[Cite as *TNSWS, L.L.C. v. Ohio Dept. of Rehab. & Corr.*, 2023-Ohio-800.]

IN THE COURT OF CLAIMS OF OHIO

TNSWS, LLC DBA THE NEXT STEP/WORK OPPORTUNITY TAX CREDIT SOLUTIONS LLC Plaintiff v. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION Defendant	Case No. 2020-00440JD Magistrate Holly True Shaver DECISION OF THE MAGISTRATE

Introduction

{¶1} Plaintiff TNSWS, LLC, dba The Next Step/Work Opportunity Tax Credit Solutions LLC (TNSWS) brings this action against defendant Ohio Department of Rehabilitation and Correction (ODRC). TNSWS essentially claims that ODRC failed to provide data about ODRC's released supervised population in accordance with a written contract, which, in turn, caused TNSWS to sustain damages. TNSWS asserts four claims against ODRC: (1) breach of contract, (2) declaratory judgment, (3) unjust enrichment (alternative claim), and (4) promissory estoppel (alternative claim).

{¶2} The Court previously denied ODRC's motion for a summary judgment in its favor.[1] In the Court's summary-judgment decision, the Court found an ambiguity in Article II of the parties' written contract. (Decision, at 10.) The Court noted that the parties' disputed written contract "appear[ed] to be a presumptively integrated writing, as the written contract constitutes a complete and somewhat unambiguous statement of the parties' contractual intent." (Decision, at 9.)

[1] Decision/Judgment Entry dated February 2, 2022.

{¶3} The matter proceeded to a bench trial before the undersigned magistrate on the issue of liability. At trial, the parties presented agreed trial stipulations, documentary evidence, witness testimony, and deposition testimony.[2] The parties also submitted post-trial briefing.

{¶4} Upon consideration of the evidence, the magistrate finds that TNSWS's declaratory-judgment claim is subsumed into TNSWS's breach-of-contract claim, that TNSWS has proven its breach-of-contract claim against ODRC by a preponderance of the evidence, that TNSWS's alternative claim of unjust enrichment is moot, and that TNSWS's alternative claim of promissory estoppel is moot. The magistrate makes the following findings of fact and conclusions of law.

Findings of Fact

Business Model and Shared Goals

{¶5} John L. White formed TNSWS in August 2015. Before White formed TNSWS, White had formed predecessor companies, which ceased activity.[3] White's relationship with ODRC began in 2011. (Defendant's Exhibit JJJ.) Both parties shared a desire to obtain employment for recently released felons. White's vision was to build a database of "felon-friendly employers," using information from defendant's Adult Parole Authority (APA) parole officers.

{¶6} The business model of White's companies included the solicitation of employers who had or were willing to hire released felons to inform these employers of a federal Work Opportunity Tax Credit (WOTC) and to inquire about an employer's interest in White's companies' services to complete the necessary paperwork to obtain the tax credit. In exchange for these services, White's companies would earn a percentage of the WOTC from each employer that utilized White's companies' services.

{¶7} As background, the federal government implemented a Work Opportunity Tax Credit, which was in effect during the years that White's companies had a relationship

[2] On the first day of trial—May 31, 2022—the parties filed Agreed Trial Stipulations.

[3] The predecessor companies were named TNS, Inc., and WOTC Solutions, LLC. (Wollen Deposition, 13-14, 17). The magistrate will refer to these companies, as well as TNSWS, as "White's companies" throughout this decision for simplicity.

with defendant. Pursuant to the program, if an employer hired a qualified ex-felon, the employer could submit paperwork within 28 days of hiring the qualified ex-felon, and the employer would be eligible to receive a tax credit. The amount of the tax credit was based on a percentage of qualified wages paid during the taxable year. (Plaintiff's Exhibit 3.) The WOTC law was suspended in 2014 and was reinstated in 2016. Normally, the paperwork would have to be submitted within 28 days of a qualified ex-felon's hire date. However, during the Obama administration, a period from January 1, 2015 through August 31, 2016 opened up, where employers could retroactively file for the WOTC for any qualified ex-felons that they had hired during this period. The deadline for submitting paperwork for a WOTC for this period was September 28, 2016. White referred to this period at trial as the "lookback period." For White's companies, the lookback period presented substantial, potential revenue because the 28-day period from hire date to submission of paperwork had been waived.

History of the Parties' Relationship

{¶8} Effective July 1, 2013, Ohio Department of Rehabilitation Correction, Operation Support Center – Adult Parole Authority and WOTC Solutions, LLC – The Next Step, Inc. entered into a Purchase Contract (Contract 415-13-0923) to engage WOTC Solutions, LLC – The Next Step, Inc., "to provide offender employment services." (Defendant's Exhibit I.) A representative of WOTC Solutions, LLC – The Next Step, Inc. (Julia K. Peterson) signed the Purchase Contract on behalf of WOTC Solutions, LLC – The Next Step, Inc. (Defendant's Exhibit I.) Representatives of ODRC signed the Purchase Contract. (Defendant's Exhibit I.) The Purchase Contract was signed by both

parties in October 2013. (Defendant's Exhibit I.) Under the terms of the Purchase Contract, the Purchase Contract was set to expire on June 30, 2015. (Defendant's Exhibit I.) The Purchase Contract was a zero-dollar contract. (Defendant's Exhibit I, Article 4.1.)

{¶9} Ohio Department of Rehabilitation Correction, Operation and Support Center – Adult Parole Authority and WOTC Solutions, LLC – The Next Step, Inc. executed a Contract Addendum that extended the Purchase Contract (Contract 415-13-0923) from July 1, 2016, through June 30, 2017. (Defendant's Exhibit RRR.) Although the Contract Addendum was a renewal of the Purchase Contract and the vendor was listed as WOTC Solutions, LLC – The Next Step, Inc., White signed the Addendum on May 12, 2016, and listed the Contractor as TNSWS. (Defendant's Exhibit RRR.) Representatives from defendant signed the Addendum in May 2016. (Defendant's Exhibit RRR.) The magistrate notes that it appears the Purchase Contract expired approximately one year prior to the Addendum, which was a renewal of the Purchase Contract. Nevertheless, the magistrate finds that the parties continued to perform work under the Purchase Contract as if it were still in effect during that period. In addition, neither the Purchase Contract nor the Addendum specifically mentions any timeliness requirement, 28-day or otherwise, for the transfer of information.

{¶10} The parties had a course of dealings in which White's companies agreed to provide ODRC with access to a "felon friendly" employer database (which White's companies were creating), in exchange for receiving certain employer data from ODRC. White's companies also performed work to assist offenders upon their release from ODRC institutions. For example, White's companies developed a card which an offender could present to a potential employer upon the offender's release from prison.

