurred "in the days following his departure" on August 1, 2019. (*See* Plaintiff's Memorandum at p. 4 ("in the days following his departure from Edward Jones, Defendant *immediately* began contacting Edward Jones clients to speak with them.") (emphasis added). Nowhere does Edward Jones explain why it waited over a month, despite knowing "immediately" about Mr. Kerr's alleged behavior.

Inexcusable delay is routinely held to be dispositive on the issue of irreparable harm, as relatively long delays are incompatible with claims that harm is both immediate and irreparable. *See Cont'l Research Corp. v. Scholz,* 595 S.W.2d 396, 402 (Mo. Ct. App. 1980)("A more crucial factor in our determination, however, is the failure of the employer to secure timely temporary injunctive relief"); *Bremer Bank, Nat. Ass'n v. John Hancock Life Ins. Co*., No. CIV. 06-1534 ADM/JSM, 2006 WL 1205604, at *2 (D. Minn. May 2, 2006) (Delay of 25 days weighed against granting of TRO). *See also, e.g.*, *Mike Avila Tr. v. Bronger Masonry, Inc*., 123 F. Supp. 3d 1088, 1099 (S.D. Ind. 2015) ("Delay in pursuing a preliminary injunction raises questions regarding the allegations of irreparable harm if the requested relief is not entered.").

Furthermore, courts in the Eighth Circuit have been reticent to find that client loss constitutes irreparable harm. *Guy Carpenter & Co. v. John B. Collins Assocs., Inc*., 179 F. App'x 982, 983 (8th Cir. 2006) ("We agree with the district court damages are an adequate remedy for any breach because clients who leave Carpenter can be identified and the damages resulting from the loss of those clients can be calculated."); *Kforce Inc. v. Beacon Hill Staffing Grp. LLC*, No. 4:14 CV 1880 CDP, 2015 WL 128060, at *10 (E.D. Mo. Jan. 8, 2015) ("Kforce's claims irreparable harm are undercut by the fact that any potential sales wrongfully diverted from Kforce to Beacon

Hill through Hahn's efforts can be quantified and therefore compensated in the form of money damages.")

Notably, none of the Edward Jones' representatives attest to any "immediate and irreparable harm" in their Affidavits. To the contrary, one of the Affidavits sets forth Edward Jones' alleged damages with exactitude. *See* Hermelbracht Aff., ¶ 21 ("[A]s of this affidavit, more than $2,000,000.00 has transferred from Edward Jones to Thurston"). The Affidavits do not attest to such harm simply because there is none— now well over five weeks after Mr. Kerr left Edward Jones. By now, most of clients have either decided to stay with Edward Jones or have followed him to TSF, which is their right.

Indeed, given the facts of the case, it is impossible to see how there can be irreparable harm. Edward Jones is one of the largest firms on Wall Street, employing more than 14,000 advisors, with nearly 7 million clients and $1 trillion in assets under management worldwide. To date, of the overall $113 million in assets that Mr. Kerr managed while at Edward Jones, a mere $8.7 million has transferred, representing less than 10% of his overall practice. Kerr Aff. ¶ 44. Of that $8.7 million, the accounts of Mr. Kerr's family members constitute $2.2 million. 45% of the $8.7 million consists of accounts of close friends and social relationships that were formed prior to his tenure at Edward Jones. Accordingly, a staggering ***70%*** of the clients that have transitioned to TSF are family and friends of Mr. Kerr. *Id*.

For this reason and the fact that Edward Jones can be adequately compensated by monetary damages for any alleged harm, Plaintiff's request for a TRO and preliminary injunction must be denied.

III.

THE MATERIAL FACTS OF THIS CASE ARE IN DISPUTE AND EDWARD JONES FAILS TO ESTABLISH PROBABLE SUCCESS

ON THE MERITS OF ANY OF ITS CLAIMS

The Affidavits are substantively insufficient to support injunctive relief. Not one of the three witnesses can identify a shred of information that Mr. Kerr supposedly misappropriated from Edward Jones or verify that he solicited any clients.

