MPT-1 — Sample Answer 1

MEMORANDUM

TO: Hannah Timaku

FROM: Examinee

DATE: July 30, 2024

RE: Laurel Girard Matter

We represent Laurel Girard in a landlord-tenant dispute. Girard rents an apartment at Hamilton Place apartment complex, where she has lived since January 2023. On July 29, 2024, she received a "Three-Day Notice to Cure or Quite" (Notice) from her landlord, Hamilton Place LLC (Hamilton) alleging that (1) Girard failed to pay a portion of her rent in violation of Paragraph 2 of her lease agreement, and (2) violated the no-pet clause in Paragraph 15 of her lease. The Notice gives Girard three days to either "cure" the violations or "quit" (vacate) the premises.

Furthermore, Hamilton is threatening to file and eviction action against Girard seeking a court order terminating the lease if she remains in the apartment and doesn't cure the violations within three days. I have prepared an objective memorandum analyzing whether the alleged violations in the Notice are valid bases for termination and what steps we should advice the client to take.

1. FAILURE TO PAY RENT

Girard has lived at Hamilton place since January, 2023. Girard's initial monthly rent at Hamilton was $1,500. On June 1, 2024, Hamilton notified Girard that her rent would be increasing 10% (to $1,650) effective July 1, 2024. Alarmed by this increase, Girard paid her initial rent of $1,500 for the month of July 2024, and did not pay the additional $150. in rent owed or the $50 late fee.

Girard's Rental Lease Agreement states the initial rent amount of her two year lease term of $1500 in clause (2) and in clause (3) states that "Tenant agrees that Landlord may raise rent no sooner than 12 months after the commencement of this lease." Furthermore, in clause (10) the lease specifies a late charge of $50 to be incurred if rent is not paid when due. If rent is not paid when due and Landlord issues a "Notice to Cure or Quit", Tenant must tender payment of any amounts owed by cashier's check or money order only.

The Lease also includes a default provision in clause (20) stating that Tenant's performance of and compliance with each of the terms of the Lease constitute a condition on Tenant's right to occupy the Premises. It further states that if Tenant fails to comply with any provision of the lease within the time period after delivery of written notice by Landlord specifying noncompliance and indicating Landlord's intention to termite this lease by reason thereof, Landlord may terminate the lease. Here, the time period is three days.

The lease here is subject to the Franklin Civil Code and Franklin Tenant Protection Act because it is in Franklin's jurisdiction. Franklin Tenant Protection Act of Franklin Civil Code § 500(a) states that "after a tenant has continuously and lawfully occupied a residential rental property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate." A "Tenant" is further defined as a person lawfully occupying residential real property for 30 days or more." FR. CIV. CODE § 500(b)(3). Here, Girard is both a Tenant, as she has lived in the property for more than 12 months, and is also therefore subject to the "just cause" provision above. "Just cause" to terminate tenancy includes a material breach of a term of the lease. FR. CIV. CODE § 500(a)(1). Courts have consistently concluded that "a lease may be terminated only for material breach, not a mere technical or trivial violation. Kilburn v. Mackenzie (Fr. Sup. Ct. 2003). To constitute a "material breach", the breach "must 'go to the root' or 'essence' of the agreement between the parties" such that it "defeats the essential purpose of the contract or makes it impossible for the other party to perform under the contract. (Kilburn, quoting Walker's Treatise on Contracts § 63 (4th ed.1998).

In Westfield Apartments LLC v. Delgado (Franklin Court of Appeal (2021)), Delgado and Westfield entered into a residential lease agreement containing a forfeiture clause stating that "any failure of compliance of performance by Renter shall allow Owner to forfeit this agreement and terminate Renter's right to possession." The lease also contained an insurance clause stating that Delgado "shall obtain and pay for any insurance coverage necessary to protect Renter" " for any personal injury or property damage" (Insurance Clause). Delgado refused to obtain renter's insurance or move out and Westfield commenced an eviction against Delgado. In that case, the court determined that not every default by a tenant justifies the landlord's termination of the tenancy, especially where the breach involves a nonmonetary covenant or a provision for the tenant's benefit. There, the court determined breach of Insurance Clause was trivial because it was not related to the payment of rent, Westfield had the ability to detect and cure the breach far in advance of bringing the suit and chose not to, it benefited Delgado by protecting her against loss.

Here, on the one hand, the case is related to the payment of rent. However, on the other hand, not every payment related to rent constitutes a material breach worthy of termination. In Vista Homes v. Darwish (Fr. Ct. App. 2005): the landlord brought an eviction action against a tenant who failed to pay $10 out of a total $1000 rent owed. While the court recognized that the

payment of rent in accordance with the terms is an essential obligations of a tenant, and the failure to properly discharge this obligation is a legal cause for dissolving the lease, but because the rent shortfall was de minimis (only 1% of rent owed) the court concluded the breach was not material.

Here, the breach of $150 out of the possible $1,650 is more than de minimis, as it constitutes a 10% increase, as opposed to the 1% increase in Darwish.

Furthermore, FR. CIV. CODE § 505(a) states that an owner of residential real property shall not, within any 12 month period, increase the renal rate for a dwelling more than 10 percent. This increase was not within the 12 month period, as it went into effect in July, after Girard had already lived there for twelve months. Furthermore, Girard had notice of the increase, as well as a notice of the violation and an opportunity to cure within FR. CIV. CODE § 501(b).