(White testimony; Byorth Deposition, 23-24, 83, 84.)[4] White's companies did not charge ODRC for these cards.

{¶11} Once offenders were released, the ones who were under supervision were required to keep in contact with their parole officers. When parole officers would interact with their clients, parole officers would take notes about the releasees, and the notes would be kept in the Field Officer Tablet (FOT)[5]. The information in the FOT was electronic, but it was not kept in a searchable format. However, defendant was starting to develop a new, online system which would connect the Adult Parole Authority (APA) offices throughout the state, known as the Ohio Community Supervision System (OCSS).

Discussions of OCSS and Requests for Employer Information

{¶12} On January 5, 2015, Cliff Crooks, ODRC's project manager for the OCSS build and deployment, contacted White and provided information about the OCSS. (Plaintiff's Exhibit 30; Plaintiff's Exhibit 5.) The OCSS project included 29 partner agencies, including ODRC, county probation departments and municipal probation departments throughout the state of Ohio. (Plaintiff's Exhibit 5.) ODRC worked with StepMobile, a Mansfield, Ohio software developer building OCSS, to convert existing FOT data before implementing the OCSS. (Plaintiff's Exhibit 5.) Crooks asked White to provide him with a list of data values he would eventually like to receive from OCSS. (Plaintiff's Exhibit 30.)

{¶13} In November 2015, Stephanie Starr, an employee of defendant, told White that the roll out date for the OCSS was late 2016. (Plaintiff's Exhibit 32.) On November 17, 2015, Crooks told Starr to inform White that the application would not be in production with the APA until sometime next calendar year; that in order for ODRC data to be

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[4] One version of the card contained the following relevant information:

"QUICK WOTC FACTS:
Save up to $9,600 from your federal tax liability with each WOTC-qualified employee you hire. The value of your tax credit is based on your certified employee's gross wages and hours worked. You have **28** days from start date to file a certification application.
WHO IS WOTC ELIGIBLE?
*** Qualified Ex-Felons***
After you hire the job candidate presenting this card, contact WOTC Solutions and get started on saving $9,600 in as little as 5 minutes! *** (Plaintiff's Exhibit 37.)

[5] At trial, the FOT was referred to as the "Field Officer Tablet" as well as the "Field Officer Tool."

provided to White by ODRC or StepMobile, a data exchange Memorandum of Understanding (MOU) would have to be executed between the parties; that the MOU could not be completed until the APA was in OCSS production; and, that when the MOU was fully executed, StepMobile and the program staff could begin a technical conversation about the data exchange. (Plaintiff's Exhibit 33.)

{¶14} On December 23, 2015, White sent an email to representatives from ODRC to set up a meeting to discuss the status and future of the WOTC law and talk through his companies' program, including employer recruitment and relations. (Plaintiff's Exhibit 16.) On January 5, 2016, Crooks emailed White and stated the following:

> "I understand that you need an [sic] status update on the Offender Community Supervision System (OCSS) automation project:
>
> For purposes of background about the project, attached is a current version of a fact sheet we provide to ODRC Adult Parole Authority (APA) staff members.
>
> Principle application programming is completed.
>
> In as much as the rollout schedule is heavily dependent on each agency's success in converting their current case management data for inclusion in OCSS, *there is no hard rollout schedule*. As agencies complete their data conversion, they will be staged for production. Two county agencies in the multi-tenant OCSS partnership have converted their current data and are tentatively scheduled to be the first agencies to roll into OCSS production next month.
>
> I understand that you're interested in APA offender data. The APA has begun the conversion process. *However, because of the technical challenges in converting the data, the APA will be the last agency in the OCSS partnership to roll into production, probably in December 2016.*
>
> As a result of the above, the APA offender employment data that Next Step Inc. has an interest in receiving will not be available until all APA regions/units are in full OCSS production and ODRC and Next Step, Inc. have executed a data sharing MOU." (Emphasis added.) (Plaintiff's Exhibit 35.)

In the same email exchange, Crooks told Andy Wollen, plaintiff's IT manager: "You'll need a data sharing MOU with each partner agency that implements the OCSS application because each agency controls access to its own data." (Plaintiff's Exhibit 35.) On January 6, 2016, Wollen corresponded with Crooks about obtaining information from the FOT before the OCSS was fully implemented. (Plaintiff's Exhibit 34.) Wollen stated that he was interested in whatever information was available, even if it was sparse. (Plaintiff's Exhibit 34.) Crooks advised Wollen to wait until the OCSS was up and running throughout the APA. (Plaintiff's Exhibit 34.) Crooks stated that parole officers keep the most current employment data in the field notes section of the FOT, which consists of free text fields that are virtually unsearchable, and that obtaining that data before the OCSS came online could result in a lot of time and effort with a result of bad data. (Plaintiff's Exhibit 34.)

{¶15} In January 2016, White met with representatives from ODRC to discuss obtaining additional employer information. On March 14, 2016, White sent an email to representatives from ODRC, including Brian Byorth, Mike Davis, Stephanie Starr, and Cynthia Mausser where he specifically requested three different sources of information. First, the rosters filed in Columbus of employers attending job fairs, so that White could call those employers and discuss the WOTC and the database. Second, data from parole office kiosks, where ex-felons reported their employment information. Third, data from the FOT, where White stated the following: "We know there's a limited amount of employer data in the FOT, but it seems that doing a *one-time extract of that data for 2015 through today* could be a low-investment win." (Emphasis added.) (Plaintiff's Exhibit 19.) White continued, "we can really move the database forward if we can even just get these three fairly small steps completed." (Plaintiff's Exhibit 19.) On April 19, 2016, White emailed Mike Davis asking about movement in getting the data and mentioning that the lookback period clock was loudly ticking. (Plaintiff's Exhibit 22.)

{¶16} On April 21, 2016, Byorth sent Davis a draft of an email that he stated could be sent out to the field officers. (Plaintiff's Exhibit 24.1.) A similar email written by Byorth and sent to Mike Davis and Stephanie Starr and other ODRC employees, was forwarded by Todd Ishee on May 3, 2016, to multiple ODRC employees, but it contained the following language near the end of the message: "We would like for each facility to

forward a list of those employers (Company Name, Name of Contact and their Email) who have participated in 2015 and 2016 1st Quarter events. Please forward this information to the attention: Bryan Byorth, Reentry Administrator, Northeast Region by Monday, May 9th." (Plaintiff's Exhibit 24.3.) The magistrate finds that this exhibit is referencing the job fair information that Byorth testified about, and that White asked for in the March 14, 2016 email. Byorth provided some responses from some institutions to White. (Defendant's Exhibit NNN.)