To prevail upon its a claim for misappropriation of trade secrets under Missouri law, Edward Jones must conclusively establish that: "(1) a trade secret exists, (2) the defendant misappropriated the trade secret, and (3) the plaintiff is entitled to either damages or injunctive relief." *Cent. Tr. & Inv. Co. v. Signalpoint Asset Mgmt*., *LLC*, 422 S.W.3d 312, 320 (Mo. 2014) ("*Signalpoint Asset Mgmt*., *LLC")*. Misappropriation occurs "in only three scenarios: (1) when a person acquires the trade secret while knowing or having reason to know that he or she is doing so by improper means, (2) when a person who has acquired or derived knowledge of the trade secret discloses it without the owner's consent, or (3) when a person who has acquired or derived knowledge of the trade secret uses it without the owner's consent." *Id.* at 321. Here, Edward Jones cannot even establish that Mr. Kerr took any "trade secret" from Edward Jones and therefore cannot demonstrate that it has a meritorious claim of misappropriation.

At the outset, it is not even clear that the information that Edward Jones alleges was taken constitutes a trade secret under Missouri law. Client lists and databases are not specifically listed in the definition of "trade secret" found in section 417.453 of the Missouri Uniform Trade Secrets Act (hereinafter "MUTSA"). *See also Signalpoint Asset Mgmt*., *LLC,* 422 S.W.3d at 320 n.8, n.9 (Although the Missouri Supreme Court did not reach the question of whether plaintiff's client list was a trade secret under MUTSA, it observed that, "[Plaintiff] has not clearly explained what it means by 'client list' in arguing that it is a trade secret" and that not all jurisdictions have recognized client lists as trade secrets); *Brown v. Rollet Bros. Trucking Co., Inc*., 291 S.W.3d 766,

777 (Mo.App. E.D. 2009) ("Customer lists are protectable as trade secrets only when they represent 'a selective accumulation of information based on past selling experience, or when considerable time and effort have gone into compiling it.' … However, '[t]o be protected, a customer list must be more than a listing of firms or individuals which could be compiled from directories or other generally available sources.') (internal quotations omitted).

In its brief, Edward Jones argues that Mr. Kerr took "three lists containing Edward Jones client information" and "other personal and financial information." Pl. Mem., pp. 4, 11. Like the plaintiff in *Signalpoint Asset Mgmt*., *LLC,* Edward Jones fails to articulate with any specificity what it means by "client list." At one point, Edward Jones asserts that "customer contact information derives independent economic value" such that it must be consider a trade secret. *Id.,* p. 16. To be clear— because Edward Jones is exceedingly vague in its papers, in an effort to obfuscate what is at issue here— the only material that Mr. Kerr is alleged to have taken are the three reports. *See* Ex. 1 to Guetterman Aff. However, none of the affidavits assert that the three reports contained any "customer contact information." Likewise, Mr. Kerr, who does not dispute that he printed three reports while still employed by Edward Jones, attests that none of these reports contained any client contact information. Kerr Aff., ¶ 16. Accordingly, Edward Jones has not established that these reports are trade secrets.

Even assuming, *arguendo*, that the reports constituted trade secrets, Mr. Kerr did not "misappropriate" them under Missouri law. At the time that the reports were printed, Mr. Kerr was an Edward Jones employee and had just lost a portion of his clients to Edward Jones Connection. *Id.*, ¶ 14. As he attests in his Affidavit, he printed these reports in the normal course of business and was using them both for a branch meeting on July 30, 2019 and the Human Resources meeting on August 1, 2019. *Id.*, ¶¶ 16-17. Indeed, none of the Affidavits allege that these three reports were

"misappropriated." Instead, Edward Jones must rely upon insinuation and hearsay not based in truth. Indeed, the crux of Edward Jones' entire misappropriation argument hinges on the testimony of employees who have absolutely zero personal knowledge of Mr. Kerr's activities. Mr. Hermelbracht claims that he was "made aware" and was "told" that Mr. Kerr printed reports and that he "reviewed the office contents and did not locate any recently printed client lists or client information." Hermelbracht Aff., ¶ 15. Likewise, Ms. White "reviewed the office contents to locate the printed information." White Aff., ¶ 9.