Furthermore, while case law specifies that the FTPA was born out of the shortage of affordable housing with the goal of providing stale affordable housing to Franklin residents and that these goals outweigh free market and freedom to contract principles allowing a landlord to include a unilateral forfeiture clause in a residential rental contract. FTPA prohibits landlords from terminating leases without a specific enumerated "just cause". Fr. Civil Code § 501(a) and seeks to safeguard tenants from excessive rent increases by imposing statutory limitations and obligations on landlords that landlords would otherwise not be subject to under normal freedom to contact principles. Fr. Civil Code § 505(a), Stark v. Atlas Leasing (Fr. Ct. App. 2003) Free market principles don't apply to residential leases due to unequal bargaining power. (As here, where the unilateral forfeiture clause entirely benefits Westfield as landlord). Permitting landlords with superior bargaining power to forfeit leases based on minor or trivial breaches would allow them to circumvent FTPA's "just cause" eviction requirements and disguise pretext evictions under the cloak of contract provisions. Ms. Girard could try to argue that her breach is minor, like the one in Darwish or in Pearsall v. Klien (Fr. Ct. App. 2007) (the court concluded there was no material breach where the tenant left minor amounts of debris outside the apartment because the debris did not damage the apartment and the landlord could remove the debris and back charge the tenant for the cost), the apartment complex will likely distinguish these by pointing out that Rent is a material element of the lease and the default was 10% as opposed to 1% and more extensive than minor debris.

In conclusion, because the failure to pay the rental increase is likely not de minimis and likely is a material breach, I would advise Ms. Girard to pay the rental increase and applicable late fees.

2. VIOLATION OF NO PET CLAUSE

Girard experiences anxiety, including feelings of overwhelm and, at times, panic attacks. About six months ago (around January 2024), Girard's therapist, Sarah Cohen, recommended that Girard consider getting an emotional support animal to help alleviate the symptoms of her mental health condition. Despite initial reluctance, about two months ago (around May 2024), Girard adopted a kitten named Zoey. Since adopting Zoey, Girard has noticed dramatic improvements in her mental well being, including fewer panic attacks and less overwhelm. Two weeks ago, Girard needed to take Zoey to the veterinarian and, after putting Zoey in a cat travel carrier, Girard ran into the on-site property manager for Hamilton Place. The manager told Zoey she was not allowed to have pets. When Girard responded that Zoey is an emotional support animal, the manager rolled her eyes and sarcastically commented, "Sure! Whatever!". That day, Girard asked her therapist, Sarah Cohen, if she could write a letter explaining how important Zoey is for Girard's well being.

Girard's rental lease agreement states that no pet of any kind may be kept on Premises, even temporarily, absent Landlord's written consent. If Landlord consents to allow a pet to be kept on the Premises, Tenant shall sign a separate Pet Addendum and pay the required pet deposit and additional monthly rent. (Agreement, Cl. 15).

As discussed above this agreement is subject to the Franklin Fair housing act, including Franklin Civil Code § 750. FR. CIV. CODE § 755(c) defines "Disability" broadly, including defining "Mental disability to include having any mental or psychological disorder or condition that limits a major life activity, including anxiety." There is little argument that Girard has anxiety.

FR. CIV. CODE § 755(m) defines a support animal as an animal that provides emotional, cognitive, or other similar support to an individual with. a disability and does not need to be trained or certified. Assistance animals include service animals and support animals. Here, Zoey helps alleviate the symptoms of Girard's mental health conditions and has dramatically improved her well being. Therefore, Zoey is a support animal and therefore an assistance animal.

Assistance animals under FR. CIV. CODE § 756(a) are permitted to live in "all dwellings" and an individual with an assistance animal may not be required to pay any pet fee, additional rent, or other fee, including security deposit or liability insurance, in connection with the assistance animal. (It is unlikely that the above rent increase would apply as it seems unrelated to this provision). However, reasonable conditions may be imposed, such as restrictions on waste disposal and the assistance animal may not be allowed if the animal constitutes a direct threat to the health or safety of others. Here, Zoey the kitten likely causes minimal damage, and likely does not threaten health or safety. The Code further specifies that information confirming that the individual has a disability or confirming that there is a disability related need fro the accommodation may be. provided by a medical professional or health care provider. Here, Ms. Girard got Zoey before providing any information to her apartment complex regarding that disability, so her apartment complex could allege that this is a violation of her lease. However,

now that she has gotten a letter from her therapist specifying her need for Zoey, including her diagnosis of an emotional disability and her need to alleviate her associated difficulties to function, any provision in Ms. Girard's lease specifying animals not being allowed is invalid as applied to Fr. Civil Code § 756(a). Despite case law, which Ms. Girard's apartment complex will likely cite, including Sunset Apartments v. Byron (Fr. Ct. App. 2010)(the court concluded that harboring a pet when a lease contains a "no-pet clause" constitutes a material breach of the lease agreement) Fr. Civil Code clearly indicates an intent to allow support animals in apartments for conditions such as anxiety, and is therefore valid.