{¶17} On May 16, 2016, Katrina Ransom sent an email to ODRC employees including Jennifer Boswell, Stephanie Starr, and Mike Davis, with language that was taken from Byorth's email, with slight changes. Ransom's email states, in relevant part:

> "The Department has agreed to assist Next/Step Solutions with identifying possible employers. This is where we would like the assistance from each of the facilities! Because each facility is required to hold Reentry/Job Fair throughout the year and have established contacts with many outside employers. We would like to share these companies and their contacts with Next/Step Solution. This would allow for these companies to have access to TNS services of providing assistance with the filing of the WOTC. This would also allow for Next/Step Solutions to strengthen their database of Ohio employers who are willing to hire those returning to their communities with history of a felony conviction. Next/Step Solution would send out an informational email to these employers. This email would provide these employers the option of waiving any further contact by TNS or the option of allowing for further conversation with TNS about their role in the Work Opportunity Tax Credit (WOTC).
>
> *We would like for each reentry coordinator to forward a list of those employers (Company Name, Name of Contact and their Email) who have hired our offenders in 2015 and 2016.* [P]lease forward this information to the attention: Stephanie Starr by Monday, May 23rd." (Emphasis added.) (Plaintiff's Exhibit 24.2.)

{¶18} The magistrate finds that this email is requesting information from the FOT that is referenced in White's March 14, 2016 email (Plaintiff's Exhibit 19), and that the

request is consistent with the lookback period of January 1, 2015 through 2016. On May 24, 2016, Mike Davis asked Stephanie Starr if she had received any information from the APA for Next Step Solutions, and she replied that she had received something from everyone but Columbus and had forwarded it to White for his review. (Plaintiff's Exhibit 24.6.)

{¶19} From about March 2016 to May 2016, ODRC forwarded some employer information collected by various ODRC institutions and APA regional staff for the period of 2015-2016 to TNSWS. (Plaintiff's Exhibit 24.2; Plaintiff's Exhibit 24.3; Plaintiff's Exhibit 24.6; Starr testimony; Defendant's Exhibit YY; Boswell Deposition, at 66, 71, 79-80, 97.) The forwarded information was of limited value to TNSWS (White testimony.) In fact, White stated that it was worthless. (Defendant's Exhibit NNNN.) Wollen stated on October 21, 2016, that ODRC provided about 2,000 employers from 50 unique parole officers, with about 1,400 phone numbers of employers. (Defendant's Exhibit OOOO.)

The MOU and its Meaning

{¶20} In 2016, The Ohio Department of Ohio Rehabilitation and Correction and The Next Step/Work Opportunity Tax Credit Solutions, LLC entered into an agreement labeled "Memorandum of Understanding (MOU) Data File Sharing and Confidentiality Agreement." (MOU) (Plaintiff's Exhibit 1; Defendant's Exhibit B.) TNSWS did not draft the MOU. Gary Mohr, who was the director of ODRC at the time of the MOU, signed the MOU; Stephen Young, who was an ODRC attorney at the time of the MOU, approved the MOU as to form and he signed the MOU on August 26, 2016. John L. White in his capacity as CEO of TNSWS, signed the MOU on September 27, 2016. As stated above, the lookback period for the WOTC expired on September 28, 2016, one day after White signed the MOU. The parties' MOU states "[u]pon approval by the Director of ODRC, this MOU shall be in effect from June 16, 2016, through June 30, 2017." (Plaintiff's Exhibit 1; Defendant's Exhibit B, Article IV.) The MOU was to be governed, construed, and enforced in accordance with Ohio law. Article XI. (Plaintiff's Exhibit 1, Defendant's Exhibit B.) The main dispute in this case involves the meaning of the following language, found in Article II, "Description of Records or Data to be Provided," which states the following:

"ODRC shall provide the following data to THE SERVICE PROVIDER:

The data will be manually extracted and transferred from Adult Parole Authority offender case files twice; after the initial transfer, an additional transfer will be made prior to the daily electronic transfer initiated by the implementation of OCSS.

a. Employer

b. Address (split into components if possible)

c. Telephone

When the Adult Parole Authority implements the Ohio Community Supervision System application for offender case management, the data will be electronically transferred to THE SERVICE PROVIDER on a daily basis via web-based SFTP." (Plaintiff's Exhibit 1; Defendant's Exhibit B.)

Notably, Article V – Cost of Data Preparation states: "The parties agree that no reimbursement will be sought under the terms of this MOU." (Plaintiff's Exhibit 1; Defendant's Exhibit B.)

{¶21} Because a dispute arose about the meaning of Article II, and the Court found in its Decision/Judgment Entry dated February 2, 2022, that an ambiguity exists as to the meaning of "twice" in Article II, the magistrate will focus on the testimony and evidence about how the language in Article II of the MOU was finalized.

Draft of MOU

{¶22} Before the MOU was finalized, at least one draft was circulated among ODRC legal staff. Defendant's Exhibit TTT is a true and accurate copy of an unexecuted early draft of the MOU, which was prepared by Ashley Parriman, one of ODRC's attorneys. (Agreed trial stipulations, 11.) Defendant's Exhibit TTT was prepared by Attorney Parriman prior to May 17, 2016. (Agreed trial stipulations, 12.) Article II of this draft states:

"ODRC shall provide the following data to THE SERVICE PROVIDER:

Data will be manually extracted and transferred, one time, from Adult Parole Authority offender case files.

a. Employer

b. Address (split into components if possible)

c. Telephone
d. Employment Type
e. Industry
f. Supervisor
g. Supervisor Phone
h. Supervisor Email
i. Hire Date
j. Employer Aware
k. Offender Name (split into first – last if possible)
l. Offender Inmate #
m. Agency Name" (Defendant's Exhibit TTT.)