Jay Gutterman proffered evidence attached to his affidavit support of the misappropriation claim showing that Mr. Kerr printed the three documents as a result of a print manager showing user "P033039" (assigned exclusively to Mr. Kerr) as the source of the printed documents that were misappropriated. Ex. 1 to Gutterman Aff. This evidence is now moot but nevertheless insufficient to prove misappropriation. Mr. Kerr has admitted to printing these documents. *See* Kerr Aff.*,* ¶ 16. However, it is not disputed that Mr. Kerr was employed by Edward Jones at the time that the reports were printed. *See id.,* ¶¶ 15-16. Accordingly, he did not acquire any "trade secret" while knowing or having reason to know that he was "doing so by improper means." Printing reports in the normal course of business is not misappropriation. Likewise, Mr. Kerr did not ever use these reports or disclose their contents to any other person. *Id.*, ¶ 34-35. As he asserts in his affidavit, he destroyed the reports after being forced by Edward Jones to resign. *Id.* He therefore did not "misappropriate" anything. *Signalpoint Asset Mgmt*., *LLC,* 422 S.W.3d at 321. In addition, on the very face of the documents, it would appear that that the print manger is not exclusive to Mr. Kerr as it purports to show print use on August 1, 2019. Obviously, such printing could not possibly have been performed by Mr. Kerr, calling into question the veracity of Mr. Gutterman's affidavits and statements on that issue. Accordingly, the allegation that Mr. Kerr

misappropriated confidential information from Edward Jones in order to contact clients and send them information about TSF is not just "disputed fact" that precludes injunctive relief in this case; it is an unjustified assumption with no basis in fact.

As Mr. Kerr makes clear in his Affidavit, after his forced resignation from Edward Jones, he made the standard "Announcement" that is used by Edward Jones itself to announce to his clients that he changed firms. Kerr Aff., ¶ 24; Exhibit C to Kerr Aff. Indeed, as counsel to Edward Jones well knows (Ex. H to Kerr Aff.), pursuant to FINRA Rule 2273, Mr. Kerr is, in fact, required to send an "educational communication" along with any individualized contact with the client, which provides the client guidance as to what to do if their advisor transitions between firms. Kerr Aff., ¶ 27. Indeed, as a CFP professional, Mr. Kerr has fiduciary obligations that *require* a duty of candor in reporting all material events pertaining to his clients' accounts, which encompasses any transition to a new firm. In fact, the evidence before this court establishes that Edward Jones itself notified Mr. Kerr's clients in writing that he left by sending form letters. *See* Ex. D, E to Kerr Aff. Not surprisingly, some of his clients reached out to him after they were notified by Edward Jones that he had left the firm to request information about his new firm. Herbert Aff., ¶ 6. Some of these clients even contacted Mr. Kerr before he made an Announcement to them. Lohe Aff. ¶ 5; Sole Aff. ¶ 4. Therefore, the injunctive relief sought by Edward Jones is unwarranted because there is proof that directly refutes the alleged improper solicitation of clients. Edward Jones' cynical attempts to classify client communications required by FINRA and by applicable CFP regulations as "solicitations" should not be countenanced by this Court.

As his clients affirm, Mr. Kerr did not solicit anyone. Griffiths Aff., ¶ 5; O'Hara Aff., ¶ 5; Herbert Aff., ¶ 10; Sole Aff. ¶ 5; Lohe Aff. ¶ 6; Rector Aff. ¶ 5; Daubenspeck ¶ 5.

Dr. Eric Lohe is a pastor at the CrossRoads Church at Westfield and served as President of the Westfield Chamber of Commerce. Lohe Aff. ¶ 2. After meeting through community service, he and Mr. Kerr became close friends. Mr. Kerr has served as his advisor for over 15 years. After being informed of Mr. Kerr's departure by Edward Jones, Dr. Lohe immediately contacted Mr. Kerr before he could even make his Announcement. *Id.* ¶ 5. Dr. Lohe affirmatively asked to transfer his accounts to TSF and on a subsequent call stated that "our friendship would never come before the truth." *Id*. Similarly, Julie Sole, a client that Mr. Kerr has been friends with for over twenty years, contacted Mr. Kerr upon learning that he was no longer at Edward Jones to manage her accounts. Sole Aff. ¶ 4. She did so before Mr. Kerr could even make his Announcement. She quickly made the decision to transfer to TSF because she did not want to remain at Edward Jones without Mr. Kerr there. *Id*. Carol Daubenspeck, a client that Mr. Kerr has known socially for over twenty years and who has been a client of his for over ten years, was likewise uninterested in remaining at Edward Jones if Mr. Kerr was no longer there to serve as her advisor and transferred to TSF. Daubenspeck Aff. ¶ 4. Like all of Mr. Kerr's other clients, this decision was due to the longstanding personal relationship and not the result of any solicitation or pressure from Mr. Kerr. *Id.* ¶ 6.