Furthermore, the above discussed materiality requirement has the benefit of preventing potentially unmeritorious litigation. Permitting forfeiture for trivial breaches of a lease could unleash a torrent of unmeritorious evictions. Tenants potentially would be in jeopardy of defending frivolous eviction actions for trivial breaches. For example, the court in Delgado discussed that Delgado's lease prevented her from bringing a musical instrument on the premises, and if that was upheld, she could risk forfeiture of the lease, and eviction, for "absurdly trivial reasons" such as hanging a violin with no strings on the wall for decoration or having a gift wrapped electronic keyboard for a niece's upcoming birthday. Preventing ANY animals for ANY reason seems that it could be trivial -- for example, taking in a kitten wandering around outside the complex or housing a wounded dog for a short period of time.

In conclusion, I would recommend that the client should notify her apartment complex of the Franklin Civil Code regarding assistance animals and request that they waive any applicable fees in connection with this code.

MPT-1 — Sample Answer 2

To: Hannah Timaku

From: Examinee

Re: Laurel Girard Matter

Date: July 30, 2024

This memorandum evaluates whether the alleged lease violations are valid bases for termination of Gerard's tenancy and recommends the steps we should advise her to take. It predicts that a court would find Girard's failure to pay the $150 and $50 late fee before the deadline to be grounds for termination, but that Girard's ownership of Zoey is not grounds for termination. It recommends that Girard pay the amount due by cashier's check within the three-day deadline and continue to maintain control over Zoey.

A. Applicable Law

As a valid contract, lease agreement is controlling, but only to the extent it does not contradict the Franklin Tenant Protection Act (FTPA). The FTPA creates statutory non-waivable rights in all tenants that endure even if the lease agreement purports to waive them. Westfield Apts. LLC v. Delgado, Franklin Ct. App. 2021.

The FTPA applies because Girard is a tenant who has continuously and lawfully occupied a residential real property for 12 months. Apartment 12 at Hamilton Place is a "residential real property" as defined by the act because it is a unit intended for human habitation. Girard is its tenant because she is a person lawfully occupying the unit and has done so fore more than thirty days pursuant to the January 1, 2023 lease (the Lease). Girard has occupied it from January 1, 2023 to July 30, 2024, more than 12 months, so the protections of FTPA 500(a) apply: Hamilton Place LLC ("HPLLC") cannot terminate Girard's tenancy without just cause stated in written notice. Under the FTPA, just cause includes material breach of the lease agreement and the maintaining or committing a nuisance.

Because Girard suffers from a disability as indicated by her therapist Sarah Cohen, the Franklin Fair Housing Act (FFHA) applies to her tenancy at Hamilton Place. The FFHA broadly defines disability to include any mental disorder or condition that limits a major life activity, such as anxiety. Girard suffers from anxiety resulting in panic attacks. Her Licensed Professional Counselor stated in writing to HPLLC that Girard's conditions meets the definition of a disability under the FFHA. This seems reasonable because a panic attack limits any and all life functions during the panic attack. Without accommodations, Girard cannot "function optimally." Thus, Girard has a disability under Franklin Law.

The FFHA states that assistance animals include service animals and support animals. Support animals are animals that provide emotional, cognitive, or other similar support to an individual with a disability. They need no special training or certification. If the animal's support alleviates one or more identified symptoms or effects of the individual's disability, they qualify as an assistance animal. FFHA 775(o). Any tenant with a disability may have an assistance animal and may not be required to pay any pet fee, additional rent, or other additional fee in connection with the animal, so long as a reliable third party in a position to know the relevant facts provides information confirming the individual has a disability or confirming there is a disability-related need for the accommodation (animal). The animal can be any breed and any size, so long as the animal remains under the control of the individual, does not constitute a nuisance, does not pose a direct threat to the health or safety of others, and would not cause substantial physical damage to the property of others.

B. Whether Girard's Failure to pay $150 in rent owed for July 2024 plus a $50 late fee constitutes adequate grounds for HPLLC to terminate the Lease

This may be grounds for termination, but is probably not assuming Girard complies in the future. Under the FTPA, which applies here, HPLLC (the Owner) may not increase Girard's rent in a 12 month period by more than 10%. Here, HPLLC increased the rent by $150, which is exactly 10% of $1500, the previously charged amount. Thus, HPLLC validly increased the rent to the maximum extent permitted by the FTPA. Further, this increase was permitted by the Lease, which states in Paragraph 3 that HPLLC may raise the rent no sooner than 12 months after the commencement of the Lease. The Lease commenced on January 1, 2023, so HPLLC gained the ability to raise the rent under the contract on January 1, 2024. HPLLC raised the rent effective July 1, 2024, with notice provided on June 1, 2024. Thus, HPLLC had the right to raise the rent to $1,650 when it did so and Girard must pay under the terms of the contract.