The data list that appears in Article II of Defendant's Exhibit TTT, i.e., items A through M, was provided to ODRC by TNSWS, LLC. (Agreed trial stipulations, 13.) A copy of Defendant's Exhibit TTT was not sent to John White or any owner or employee of TNSWS. (Agreed trial stipulations, 14.) Attorney Parriman did not discuss or negotiate the terms of Exhibit TTT with John White or any owner or employee of TNSWS. (Agreed Trial Stipulations, 15). Defendant's Exhibit B is a true and accurate copy of another version of the MOU prepared by Attorney Parriman. (Agreed trial stipulations, 16.) Defendant's Exhibit B was modified by Attorney Parriman to reflect the terms contained therein after July 6, 2016. (Agreed Trial Stipulations, 17). Attorney Parriman did not send a copy of Defendant's Exhibit B to John White or any owners or employees of TNSWS. (Agreed Trial Stipulations, 18.) Attorney Parriman did not discuss or negotiate the terms of Defendant's Exhibit B with John White or any owner or employee of TNSWS. (Agreed Trial Stipulations, 19). Pursuant to Article I, the MOU was for "the sole purpose of providing THE SERVICE PROVIDER [TNSWS] with ODRC data that will be used to update and maintain the Felon Friendly employer's database." (Plaintiff's Exhibit 1; Defendant's Exhibit B.) The magistrate notes that Defendant's Exhibit B (which is also Plaintiff's Exhibit 1) is the final, executed version of the MOU at issue.

Relevant Witness Testimony

{¶23} Stephanie Starr testified that she was a program administrator for the APA and that she was the liaison between White's companies and her supervisor. During her

testimony, she discussed Defendant's Exhibit SS, an email from Andy Wollen, dated January 20, 2016, to Starr, Byorth, Mike Davis, Jessica Dennis and White, requesting a one-time extract of data from the FOT. In the attachment to this email, Wollen explains the information sought and why it was important. (Defendant's Exhibit SS.) Specifically, it states:

{¶24} "TNS/WS is requesting a one-time extract of Employer-related data from the Field Officer Tool (FOT) system.

{¶25} Why are we requesting the data?

{¶26} Because of the way Congress has managed the WOTC law, all employers who hired a felon in 2015 are still eligible to receive the WOTC credit, even if they did not file paperwork within the standard 28-day window. We have an opportunity to add those 2015 employers to the Felon Friendly employers database, and to help those employers get the $2,400 per hire they are due.

{¶27} What will we do with the data?

{¶28} We call each employer to educate them about the WOTC credit they have earned. In the course of the conversation, we also educate them about the database, make very clear that it is not a published list but a highly-filtered set of results, and help them understand the benefits of hiring felons. If an employer requests not to be included in the database, we immediately mark them as not to be used for leads.

{¶29} How does this benefit ODRC and its Officers?

{¶30} We consistently hear that one of the toughest challenges for Officers is helping offenders find employment. Our efforts (and this data) help address this challenge by 1) building an ever-growing database of felon-friendly employers from which we provide matched leads, and 2) acquainting Ohio employers with the benefits of the WOTC so they are willing and eager to hire ex-felons as employees.

{¶31} What data do we need?

{¶32} We don't know exactly what is available in the FOT, but here is a sample list of fields:

Must-Have	Nice to Have	
Employer Name	Telephone	Hire Date

Address (split into components if possible)	Employment Type	Offender Name (split into first – last if possible)
	Industry	
	Supervisor	
	Supervisor phone & email	

We suggest that IT simply does a one-time export of these fields into Excel. If desired, that Excel file can be circulated among Officers to give them an opportunity to strike any private employers before sharing with us." (Defendant's Exhibit SS.) The magistrate notes that the list of data sought by Wollen in Defendant's Exhibit SS closely resembles the list of data points found in the unexecuted, early draft of the MOU in Defendant's Exhibit TTT.

{¶33} On May 13, 2016, Ashley Parriman emailed Katrina Ransom. (Plaintiff's Exhibit 27.) The subject line of the email is "WOTC/ employer data." (Plaintiff's Exhibit 27.) Parriman states:

> "We are not allowing an FOT extraction: *all historical employer data* (employer names and addresses only) will be collected by us and manually transferred/emailed to Next Step.
>
> When we move to OCSS, we will allow nightly extraction of employer data – again, employer names and addresses only.
>
> There will likely be a gap period between our transfer of historical data to Next Step and the OCSS nightly extractions. How do we plan to handle this? Through another manual transfer of data?" (Emphasis added.) (Plaintiff's Exhibit 27.)

{¶34} Stephen Young testified that the technical aspects of the MOU were drafted by others. (Young deposition, p. 15.) Young explained that the MOU is an IT form drafted by the Department of Administrative Services (DAS) that DAS encourages state agencies to use when sharing data. (Id., p. 56.) Young stated that Contract 415-13-0923 was the purchase contract between ODRC and White's companies, which was based upon the Request for Proposal (RFP) that ODRC had issued years before the MOU. (Id., p. 34.) Young stated that Contract 415-13-0923 was a no cost purchase contract; that ODRC

was not paying for any services; and that the benefit to the agency was White getting released felons employed. (Id., p. 34-46.)

{¶35} Andy Wollen testified via deposition that that the MOU showed up "out of the blue;" that he did not recall having conversations with John White or ODRC employees about the specific terms of the MOU; and that nobody had conversations about when the manual extractions would be performed. (Wollen deposition, p. 112-113).

{¶36} Bryan Byorth testified that he worked as a re-entry administrator and that he knew about the WOTC before he met White. Byorth's role related to things inside an institution as opposed to any sort of post-release data collection. (Byorth deposition, p. 8-16.) Byorth worked with White to educate inmates about the program prior to release. (Id., p. 23.) Byorth understood that White needed timely employer data to be able to help employers obtain the WOTC. (Id., p. 39.) According to Byorth, no one contacted him about the information listed in Article II of the MOU. Rather, Byorth requested final quarter of 2015 and first quarter of 2016 job fair attendee lists. (Id., p. 74.) The information that Byorth requested was not the same information as set forth in Article II of the MOU. Byorth did not have involvement in any discussions about manual extractions as set forth in the MOU. (Id., p. 76.)

{¶37} In March through May 2016, Jennifer Boswell, a parole officer, worked on a project to gather employment information from parole officers in the Akron region who had completed a spreadsheet that was generated from Stephanie Starr in Central Office. The information she gathered was employer data from companies where supervised ex-felons had obtained employment. Boswell stated that she kept track of which parole officers had responded, but that some did not respond to the request, and the detail of the information varied depending on who the parole officer was. Boswell collected information from parole officers and then forwarded the information she obtained to White. However, Boswell did not confirm that every piece of employer data within her region's FOT case files was extracted and sent to White. (Boswell Depo., p. 99.) Boswell also did not, after receiving an initial data set, go back to ask for updated information. (Id.)

{¶38} Katrina Ransom testified that she became the superintendent of the Adult Parole Authority in March 2016. Ransom had very little involvement with the terms of the MOU, and she did not discuss the terms of the MOU with White. Ransom stated that she

was aware of a change in the WOTC law and that her employees were sending White information both to build the felon-friendly database and because of a change in the law. Ransom stated that no one knew when the OCSS would be implemented. Ransom stated that the nature of the relationship with ODRC and White's companies was that ODRC would share data with White's companies.