Patrick Rector has been a client of Mr. Kerr's for the past 9 years. Rector Aff., ¶ 3. Mr. Rector used to be Mr. Kerr's landlord and the two have since become good friends. *Id.*, ¶ 2. Although they often see each other socially, Mr. Kerr never solicited Mr. Rector, nor did he ask that he transfer his accounts. *Id.*, ¶ 6. Indeed, it was Mr. Rector's independent decision to transfer his accounts, and this decision was based on the longstanding relationship between the two. *Id.*, ¶ 6.

Dorothy S. Herbert was introduced to Mr. Kerr by her daughter, a CPA who is also a client of Mr. Kerr. Herbert Aff., ¶ 2. Ms. Herbert first learned that Mr. Kerr left Edward Jones when she received a telephone call from an Edward Jones representative. *Id.*, ¶ 4. She subsequently received a communication from Edward Jones informing her of Mr. Kerr's departure but was not provided with any contact information or information regarding his new affiliation with TSF. *Id.*, ¶ 5. In a later call with Mr. Kerr, he informed her that he was no longer managing her account at Edward Jones and had transferred to TSF. *Id.*, ¶ 6. Upon hearing that information, "[t]here was no decision to make" as to who should be her family's trusted advisor, and she quickly transferred to TSF, without any solicitation from Mr. Kerr. *Id.*, ¶ 7.

Ms. Ann M. O'Hara, an Indiana-admitted attorney in good standing who is familiar with restrictive covenants and non-compete clauses through her practice, chose to continue using Mr. Kerr as her trusted advisor. O'Hara Aff., ¶ 2. After Mr. Kerr informed her that he had moved on to TSF through his standard Announcement, Ms. O'Hara affirmatively asked how she could join him. *Id.*, ¶¶ 5-6. It was an independent decision based on her personal relationship with Mr. Kerr, and she was not induced or solicited by Mr. Kerr. *Id.*, ¶ 7. Likewise, Mr. Michael Griffiths, also an Indiana-admitted attorney in good standing who is familiar with restrictive covenants and non-compete clauses through his corporate counsel position, made the independent decision to join Mr. Kerr at TSF. Griffiths Aff., ¶ 2. Mr. Griffiths made this decision based on his personal relationship with Mr. Kerr, who is his neighbor. *Id.*, ¶ 3. After being informed by Mr. Kerr during a neighborly dinner that he was no longer managing his account at Edward Jones and had joined TFS as an advisor, Mr. Griffiths affirmatively asked Mr. Kerr how he could join him. *Id.*, ¶¶ 5-6. These client affidavits make clear that Edward Jones is not accurately representing what occurred, in a desperate attempt to prevent clients from exercising their rights to follow Mr. Kerr to TSF.

Moreover, courts around the country ruling in financial services cases have held that informing customers of a change of affiliation like Mr. Kerr did in this case is not an improper solicitation requiring protection. *See ING Life Ins. and Annuity Co. v. Gitterman*, No. 10-4076 (DMC)(JAC), 2010 U.S. Dist. LEXIS 85040, at *10 (D.N.J. Aug. 18, 2010) ("Merely being in contact with former clients does not constitute solicitation"); *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Brinkman*, No. CV-08-1751-PHX-FJM, 2008 U.S. Dist. LEXIS 84751, at *4-5 (D. Ariz. Oct. 3, 2008) (defendants "should have advised the customers that they were leaving, and that the customers would be free to stay with Merrill Lynch or go with them to their new firm. We reject Merrill Lynch's contention that they could not at least do this"); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. O'Connor*, 194 F.R.D. 618, 620 (N.D. Ill. 2000) (a prohibition against advising customers of departing broker's new affiliation would be "unlawful, as well as unreasonable"); *Getman v. USI Holdings Corp.*, No. 05-3286-BLS2, 2005 Mass. Super. LEXIS 407, at *11-12 (Mass. Super. Ct. Sept. 1, 2005) (providing notice to clients that one is leaving their current employ and going elsewhere – providing new address, telephone number, and email address – "Such notice is common courtesy.").