Girard did not pay the full rent by July 3, so she breached the contract. Her breach, however, may not be "material" and thus may not be just cause for HPLLC to terminate the lease under the FTPA. A breach is material if it "goes to the root or essence" of the contract or "defeats the essential purpose of the contract or makes it impossible for the other party to perform. . .." Delgado. Paying rent is one of the "essential obligations of the tenant" and failure to pay is a legal cause for termination. Id. Failure to pay the entire amount owed for rent is not a material breach in some cases, however, including where the shortfall is de minimis. Vista Homes v. Darwish, Fr. Ct. App. 2005. In Darwish, the tenant failed to pay only 1% of the lease and the court held that such shortfall was not a material breach justifying termination. A breach may be found not to be material where the harm to the landlord can simply be remedied by "back charg[ing] tenant" Sunset Apts. v. Byron, Fr. Ct. App. 2010. Thus, Girard must comply with her rent obligations but failure to to so does not automatically warrant termination.

Here, Girard failed to pay $150 of the $1,650 owed, a substantial shortfall. This is likely not de minimis like the shortfall in Darwish, so it could constitute a material breach and grounds for termination. The harm to HPLLC can be remedied by late payment, however, and HPLLC has

indicated it is amenable to this based on its Cure or Quit notice seeking payment with a late fee. The late fee is only $50, so the court would likely uphold it. If Girard pays the $150 plus $50 for the late fee promptly, a court would likely find she is not in material breach and that termination of the lease is not justified under the FTPA.

It does not matter that the Lease states that HPLLC may terminate the lease if Girard fails to comply with any provision of the lease within the time period provided in HPLLC's written notice. This clause seeks to waive Girdard's FTPA rights, which are unwaivable on public policy grounds given the unequal bargaining power of landlord and tenants. It is like the forfeiture clause in Delgado, and will be similarly disregarded in this case under the FTPA. "The FTPA makes clear that its tenant protection provisions cannot be wavied." Delgado (citing Fr. Civ. Code. 501(g)).

C. Whether Girard's ownership of a cat is a valid reason for HPLLC to terminate the lease

HPLLC cannot terminate the lease based on Girard's ownership of Zoey the cat. As discussed above, Girdard is an individual with a disability and the cat is an emotional support animal, which falls into the broader category of support animal. Much like the forfeiture clause in Delgado that was void to the extent it contradicted state law, Paragraph 15 in the Lease is void as to Girard's ownership of Zoey under the FFHA.

The cat greatly alleviates the symptoms and effects of Girard's disability. Sarah Cohen is a reliable third party under the FFHA because she is in a position to know about Girard's disability given her history of treating Girard and Girard's need for the cat. Cohen prescribed the cat.

Cohen is a health-care provider or the equivalent, so she fits within the Act's nonexclusive list of reliable third parties. Cohen provided information confirming there is a disability-related need for the cat to HPLLC in her July 26, 2024 letter or email. Thus, the FFHA applies and controls over contradictory provisions in the Lease.

Paragraph 15 of the Lease states that no pets may be kept on the premises without HPLLC's consent and that if HPLLC consents, it may charge a pet deposit and additional monthly rent. This provision would be valid to most tenants under general freedom of contract principles, but not as to Girard, an individual with a disability. Instead, the on-point statutory provisions control here. The FFHA's public policy goals of requiring landlords to reasonably accommodate disabled tenants outweigh HPLLC's interest in not having cats on the premises and charging extra rent for disabled people with service animals. Further, the public policy goals of equalizing to some extent the unequal bargaining power of landlords and tenants make tenant's statutory protections unwaivable. Delgado (citing Stark v. Atlas, Fr. Ct. App. 2003). Thus, the FFHA's provisions for service animals apply, not Paragraph 15.

The cat seemingly meets the requirements of the FFHA. It alleviates Girard's symptoms, as indicated by her statements that she can take on anything that comes her way when she has Zoey. Girard keeps Zoey under control, such as by using a carrier when she takes Zoey out of the

apartment. Thus, Zoey's behavior and waste pose no risk of nuisance. Further, Zoey is not a direct threat to anyone because she is just a house cat and the facts do not indicate she has any vicious propensities. Further, a house cat is unlikely to cause substantial damage to the property of others, and HPLLC can pursue reimbursement for any damages she does cost without violating the FFHA. If Zoey does cause any actual problems, the problems could likely be effectively mitigated by conditions that do not prevent Zoey from achieving her purposes as a support animal.

Zoey meets the requirements of the FFHA and the FFHA controls here. Thus, Girard has the right to enjoy the protections of the FFHA: she may keep the cat, pursuant to 756(a), and need not pay any pet fee, deposit, or additional rent, pursuant to 756(c). If the cat causes any damage besides ordinary wear and tear, Girard will be liable to HPLLC for that amount. Girard already had Cohen, a reliable third party, send information confirming her need for the support animal to HPLLC. Thus, Girard has complied with the FFHA already, as of July 26, 2024.

In addition to the strong textual reasons supporting this conclusion, public policy weighs in favor of allowing Girard to keep the cat. Some tenant-protective legislation serves the public policy against pretext evictions and unmeritorious litigation by landlords. Delgado. Here, Girard possessed Zoey for two months. HPLLC took no action, but an employee commented that the cat was not allowed two weeks ago. This was after Girard failed to pay the additional $150. Then, three days after receiving the necessary information from Sarah Cohen, HPLLC issued Girard a cure or quit notice based on both the $150 and the cat. It appears HPLLC may be pre- textually raising the cat issue as ground for termination in retaliation for Girard's failure to pay the extra rent and/or for exercising her FFHA rights. Thus, a court would likely find that Girard has the right to keep the cat there under the clear terms of the statute and on public policy grounds.