{¶39} Cliff Crooks testified that any time an outside agency wants data from ODRC, an MOU must be completed regarding the terms. Crooks stated that he was not aware of the MOU at issue until he was prepped for this litigation. Crooks' expectation was that an MOU would not be in place until the OCSS was in full production, which did not occur until 2021.

{¶40} Stephanie Starr forwarded employer data to White's companies. Starr testified that the May 2016 request was not related to Article II of the MOU. However, Starr also testified that the "manual extraction" was what she did in May 2016 when she asked APA and institutions to send employer information that they had and were willing to forward. Starr did not recall performing a second ask after the May 2016 ask. Starr stated that everyone except the Columbus region provided information to her as a result of the ask in May 2016, and that she forwarded that information to White. Starr did not know when the OCSS would be in full production. Every time she asked, it kept getting delayed.

{¶41} As stated previously, White signed the MOU on September 27, 2016. Plaintiff's Exhibit 28.3 is an email chain in October 2016 involving a question from White to Starr. In the email, Starr asks Ransom, Davis, and Byorth the following:

{¶42} "Got a call from John White and he was asking about Article II of the MOU where it talks about a manual extraction of offenders and he wanted to know when that would happen. Any thoughts?" (Plaintiff's Exhibit 28.3.) Ransom responds: "I'm pretty sure that is what we agreed to do earlier this year to assist before the deadline of the new law." (Plaintiff's Exhibit 28.3.) Starr then asks: "Do you know how this 'manual extraction' was going to happen? John is very adamant that we are trying to not hold up to our end of the MOU but I am not sure what the agreement was." (Plaintiff's Exhibit 28.3.) Ransom responds: "It was what we did in May giving him the information manually since the deadline for the new law was approaching. The institutions and APA regions sent

employment information." (Plaintiff's Exhibit 28.3.) Mike Davis then adds: "That's right. He is just night [sic] satisfied with the results." (Plaintiff's Exhibit 28.3.) Starr later informed White that "the 'manual extraction' is what we did back in May when we asked the APA and institutions to send employment information that they had and were willing to send forward." (Plaintiff's Exhibit 28.4.)

{¶43} The MOU was in effect through June 30, 2017. (Plaintiff's Exhibit 1; Defendant's Exhibit B.) The parties did not execute another MOU. APA did not connect to the OCSS until 2021. ODRC released 15,094 felons into supervision in 2015; 15,761 felons into supervision in 2016; and 16,943 felons into supervision in 2017. (Agreed trial stipulations, 8-10.) Defendant admits that it did not "manually extract and transfer data from Adult Parole Authority offender case files twice" during the term of the MOU. (Plaintiff's Exhibit 6, Interrogatory 11.) However, defendant asserts that the data collection that was performed by its employees in 2015 and 2016 suffices for the "manual extraction" language in the MOU. (Plaintiff's Exhibit 6, Interrogatory 11.)

Conclusions of Law

{¶44} TNSWS is required to establish its civil claims by a preponderance of the evidence. *See Merrick v. Ditzler*, 91 Ohio St. 256, 260, 110 N.E. 493 (1915) ("[i]n the ordinary civil case the degree of proof, or the quality of persuasion as some text-writers characterize it, is a mere preponderance of the evidence"); *Weishaar v. Strimbu*, 76 Ohio App.3d 276, 282, 601 N.E.2d 587 (8th Dist.1991). A preponderance of the evidence "is defined as that measure of proof that convinces the judge or jury that the existence of the fact sought to be proved is more likely than its nonexistence." *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, ¶ 54.

{¶45} On the trial of a civil case, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The magistrate is the trier-of-facts in this case. The magistrate therefore is free to give weight to the evidence, and the magistrate is free to believe all, part, or none of the testimony of the witnesses in this case. *See State v. Green*, 10th Dist. Franklin No. 03AP-813, 2004-Ohio-3697, ¶ 24.

TNSWS's Declaratory-Judgment Claim

{¶46} TNSWS's declaratory-judgment claim essentially is subsumed into its breach-of-contract claim. The analysis concerning TNSWS's breach-of-contract claim governs TNSWS's declaratory-judgment claim in this instance. See *Ambulatory Care Affiliates, Ltd. v. OhioHealth Corp.*, 10th Dist. Franklin No. 10AP-30, 2010-Ohio-3035, ¶ 10 (actions for declaratory judgment are special proceedings but when a declaratory judgment claim is asserted within the context of an ordinary civil action for breach of contract, the underlying action governs an appellate court's analysis); *see also* R.C. 2743.03(A)(2) (generally providing that, if a claimant also files a claim for declaratory judgment, injunctive relief, or equitable relief that arises out of the same circumstances that gave rise to the claimant's civil action against the state, this court has exclusive, original jurisdiction to hear and determine that claim).

TNSWS' Breach of Contract Claim

{¶47} The existence of a contract presents a question of law. *Motorists Mut. Ins. Co. v. Columbus Fin., Inc.*, 168 Ohio App.3d 691, 2006-Ohio-5090, 861 N.E.2d 605, ¶ 7 (10th Dist.). To declare the existence of a contract, "both parties to the contract must consent to its terms; there must be a meeting of the minds of both parties; and the contract must be definite and certain." (Citations omitted.) *Episcopal Retirement Homes v. Ohio Dept. of Indus. Relations*, 61 Ohio St.3d 366, 369, 575 N.E.2d 134 (1991). *Black's Law Dictionary* 1178 (11th Ed.2019) defines "meeting of the minds" as "[a]ctual assent by both parties to the formation of a contract, meaning that they agree on the same terms, conditions, and subject matter." *Black's Law Dictionary* notes: "Although a meeting of the minds was required under the traditional subjective theory of assent, modern contract doctrine requires only objective manifestations of assent." *Black's Law Dictionary* 1178 (11th Ed.2019).

{¶48} The Tenth District Court of Appeals has stated, "Parties manifest their mutual assent either by making a promise or by beginning or rendering performance." *Gates v. Praul*, 10th Dist. Franklin No. 10AP-784, 2011-Ohio-6230, ¶ 18, citing *Ford v. Tandy Transp.*, 86 Ohio App.3d 364, 380, 620 N.E.2d 996 (4th Dist.1993). The evidence shows that the parties objectively and mutually assented to the subject matter and terms of the

MOU, as the MOU was signed by Gary Mohr, former director of ODRC, the MOU was signed by Stephen Young, an ODRC attorney who approved the MOU as to form, and the MOU was signed by John L. White, in his capacity as CEO of TNSWS. (Plaintiff's Exhibit 1; Defendant's Exhibit B.) The MOU itself reflects essential terms, with requisite definiteness and certainty, as the MOU identifies the parties to be bound, and the subject matter of the agreement. *See Alligood v. Procter & Gamble Co.*, 72 Ohio App.3d 309, 311, 594 N.E.2d 668 (1st Dist.1991) ("[a] valid contract must * * * be specific as to its essential terms, such as the identity of the parties to be bound, the subject matter of the contract, consideration, a quantity term, and a price term"). The magistrate concludes that, through the MOU, the parties entered into an enforceable contract.