Of larger concern, Edward Jones is guilty of materially omitting any information about its own Announcement policies and the industry standard that it employs when recruiting experienced advisors to its company. Mr. Kerr offers direct evidence of Edward Jones' own Announcement policy, including the script and talking points that it provides to the experienced advisors. In addition, Edward Jones has made it clear through Katherine Mauzy, the partner in charge of building the experienced advisor head count in her public statements that it is aggressively recruiting experienced advisors and implementing a policy where their " People (advisors) move,

and follow guidance and support from our team, and they're allowed to announce to the clients where they have gone." *See* Ex. A to Kerr Aff.

This policy permits the recruited advisors from doing exactly what Edward Jones recruits are permitted doing, notifying long standing clients of their new affiliation while still comporting with the obligations under a non-solicitation provision of a former employment agreement. The fact that Edward Jones regularly and intentionally attempts to mislead this Court by materially omitting its own policies under the circumstances is nothing new, as it regularly fails to mention any of its own identical policies in any of the other jurisdictions TRO applications reviewed and filed against departing advisors. Here and in several other jurisdiction around the country, Edward Jones is guilty of the quintessential "unclean hands" defense with respect to the contradictory and misleading position its takes on this issue in the courts. This institutional policy of failing to provide all of the material information to the Courts when Edward Jones is requesting a significant restrictions on former advisors' livelihood should not be permitted by this Court.

Additionally, on their face, the Affidavits must be rejected as nothing more than inadmissible hearsay from self-interested witnesses about what Mr. Kerr's long-time clients told them when they were contacted by them. The transitional financial advisor, Mr. Hermelbracht, came to Mr. Kerr's office for the first time on August 1, 2019 and began contacting his clients in an effort to keep them at Edward Jones. *See* Hermelbracht Aff., ¶¶ 12, 16. He does not even provide critical information like who the clients were, when they were contacted, and what they specifically told him. *Id.* ¶¶ 17-20. Plainly, Mr. Hermelbracht, who is compensated by retaining clients of advisors who have departed from Edward Jones and is clearly self-interested in convincing Mr. Kerr's longtime clients not to leave Edward Jones to follow him to TSF, cannot even recall the circumstances surrounding these alleged client interactions.

Likewise, many of Ms. White's statements are inadmissible hearsay, entirely self-interested, and based on half-truths at best. It is undisputed that Ms. White filed a complaint against Mr. Kerr prior to the events at issue in this action. Ms. White neglects to explain in her affidavit that only after she attempted to instigate an argument with Mr. Kerr regarding his upcoming meeting with Human Resource, did he defiantly tell her that no matter the outcome of the meeting, he would be fine given his reputation in the industry. Kerr Aff., ¶ 18. Likewise, Ms. White inexplicably claims that she saw Mr. Kerr print "confidential customer information" despite the fact it would have been a physical impossibility for her to do so without Mr. Kerr seeing her, based on the set-up of the office. (Notably, nowhere in the affidavit does Ms. White specify just what "confidential customer information" Mr. Kerr printed. Presumably, having worked as the Branch Office Administrator for twenty years, Ms. White would have been able to easily identify any standard reports. Such an omission is odd, if she indeed saw what was printed.). White Aff., ¶ 8. Furthermore, and most incredibly, Ms. White's affidavit is rife with what appears to be double hearsay. *Id.*, ¶ 11-15. She does not, like Mr. Hermelbracht, testify that she was "told" by clients about Mr. Kerr's activities. Instead, in artfully drafted language, she "learned" about them. It is not explained how she "learned" about these allegations, who told her, and what was said. Injunctive relief must be based upon more than idle gossip around the water cooler.