D. Recommendations

We should advise Girard to promptly pay $200 in overdue rent and late fees to HPLLC by cashier's check, as required by her Lease and the June 1, 2024 Notice. She must do this by August 1, which is within three days of her receiving the Notice. If she does, she will have cured the violation and HPLLC will likely not have grounds to terminate the lease. She must comply in the future by paying $1,650 by the third of each month.

As to Zoey, Girard very likely has the right to keep her there (at least as long as her disability and Zoey's effectiveness in alleviating it endure) and not to pay any additional fees, unless the cat causes actual damage beyond ordinary wear and tear. Girard should continue to keep Zoey well under control by cleaning up waste, controlling her behavior, controlling her noise level, and using the carrier when she takes Zoey out of the apartment.

MPT-1 — Sample Answer 3

To: Hannah Timaku

From: Applicant

Re: Laurel Girard Matter

Date: July 30, 2024

Memorandum

The purpose of this memorandum is to assess whether Ms. Girard's alleged violations are a sufficient basis for Hamilton Place (Hamilton) to terminate the lease. Additionally, the memo will contain the steps that Ms. Girard should take moving forward.

Termination Of Lease

Franklin Tenant Protection Act (FTPA) §500 states that "after a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate the tenancy." The FTPA further defines an owner as "any person, acting as principal or through an agent, having the right to offer residential real property for rent"; and a tenant as "a person lawfully occupying residential real property for 30 days or more, including pursuant to a lease." The FTPA §501(a)(1) states that just cause for terminating a lease includes a "material breach of a term of the lease" or "maintaining or committing a nuisance." In Westfield, the Franklin court of appeals cited the Franklin Supreme Court which confirmed that "a lease may be terminated only for material breach, not a mere technical or trivial violation." The Franklin Supreme Court further stated that to be material "the breach must go to the root or essence of the agreement between the parties" and that the breach "defeats the essential purpose of the contract or makes it impossible for the other party to perform under the contract." Importantly the court stated that this limit applies even when the lease attempts to remove the materiality requirement.

In Westfield, the Plaintiff terminated the lease of the defendant tenant for failure to obtain rental insurance. The plaintiff argued that the failure was a violation of the lease and pursuant to the lease's forfeiture clause the landlord could terminate the lease for "any failure of compliance or performance" by the defendant tenant with the terms of the lease. The Franklin Court of Appeals disagreed reasoning that the FTPA does not allow the tenant to waive the materiality requirement imposed by the FTPA. In Stark, the court noted that freedom to contract is an important principle, but that by enacting the FTPA, Franklin concluded that "free market principles do not apply to residential leases" reasoning that there is a great disparity between the bargaining power of tenants and landlords.

Ms. Girard is similarly protected by the FTPA materiality requirement. Ms. Girard has been a tenant of residential real property for over 12 months as she signed the lease back in January of 2023 and it is now July 2024. This means that she is protected by the FTPA and that the lease may only be terminated for "just cause" and with written notice. As stated above, "just cause" requires a material breach of the lease. Just like in Westfield, Ms. Girard's lease contains a clause stating that a failure to comply with any provision of the lease allows Hamilton to terminate the lease. However, as noted in Westfield the addition of this clause does not waive the materiality requirement, thus Ms. Girard's lease can only be terminated if there is a material breach. Ms. Girard's failure to follow a provision does not automatically justify termination, rather the failure must be material.

The Failure To Pay Increase In Rent

Ms. Girard's lease provided that the rent could be increased after the first 12 months. This is in accordance with the FTPA §505 which states that a landlord cannot increase the rent more than 10% in any 12 month period. Hamilton increased the rent from $1,500 to $1,650 on July 1, 2024 which is more than 12 months after the start of the lease and is exactly a 10% increase. This issue here is whether Ms. Girard's failure to pay the additional increase constitute a material breach of the lease enabling Hamilton to terminate the lease. In Vista Homes, the tenant failed to pay $10 of the $1,000 rent owed which equaled only 1% of the total rent. Even though the court stated that the payment of rent is an "essential obligation" of the lease, and while normally the failure of an essential obligation constitutes just cause for termination, the failure in this case was not material because the amount was "de minimis." Here, Ms. Girard's failure to pay rent constitutes 10% of the total rent owed. This is likely going to be considered more than just "de minimis." Additionally, the failure to pay rent is an "essential obligation" that would constitute material breach. While one of the goals of the FTPA is to protect tenants from excessive rent increases, the rent increase at issue here is within the allowed limit by the FTPA as noted above. Thus, public policy is not offended by the lease allowing the $150 increase in rent and treating the failure to pay it as material. Because the renal increase was within the 10% threshold and the amount is likely more than "de minimis", Ms. Girard's failure to pay is a material breach. I would advise Ms. Girard to comply with the written notice and cure the breach by paying the $150 in past due rent and the $50 fee for late rent within the three day cure period.