{¶49} The express terms of the parties' MOU show that the parties' contract was effective from June 16, 2016, through June 30, 2017, and the MOU was to be governed, construed, and enforced in accordance with Ohio law. Article IV(A); Article XI. (Plaintiff's Exhibit 1, Defendant's Exhibit B.) Defendant concedes in its post-trial brief that it did not perform the two manual extractions as set forth in the MOU during the term of the MOU.

{¶50} The construction and interpretation of contracts constitute matters of law. *Boggs v. Columbus Steel Castings Co.*, 10th Dist. Franklin No. 04AP-1239, 2005-Ohio-4783, ¶ 5, citing *Latina v. Woodpath Development Co*, 57 Ohio St.3d 212, 214, 567 N.E.2d 262 (1991). The Sixth District Court of Appeals has remarked, "Intention of the parties to a contract is always a polestar in determining the rights, liabilities and remedies of the parties to a contract." *Computer Sciences Corp. v. Owens-Illinois Corp*., 6th Dist. Lucas C.A. No. 7778, 1975 Ohio App. LEXIS 7149, at *5 (Apr. 18, 1975). The Tenth District Court of Appeals has instructed, "Courts construe contracts to give effect to the intent of the parties and such intent is presumed to be in the language used in the contract. *Boggs* at ¶ 6, citing *Reida v. Thermal Seal, Inc.*, Franklin App. No. 02AP-308, 2002-Ohio-6968.

{¶51} If an ambiguity exists, a court is permitted to consider extrinsic evidence to determine the parties' intent. *Cadle v. D'Amico*, 2016-Ohio-4747, 66 N.E.3d 1184, ¶ 24 (7th Dist.), citing *Wells Fargo Bank, N.A. v. TIC Acropolis*, L.L.C., 2d Dist. No. 2015-CA-32, 2016-Ohio-142, ¶ 47. But, if the parties' intent cannot be determined from consideration of extrinsic evidence, then the contract must be construed against the

drafter. *Cadle* at ¶ 24, citing *Cocca Dev. Ltd. v. Mahoning Cty. Bd. of Commrs.*, 7th Dist. No. 12 MA 155, 2013-Ohio-4133, ¶ 10; *Michael A. Gerard, Inc. v. Haffke*, 8th Dist. No. 98488, 2013-Ohio-168, ¶ 14. A contract "'does not become ambiguous by reason of the fact that in its operation it will work a hardship upon one of the parties thereto.'" *Foster Wheeler Enviresponse*, 78 Ohio St.3d 353, 362, 678 N.E.2d 519 (1997), quoting *Ohio Crane Co. v. Hicks*, 110 Ohio St. 168, 172, 143 N.E. 388, 389 (1924). And it is not the responsibility or function of a court to rewrite parties' contracts to provide for a more equitable result. *See Foster Wheeler Enviresponse v. Franklin Cty. Convention Facilities Auth.*, 78 Ohio St.3d at 362.

{¶52} Under Ohio law, to establish a claim for breach of contract, a plaintiff "must prove: (1) the existence of a contract, (2) performance by the plaintiff, (3) breach by the defendant, and (4) damages or loss resulting from the breach." *Claris, Ltd. v. Hotel Dev. Servs., LLC*, 2018-Ohio-2602, 104 N.E.3d 1076, ¶ 28 (10th Dist.), citing *Lucarell v. Nationwide Mut. Ins. Co.*, 152 Ohio St.3d 453, 2018-Ohio-15, ¶ 41, 97 N.E.3d 458; *Jarupan v. Hanna*, 173 Ohio App.3d 284, 2007-Ohio-5081, ¶ 18, 878 N.E.2d 66 (10th Dist.). *See Natl. City Bank v. Erskine & Sons, Inc.*, 158 Ohio St. 450, 110 N.E.2d 598 (1953), paragraph one of the syllabus (holding that the "word, 'breach,' as applied to contracts is defined as a failure without legal excuse to perform any promise which forms a whole or part of a contract, including the refusal of a party to recognize the existence of the contract or the doing of something inconsistent with its existence").

The Tenth District Court of Appeals has stated:

> In order to prove a "breach by the defendant," a plaintiff must show only that the defendant "did not perform one or more of the terms of a contract." *Little Eagle Prop. v. Ryan*, Franklin App. No. 03AP-923, 2004 Ohio 3830, at ¶15. Accordingly, to prove a simple breach, a plaintiff is *not* required to prove that the defendant failed to perform a "material" term of a contract.

Nious v. Griffin Constr., Inc., 10th Dist. Franklin No. 03AP-980, 2004-Ohio-4103, ¶ 15.[6]

[6] In *Nious v. Griffin Constr., Inc.*, 10th Dist. Franklin No. 03AP-980, 2004-Ohio-4103, ¶ 16, the Tenth District Court of Appeals also stated:

> Indeed, the concept of "material" breach is only relevant when a plaintiff stops performing because of a defendant's breach. If a defendant fails to perform an essential or "material" element of a contract, not only can it be liable for damages, but it also excuses

{¶53} The MOU plainly and unambiguously provides that: "This MOU is for the sole purpose of providing THE SERVICE PROVIDER with ODRC data that will be used to update and maintain the Felon Friendly employer's database." (Plaintiff's Exhibit 1; Defendant's Exhibit B.) The MOU also states:

> "ODRC shall provide the following data to THE SERVICE PROVIDER: The data will be manually extracted and transferred from Adult Parole Authority offender case files twice; after the initial transfer, an additional transfer will be made prior to the daily electronic transfer initiated by the implementation of OCSS.
>
> a. Employer
>
> b. Address (split into components if possible)
>
> c. Telephone
>
> When the Adult Parole Authority implements the Ohio Community Supervision System application for offender case management, the data will be electronically transferred to THE SERVICE PROVIDER on a daily basis via web-based SFTP." (Plaintiff's Exhibit 1; Defendant's Exhibit B.)