Even if Edward Jones could establish that Mr. Kerr actually took any "trade secrets" (which, as set forth above, it cannot), Edward Jones cannot proffer even a scintilla of evidence to support its allegation that Mr. Kerr actually used these supposed "trade secrets" to improperly solicit clients. Contrary to its allegation that Mr. Kerr used the three reports—that, again, did not even contain client contact information— to induce his clients to leave Edward Jones, the evidence establishes that Mr. Kerr made the standard announcement to clients that he had cultivated and

serviced for years that he changed firms. Edward Jones itself instructs incoming brokers to make this same announcement once they join the firm. *See* Ex. C to Kerr Aff.

Additionally, Edward Jones tries to make much hay out of a packet of information sent to Mr. Kerr's clients in an attempt to support an inference that he solicited these clients. *See* Pl. Mem. at pp. 4, 12. Unbeknownst to Mr. Kerr originally, Edward Jones itself sent out a letter and FINRA flier which announced to all of Mr. Kerr's clients that he had departed Edward Jones. *See* Kerr Aff., ¶ 28 (referencing Ex. D, E to Kerr Aff.). Once those clients – many of whom Mr. Kerr had worked with for years and knew personally through his many connections in the community – reached out, Mr. Kerr answered their questions and provided them with information at their request. *See* Griffiths Aff., ¶ 6; O'Hara Aff., ¶ 6; Herbert Aff., ¶ 6; Sole Aff. ¶ 4; Lohe Aff. ¶¶ 5,7; Rector Aff. ¶ 6; Daubenspeck Aff. ¶ 4. In his Affidavit, he confirms that he only sent information to clients that requested it and that he kept contemporary notes of this as required by the FINRA Rules. Kerr Aff., ¶ 27. Nothing about this natural process could possibly be said to constitute improper solicitation.

In sum, Edward Jones has failed to present any credible evidence that Mr. Kerr misappropriated confidential information and used such information to solicit clients. Accordingly, its application for injunctive relief must be denied.

IV.

THE BALANCE OF HARDSHIPS CLEARLY FAVOR THE INDIVIDUAL DEFENDANT IN THIS CASE

When determining whether to issue a preliminary injunction, the Court is required to balance the potential hardships that either side will endure as a result of the injunction. *Hubbard Feeds, Inc. v. Animal Feed Supplement, Inc*., 182 F.3d 598, 601 (8th Cir. 1999). Here, the relief Edward Jones seeks will greatly impair Mr. Kerr's ability to earn a living because clients that he

has developed during his over twenty year career in the securities industry will not be able to freely transfer their business to him, as is their absolute right and, in most instances, their very strong desire. *See e.g.* O'Hara Aff., Griffiths Aff., Lohe Aff., Sole Aff., Daubenspeck Aff., Rector Aff., and Herbert Aff. Further, if the relief Edward Jones seeks is granted, Mr. Kerr will not be able to generate the revenue for his business that he has in the past. Kerr Aff., ¶ 3. Notably, Mr. Kerr is the primary breadwinner for his family, including his two daughters. *Id.*, ¶ 2.

If Mr. Kerr is enjoined from doing business with his clients, it would destroy the career that he has worked so hard to build. It also would financially cripple him and his ability to support himself and his family. *Kforce Inc*., 2015 WL 128060, at *10 (Denying preliminary injunction where injunction would prevent defendant from earning a living).

By comparison, Edward Jones is a Fortune 500 company with over $7.5 billion in annual revenue that attempts to intimidate former advisors through baseless litigation such as the instant action. Just as Edward Jones cannot demonstrate irreparable harm from Mr. Kerr's alleged conduct, it cannot show that it will suffer hardship should this injunctive relief not issue. On the other hand, should Mr. Kerr be subjected to this injunction, he will be at the mercy of Edward Jones, who will have the opportunity to march into court to "enforce" the terms of the injunction at every turn. The chilling effect on Mr. Kerr, who could be accused of violating the injunction for casual or social communications with former clients or any number of innocent actions, will undoubtedly have a detrimental effect on his livelihood. Furthermore, the Order would be potentially misleading to clients such that they would perceive a court order that enjoins Mr. Kerr as a Court ruling that he engaged in wrongdoing, even if the Order only reflects the current restrictions contained in his agreements or the "status quo" as Edward Jones would describe it to the Court. Clients who might otherwise wish to continue the relationship might assume that a

court's order means that Mr. Kerr broke the law or that it would be unlawful for Mr. Kerr to service their accounts at TSF. Edward Jones, however, has tolerated Mr. Kerr's alleged conduct for over a month without so much as sending Mr. Kerr a cease-and-desist letter, and cannot demonstrate any damages stemming from said conduct. The hardship from this injunction to Mr. Kerr far outweighs that to Edward Jones, and accordingly, this factor too weighs against Edward Jones.