No-Pet Provision

Ms. Girard's lease provides that no pets are allowed in the premises without the Landlord's written consent, and if the landlord consents then the tenant must pay the required pet deposit and additional rent. FTPA §756(a) provides that a tenant's with disabilities are permitted to have "assistance animals" in all dwellings. The FTPA states that assistance animals include "support animals" which is defined as "animals that provide emotional, cognitive, or other similar support to an individual with a disability." At issue here is whether Ms. Girard's cat is a support animal and is thus considered to be an assistance animal which is permitted in all dwellings for a tenant with a "disability. The FTPA states that the term disability should be broadly

construed and includes "mental or psychological disorders or condition that limits a major life activity." It further provides examples such as "anxiety, post-traumatic stress disorder, or clinical depression." FTPA §756(b) requires that Ms. Girard obtain information confirming her disability from a "reliable third-party who is in a position to know about the individual's disability or the disability-related need for the requested accommodation, including a medical professional or health care provider." Here, Ms. Girard has a disability and can provide the confirming information. She has been treated by Franklin licensed professional counselor Sarah Cohen for four years and Ms. Cohen is familiar with Ms. Girard's mental health condition. Ms. Cohen's letter states that Ms. Girard has an "emotional disability" due to anxiety, and in order to help Ms. Girard function she uses her cat Zoey as an emotional support animal. The FTPa provides that anxiety is an example of a disability, thus Ms. Girard suffers from a disability because of her anxiety. Her cat Zoey is also qualified support animal because she provides Ms. Girard with emotional support relieving her from her anxiety symptoms. This was noted in the interview transcript as Ms. Girard stated that she has "noticed a dramatic improvement in her overall mental well being" and has suffered "fewer panic attacks" since getting Zoey. The FTPA does no require that a support animal have specialized training so that is not an issue here. Since Ms. Girard properly suffers from a disability she is permitted to have her cat Zoey in her apartment because Zoey is properly defined as a support animal which is a type of assistance animal allowed under the FTPA. Thus, in accordance to the FTPA she can not be prohibited from having Zoey.

Additionally, the failure to get Hamilton's written consent is not a material breach of the lease either. In Sunset, the court held that having a pet in violation of a no-pet clause in the lease was a material breach. However, that is not the case here because the FTPA specifically allows Ms. Girard to have a an emotional support pet due to her disability. To hold otherwise would be against public policy. As noted in Westfield, the FTPA's goals outweigh the ability to freely contract. Hamilton sits in a position of higher bargaining power and by upholding the no pet clause would be contrary permit landlords to disregard the protections put in place by the FTPA.

I would advise Ms. Girard that having Zoey is not a violation of the lease. Additionally, she is not required to pay any additional "pet deposit" or pet fee that is described in section 15 of her lease. Pursuant to FTPA §756(c) an "individual with an assistancce animal shall not be required to pay any pet fee, additional rent, or other additional fee, including security deposit, or liability insurance, in connection with the assistance animal." Thus, Hamilton can not require Ms. Girard to pay anything extra because of having Zoey. However, the FTPA does provide that the landlord can impose "reasonable conditions" on her use of Zoey as long as they don't "interfere with the normal performance" of Zoey's duties. So I would strongly advise Ms. Girard to follow any reasonable conditions that might be imposed.

Conclusion

In conclusion, Ms. Girard's failure to pay the additional rent likely consittutes a material breach as described above, and she must cure that breach within the three day period. However,

she is not in breach of her lease by having her support animal Zoey and shall not be required to pay any additional fees related to her support animal.

MPT-2 — Sample Answer 1

To: Damien Breen

From: Examinee

Date: July 30, 2024

Re: Sidecar Design Matter

MEMORANDUM

This memorandum addresses two questions: (i) whether Sidecar Design is liable to Conference Display Innovations ("CDI") under the CFAA; and (ii) assuming Sidecar is liable, what damages CDI can recover under the CFAA. This memorandum assumes that Sidecar is liable for its former employee, John Smith's, actions.

I. Sidecar's Liability under the CFFA

The Computer Fraud and Abuse Act ("CFFA"), codified at 18 U.S.C. § 1030, governs this dispute. A person violates the CFFA where they either (i) intentionally access a computer without authorization or exceeds authorized access, and thereby obtain information from any protected computer; or (ii) knowingly and with the intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value. Id. The CFFA provides for a civil action against a violator of the Act, but only if the conduct involves losses during any one year period totaling at least $5,000. At issue here is Smith's diverting of CDI's customer's funds into his own account, so the relevant inquiry is not whether he obtained information from a protected computer, but whether his actions are actionable under prong (ii) of the CFFA. Further, there can be no dispute as to whether Smith acted knowingly and with the intent to defraud, and that he obtained something of value, because he clearly consciously diverted funds from CDI's customer to his own account. Further still, Smith, as an employee of Sidecar hired for the purpose of creating a website and secure payment system for CDI, clearly did not access a protected computer without authorization, as he had express authorization by virtue of his employment. Consequently, the only relevant inquiry as to Sidecar's liability is whether Smith "exceed[ed] authorized access."