{¶54} The Court found in its Decision/Judgment Entry that the meaning of "twice" as used in the MOU was ambiguous. (See, Decision, p. 10.) Therefore, after reviewing the evidence submitted at trial, the magistrate makes the following findings regarding the meaning of language in Article II of the MOU.

Meaning of "Initial Transfer"

{¶55} The magistrate finds that the words "initial transfer" contemplated a transfer of employer data from all Adult Parole Authority offender case files, not just some. The

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the plaintiff from any further performance. See *Bd. of Commrs. of Clermont Cty. v. Village of Batavia* (Feb. 26, 2001), Clermont App. No. CA2000-06-039, 2001-Ohio-4210; *Software Clearing House, Inc. v. Intrak, Inc.* (1990), 66 Ohio App.3d 163, 170-171, 583 N.E.2d 1056. In other words, only a "material" breach entitles a plaintiff to stop performing, which, in essence, terminates the contract. *Kersh v. Montgomery Dev. Ctr.* (1987), 35 Ohio App.3d 61, 62-63, 519 N.E.2d 665. See, also, *Shanker v. Columbus Warehouse Ltd. Partnership* (June 6, 2000), Franklin App. No. 99AP-772, 2000 Ohio App. LEXIS 2391 ("Even if plaintiffs * * * breached the agreement, defendant's non-performance is not excused unless plaintiff's breach was material"); *Sun Design Sys., Inc. v. Tirey* (Apr. 19, 1996), Miami App. No. 95-CA-46, 1996 Ohio App. LEXIS 1524 ("It is well-established that a 'material breach of contract by one party generally discharges the non-breaching party from performance of the contract'").

magistrate finds that although TNSWS was provided information from some APA offender case files in the spring of 2016, before the effective dates of the MOU, from parole officers who were willing to provide that information, no manual extraction of offender employer information from Adult Parole Authority offender case files (the FOT) was ever attempted from all APA offender case files throughout the state. The plain language of Article II of the MOU shows that defendant agreed that employer, address, and employer telephone from APA offender case files would be manually extracted and transferred to TNSWS. The language in Article II does not limit the employer data to be extracted from APA offender case files by only those parole officers who were willing to provide it. The magistrate finds that even if the parole officers were reluctant to obtain or share the data, the language in Article II states that defendant would obtain that data and transfer it to plaintiff manually, so that plaintiff could update and maintain the Felon Friendly employer's database. The magistrate finds that defendant's failure to manually extract and transfer data from offender case files of the Adult Parole Authority, as it promised to do, violated a term in the MOU that is essential to the purpose of the parties' MOU, which, as stated in Article I of the MOU, was for "the sole purpose of providing THE SERVICE PROVIDER [TNSWS] with ODRC data that will be used to update and maintain the Felon Friendly employer's database." (Plaintiff's Exhibit 1; Defendant's Exhibit B.)

{¶56} The magistrate further finds that defendant was required to perform the initial manual extraction and transfer of data during the term of the MOU. The exhibits in evidence, including the first draft of the MOU (Defendant's Exhibit TTT), the email from Parriman (Plaintiff's Exhibit 27), and the email from Wollen (Defendant's Exhibit SS), show that the parties contemplated a "one-time extract" from the FOT, which did not occur during the term of the MOU. The greater weight of the evidence shows that the voluntary delivery of job fair lists and employer information from 2015 and 2016 that was performed in the spring of 2016 was separate and distinct from any manual extraction and transfer of data as set forth in the language in Article II of the MOU. The magistrate further finds that defendant's argument that the spring 2016 requests were partial performance of the MOU is not persuasive. Although Wollen testified that he received information from about approximately 2,000 employers, the numbers of inmates who are released from defendant's custody annually shows that 2,000 employers is a small fraction of the likely

number of employers who had hired a WOTC-eligible offender. As noted earlier, ODRC released 15,094 felons into supervision in 2015; 15,761 felons into supervision in 2016; and 16,943 felons into supervision in 2017. (Agreed trial stipulations, 8-10.)

{¶57} Based on the evidence, the magistrate finds that plaintiff was prepared to update and maintain its database of Ohio "felon friendly" employers using data from defendant, and that defendant's breach of failing to provide an initial manual extraction of data from the APA offender case files frustrated defendant's efforts. Therefore, the magistrate finds that plaintiff has proven, by a preponderance of the evidence, that defendant breached the MOU and that plaintiff is entitled to a hearing on the issue of damages.

Meaning of "Additional Transfer"

{¶58} The magistrate further finds that the reference to an additional transfer being made prior to the daily electronic transfer initiated by the OCSS means that defendant intended to perform a second manual extraction and transfer of data shortly before the OCSS was operational. The magistrate finds that the parties agreed that there would be no need for a manual transfer of data once the OCSS was operational, because the OCSS would automatically transfer data on a daily basis, as stated in Article II. The magistrate finds that Parriman's email (Plaintiff's Exhibit 27) shows that defendant agreed to an initial, one-time extraction from all APA files, then, shortly before the OCSS provided daily transfers, an additional transfer would occur so that the information could be updated. However, the evidence shows that because the OCSS was not fully implemented during the term of the MOU, defendant never performed a second manual extraction and transfer. The magistrate finds that the failure to perform a second manual extraction and transfer was tied to the condition that the OCSS become fully implemented. The magistrate finds that the language in the executed MOU used the word "twice" to show that the parties contemplated an initial extraction during the term of the MOU, and a second extraction shortly before the OCSS was fully implemented. The magistrate finds that the parties intended on a daily electronic transfer of information once the OCSS was fully implemented, but the evidence also shows that ODRC was not in control of and could not be certain of the implementation date. The magistrate further finds that plaintiff's

argument that the language in the MOU promised or guaranteed that the APA would fully implement the OCSS application for offender case management by June 30, 2017 is not supported by the language of the MOU or the evidence presented at trial. The preponderance of the evidence shows that no one had a date certain when the OCSS would be in full production and that the target date of completion kept getting pushed back throughout the years. The magistrate further finds that it is not a reasonable interpretation of the MOU to require or guarantee full OCSS production by June 30, 2017. The magistrate finds that the evidence in the record shows that White himself was aware that no date certain of the OCSS being in full production mode had been established or promised to him, based upon his own remarks during the relationship between the parties. (See, Defendant's Exhibit UU: "We understand that the delays in bringing the OCSS on-line are apparently out of anyone's control;" Defendant's Exhibit AAAA: "OCSS which appears to be very slow in its roll out.") Despite plaintiff's arguments at trial and in its post-trial briefing, the plain language of the MOU does not guarantee a date certain that the OCSS would be fully implemented. Indeed, the language in the MOU contemplates a future condition when the OCSS would be fully implemented, but the language does not state when that date would occur. Therefore, the magistrate finds that although the parties were hoping that the OCSS would be implemented during the term of the MOU, the MOU did not require or promise that the OCSS would be implemented during the term of the MOU, and that plaintiff's contention that the MOU required ODRC to fully implement the OCSS either in December 2016 or by June 30, 2017 is not supported by the evidence. Therefore, the magistrate finds that plaintiff has failed to prove, by a preponderance of the evidence, that defendant's failure to perform a second manual extraction during the term of the MOU was a breach of the MOU.