V.

THE EXTRAORDINARY RELIEF OF A PRELIMINARY INJUNCTION IS NOT WARRANTED HERE SINCE EDWARD JONES FAILS TO DEMONSTRATE ANY HARM THAT CANNOT BE REDRESSED BY MONETARY DAMAGES

The extraordinary relief of a preliminary injunction requires that a party show "that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief" that cannot be redressed by money damages. *Roudachevski*, 648 F.3d at 706. Indeed, in the Hermelbracht Affidavit, Edward Jones quantifies the exact amount of assets: "more than $2,000,000.00 has transferred from Edward Jones." Hermelbracht Aff., ¶ 21. Damages under these circumstances would be directly related to the annual revenue and income generated from these client departures if the contract is breached which is readily quantifiable and required under FINRA rules and securities law.

Harm is not irreparable because Edward Jones could be adequately compensated by a monetary award at the FINRA arbitration to the extent that Edward Jones can actually establish that customers that transferred to Mr. Kerr at TSF were solicited in violation of a post-employment restrictive covenants. Any such accounts can be monetized via review of trailing twelve-month revenue records. Every revenue dollar, every trade and every net commission Mr. Kerr earned from his clients is documented. Hence, under the circumstances here not only is injunctive relief

inappropriate, it is not permissible. The United States Supreme Court has repeatedly held that where money damages provide an adequate remedy, irreparable harm cannot be found:

> [I]t seems clear that the temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury . . . . 'The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.' (emphasis in original).

Sampson v. Murray, 415 U.S. 61, 90 (1964) (quoting *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

Missouri courts similarly have held that harm is irreparable only if it cannot be addressed adequately through money damages. *Guy Carpenter & Co.*, 179 F. App'x at 983 ("[D]amages are an adequate remedy for any breach because clients who leave Carpenter can be identified and the damages resulting from the loss of those clients can be calculated").

Courts are clear that purely economic damages, like those alleged by Edward Jones here, cannot constitute "irreparable harm" sufficient to sustain a motion for preliminary injunction. *See, e.g.*, *Sampson v. Murray*, 415 U.S. 61, 90, 94 S.Ct. 937, 952–53, 39 L.Ed.2d 166 (1974) ("The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.") (quotation omitted); *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 420 (8th Cir.1987) (indicating a party has not shown irreparable harm if its alleged injuries can be remedied in a suit for money damages); *Caballo Coal Co. v. Indiana Michigan Power Co*., No. 4:01-CV-1558CAS, 2002 WL 32727070, at *7 (E.D. Mo. Jan. 10, 2002), *aff'd*, 305 F.3d 796 (8th Cir. 2002) ("Monetary loss may constitute

irreparable harm only where the movant's very existence is threatened, i.e., where an act threatens an ongoing business with destruction as opposed to mere disruption… Although plaintiffs may be harmed by the termination of its contract with defendants until this case is decided on the merits, that harm is not necessarily irreparable and can be fully compensated by an award of monetary damages.") (quotations omitted).

Because Edward Jones cannot demonstrate that it will be irreparably harmed should the injunction not issue, its emergency Motion must be denied.

CONCLUSION

For the foregoing reasons, Defendant respectfully submits that this Court should deny Edward Jones's Motion for Temporary Restraints and a Preliminary Injunction, dismiss this action in its entirety, and grant such other and further relief as this Court deems just and proper.

Dated: January 25, 2022

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CERTIFICATE OF SERVICE

I certify that on October 14, 2019, a copy of the foregoing Opposition to a Temporary Restraining Order was submitted via Southern District of Indiana ECF filing and mailed, by first-class U.S. Mail, postage prepaid and properly addressed to the following:

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