The CFFA defines the term "exceeds authorized access" as accessing a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled to obtain or alter. § 1030. The meaning of "exceeds authorized access" was clarified by the United States Supreme Court in Van Buren. The Court in Van Buren determined that a person exceeds authorized access only when a person accesses data that the person does not have a technical right to access. In other words, where a person has a computer and login credentials that give access to information, that person does not exceed their

authorized access by accessing that information. See Van Buren. More simply, where a person does not need to use technical means to circumvent password protection, the person has not exceeded authorized access. See Homefresh LLC v. Amity Supply. However, the analysis is not so simple as that. Once an employee leaves a job, the employee no longer has the legal right to use the employer's computers or to use the credentials to access those computers. Id. In other words, whether a person exceeds authorized access turns on whether they had a legal right to access information, not just whether they had a technical ability to do so. See id.

Here, whether Sidecar, through Smith, exceeded their authorization under the CFFA turns on the timeline. Sidecar through Smith did not exceeds it authorized access for the first $25,000 stolen, but it did for the second $50,000 stolen. When Smith first stole $25,000 from one of CDI's customers, Sidecar and CDI had a contract that entitled Sidecar to access CDI's customer data. This data was password protected, but Smith had the password and was able to access the Data through his employment. In other words, Smith had a legal right to access CDI's customer data when he stole the first $25,000. Further, Smith did not use any hacking or methods to circumvent the password protection of CDI's customer data, he merely typed in the password and accessed files available to him. As the Homefresh Court instructs, where a person has a legal right to access data and does not use technical means to circumvent protection of the data, that person does not exceed their authorization, and here that is exactly the case with Smith. He had a legal right to access the data under Sidecar's contract with CDI, and needed no technical circumvention to access it. Thus, for the first $25,000 stolen, Smith did not exceed his authorized access and thus Sidecar is not liable for that $25,000 under the CFFA.

However, Sidecar is likely liable for the second $50,000 stolen by Smith. Crucially here, SIdecar and CDI's contract terminated once Sidecar completed setting up CDI's website and arranging secure payment systems. Once that contract ended, Sidecar and its employees no longer had a legal right to access CDI's customer data. By accessing CDI's customer data after the legal right terminated, Sidecar, through Smith, exceeded their authorization by accessing the data, just as illustrated in Homefresh. The fact that CDI did not change their login credentials despite Sidecar's warning to do so is immaterial; the Homefresh Court clearly states that technical ability to access information alone is not dispositive. Although Smith could technically access CDI's data, he no longer had a legal right to do so. Thus, he exceeded his authorization. Consequently, Sidecar, through Smith, will likely be liable for the $50,000 stolen by Smith.

II. Damages available to CDI

This section assumes that Sidecar is liable to CDI under the CFFA for the full amount stolen by Smith. Under the CFFA, a civil action only may be brought by an aggrieved party who suffered more than $5000 in damages in one year. § 1030. Damages for violation of the CFFA are limited to economic damages only. The CFFA further provides that "losses' include "any reasonable cost to the victim, including the cost of responding to an offense, conducting a damage assessment, and restoring data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of

service." Id. Franklin Courts have interpreted this provision to exclude costs incurred to upgrade the plaintiff's security system. Slalom Supply v. Bonilla. However, a plaintiff company can recover amounts paid to an external cybersecurity company for the costs of investigation, as well as amounts paid to its own employees to assist in the investigation into the breach. Id. Further, punitive damages are categorically not permitted in civil cases under the CFFA.

The CFFA also allows for recovery of consequential damages, but only if such damages result from the interruption of service. Id. Slalom Supply is instructive on the issue of consequential damages in the present case. In Slalom Supply, the defendant diverted two payments of funds from the plaintiff's customers to his own account. Id. In order to preserve its relationship with the customers, the plaintiff covered that expense out of its own coffers. Id. The Court held that such an expense did not result from an interruption of service, and thus was not recoverable under the CFFA. Id. The interruption of service occurred when the plaintiff had to shut down its website, not when the funds were diverted, so the expense could not be a result of the interruption. Id.

Here, Sidecar will be liable for costs incurred in investigating the security breach, including payment to CDI's own employees, but it will not be liable further. CDI alleges damages of $606,000, consisting of: $4000 paid to a cybersecurity firm to investigate and fix the breach; $500 paid to upgrade the security system; $1,500 paid in overtime to CDI's employees to help with the security firm's investigation; $75,000 in restitution for the amount taken; $125,000 for the termination of the pending contract; and $400,000 in punitive damages. Preliminarily, punitive damages are categorically disallowed under the CFFA, as stated by Slalom Supply, and thus CDI cannot recover such damages. Further, CDI clearly cannot recover the $500 spent to upgrade their security system, because payments to upgrade security systems are expressly not recoverable according to Slalom Supply. More complicated is the $75,000 refunded to CDI's customer and the $125,000 lost in the cancellation of the contract. These expenses are not recoverable because they did not result from an interruption in serve as required by the CFFA, but rather were incurred prior to any interruption. Any interruption of service CDI suffered would have been when they investigated the security breach, but at the time the funds were stolen and the contract canceled there had been no interruption yet. Just as in Slalom Supply where the plaintiff could not recover for the cost of covering a customer's order out of its own coffers, CDI here cannot recover for the costs incurred in reimbursing their customer and the contract cancellation. There had yet been no interruption, and so consequential damages are not available. As a result, Sidecar would be liable only for $5,500 - the costs paid to the cybersecurity company and to CDI's own employees in investigating and remedying the breach. Note that because this amount exceeds $5,000, CDI is able to bring a claim, but their damages will be limited to $5,500.