Timeliness of Data Extractions

{¶59} The magistrate further finds that ODRC was aware that TNSWS wanted to obtain the data referred to in the MOU before a certain WOTC lookback expired. However, the language in the MOU does not mention a certain WOTC lookback period, and, in fact, White signed the MOU one day before the lookback period expired. The magistrate finds that White knew on the date that he signed the MOU that his hopes to

capitalize on the lookback period were dashed. Thus, although defendant breached the MOU by failing to perform an initial manual extraction and transfer of data, the magistrate finds that plaintiff has failed to prove that the MOU required a transfer of data prior to the expiration of the lookback period. Despite White's hopes that defendant would provide information to him that he could use to obtain compensation during the lookback period, the language of the MOU does not refer to the lookback period or place any time limitation on providing the initial transfer of employer information, other than the end date of the MOU itself. The magistrate also finds that White's desire for information and his timelines were important to him to try and obtain a WOTC, but timeliness was not important to ODRC because the database could be and was built on information regardless of whether that information was transferred prior to the expiration of the lookback period. The magistrate finds that plaintiff's assertions that the MOU required that the first manual extraction occur prior to the expiration of the lookback period, and that the second manual extraction had to occur either prior to December 2016 or by June 30, 2017 is not supported by the language of the MOU or by the evidence.

Damages

{¶60} Although the issues of liability and damages were bifurcated before trial, the magistrate finds that defendant's breach of the MOU caused plaintiff to sustain damages. Plaintiff provided evidence at trial that it paid at least $5,000 to StepMobile for access to the OCSS. The magistrate further finds that plaintiff has proven that it successfully obtained Work Opportunity Tax Credits from Ohio employers during the time that the MOU was in effect, even without data from defendant. (See, Exhibit 54, Bates No. P005376, 5380, 5381, 5384, 5386.) The magistrate finds that it is more likely than not that had defendant provided the data it was required to under Article II of the MOU, plaintiff would have obtained some number of additional WOTC credits from that information.

{¶61} Finally, the magistrate notes that the Purchase Contract, as extended by the Addendum, was a zero-dollar contract, and the MOU states that "the parties agree that no reimbursement will be sought under the terms of the MOU." (Defendant's Exhibit B.) The evidence shows that White and his companies provided WOTC cards to ODRC, the APA, and released felons, whether they were under supervision or not, at White's

companies own expense, and the exhibits show that White never intended to recoup the costs of the WOTC cards from defendant, and defendant never agreed to pay for those cards, because White's business model relied on payment from a portion of the WOTC from employers. During the trial on the issue of damages, the parties may present further evidence on these matters, along with additional evidence on the issue of damages.

Alternative Claims of Unjust Enrichment and Promissory Estoppel Are Moot

{¶62} Unjust enrichment of a person "occurs when he has and retains money or benefits which in justice and equity belong to another." *Hummel v. Hummel*, 133 Ohio St. 520, 528, 14 N.E.2d 923 (1938).

{¶63} The Tenth District Court of Appeals has stated, "The doctrine of unjust enrichment provides an equitable remedy, under which the court implies a promise to pay a reasonable amount for services rendered where a party has conferred a benefit on another without receiving just compensation for his or her services. Thus, under the theory of quantum meruit, a party may recover compensation in the absence of a contract where an unjust enrichment would result if the recipient were permitted to retain the benefit without paying for it." *Banks v. Nationwide Mut. Fire Ins. Co*., 10th Dist. Franklin No. 99AP-1413, 2000 Ohio App. LEXIS 5504, at *13-14 (Nov. 28, 2000), citing *Paugh & Farmer, Inc. v. Menorah Home for Jewish Aged*, 15 Ohio St. 3d 44, 472N.E.2d 7 04 (1984); *Fox & Associates Co. v. Purdon*, 44 Ohio St. 3d 69, 541 N.E.2d 448 (1989).

{¶64} The Tenth District Court of Appeals has further stated, "Generally, where damages are available for breach of contract or in tort, the party cannot also invoke the equitable remedy for unjust enrichment." *Banks*, *supra*, at *14 (Nov. 28, 2000). The Tenth District Court of Appeals also has stated that "if no remedy is available in contract or tort, then the equitable remedy in unjust enrichment may be afforded to prevent injustice." *Banks*, *supra*, at *14. Since, in this instance, damages are available as a legal remedy for ODRC's breach of contract, TNSWS may not invoke the equitable remedy of unjust enrichment. *See Banks*, *supra*, at *14; *see also Van Buskirk v. Dunlap*, 2 Ohio Dec.Rep. 233, 129 (C.P.1859) ("[d]amages for breach of contract is a legal right, and has a legal remedy * * *"). TNSWS's claim of unjust enrichment therefore is moot. *See State v. Carr*, 5th Dist. Stark No. 2014CA00200, 2015-Ohio-1987, ¶ 11 ("Black's Law Dictionary (8

Ed.Rev.2004) 1029 defines 'moot' as, among other things, '[h]aving no practical significance; hypothetical or academic'"). Since TNSWS is entitled to a legal remedy for ODRC's breach of contract, TNSWS's equitable claim based on promissory estoppel also is moot. *See Hortman v. City of Miamisburg*, 110 Ohio St.3d 194, 2006-Ohio-4251, 852 N.E.2d 716, ¶ 24 (promissory estoppel is equitable in origin and arose to provide a remedy through the enforcement of a gratuitous promise).

Conclusion

{¶65} The magistrate finds that TNSWS's declaratory-judgment claim is subsumed into TNSWS's breach-of-contract claim, that TNSWS has proven its breach-of-contract claim against ODRC regarding an initial manual extraction and transfer of data by a preponderance of the evidence, that TNSWS's alternative claim of unjust enrichment is moot, and that TNSWS's alternative claim of promissory estoppel is moot. The magistrate recommends judgment in favor of TNSWS on TNSWS's breach-of-contract claim against ODRC.

{¶66} *A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).*

HOLLY TRUE SHAVER
Magistrate

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Sent to S.C. Reporter 3/16/23