MPT-2 — Sample Answer 2

To: Damien Breen

From: Applicant

Date: July 30, 2024

Re: Sidecar Design Matter

Memorandum

The purpose of this memorandum is to assess whether Sidecar is liable to Conference Display Innovations Inc. (CDI) under the federal Computer Fraud and Abuse Act (CFAA) and if so what damages CDI may recover from Sidecar.

Sidecar's Liability Under The CFAA

The Computer Fraud and Abuse Act (CFAA) was enacted in response to the growing number of computer hackers (HomeFresh). The CFAA is interpreted to cover any computer that can be connected to the internet. Initially the CFAA was created to impose criminal violations, however, is has since been expanded to allow for civil causes of action and should be applied in the same manner regardless of whether it is being used in a criminal case or civil case. To establish liability under the CFAA, §1030 requires that the defendant access a computer "without authorization or exceeds authorized access and thereby obtains information from any protected computer." The United States Supreme Court (SCOTUS) in Van Buren, held that the phrase "exceeds authorized access" means that "an individual exceeds authorized access when he accesses a computer with authorization but then obtains information located in particular areas of the computer -- such as files, folders, or databases -- that are off limits to him." In Van Buren, the defendant was a police officer who accessed a women's license plate information at the request of a third party who paid him for the information. SCOTUS said that this was not a violation of CFAA because his login credentials and work computer gave him access to that information and the access was only prohibited by department policy. Because there was no "technical barrier" in gaining access to the information it did not constitute a violation. The Franklin District court in HomeFresh, citing to Van Buren, stated that a "only when a person accesses data that the person does not have the technical right to access" do they exceed authorized access. In HomeFresh, the plaintiff's employee quit and began working for a competitor but never returned his laptop. His role when working for the plaintiff allowed him to use a company computer and have access to all its data, and his login credentials allowed him access to all of the customer information. While still working for the plaintiff, the employee downloaded data regarding the plaintiff's customers, and then after he quit he downloaded more

of the plaintiff's customer data. The Franklin court ruled that the data downloaded while still employed by the plaintiff did not violate the CFAA because he did "not use technical means to circumvent password protection" as he had valid access. However, the Franklin court took the approach that "once an employee leaves a job, the employee no longer has the legal right to use the employer's computers or to use the passwords or login credentials that allow the employee access to those computers." This decision does not conflict with SCTOUS's ruling in Van Buren because in that case the court refused to address the issue whether a person can be liable under the CFAA for access after their employment. The Franklin has taken the side that an employee may be liable under the CFAA for access after leaving the employment.

Here, Smith accessed CDI's payment system at two distinct times, once during employment with Sidecar and once afterwards. Following the rules laid out above in Van Buren and HomeFresh, Smith did not violate the FCAA when he accessed the CDI customer payment system on June 5th, 2024. This is because Smith was employed by Sidecar at this point and part of his job requirement was to work on the CDI project. The CDI project involved providing Sidecar with a password giving it full access to all data in the system. Thus, Smith rightful had access to all that data through his employment on the project. Under Van Buren, there is no technical barrier here so Smith is not liable under the CFAA for his access of CDI's data on June 5th. This means that Sidecar is also not liable under respondeat superior for Smith's access on June 5th, because Smith himself is not liable. Even though CDI specifically told Sidecar not to use any customer data once it was entered into the portal, this does not change the analysis. As described in Van Buren, departmental policy that prohibits the specific use is not the determining factor of whether liability exists under the CFAA, rather its whether a technical barrier existed.

However, Smith may be liable under the CFAA for the access to customer information on July 5th. As stated above, the Franklin court in HomeFresh, has ruled that a person may be liable under the CFAA for accessing information after employment has ended. Here, Sidecar's employment and contract with CDI ended on July 2nd, thus Sidecar no longer had authorization to access that information. Like in HomeFresh, the employment here had ended, so the use of the passwords to access the information constitutes a violation of the CFAA. CDI had terminated Sidecar's right to use the password and thus terminated Smith's right to use the password even though he was still employed by Sidecar. Since Smith has violated the CFAA by accessing CDI customer information on July 5th, Sidecar is liable under respondeat superior for Smith's violation.

Recoverable Damages

Because Sidecar is responsible under respondeat superior for Smith's violation of CFAA, CDI may recover from Sidecar for Smith's violation. The CFAA §1030 permits recovery for any person who "suffers damage or loss" by a violation and may recover "compensatory damages and injunctive relief or other equitable relief." It further states that a civil action may only be

brought if the "losses to claimant during any one-year period totaling at least $5,000." Additionally, damages are limited to economic damages. Section 1030(e)(11) states that losses include" cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service." In

Slalom, the 15th circuit held that money spent to "upgrade the security system" does not count as costs for "restoring the system" under §1030(e)(11). Thus the $500 incurred to upgrade the CDI system will not be recoverable. Slalom does not permit the victim to be reimbursed for upgrading their own system. However, the court permitted recovery for the money paid to the victim's employees to assist in investigating the security breach as well as cost paid to a security firm for investigating the breach. Slalom court reasoned that §1030 does not require only "external help" in investigating a breach. Thus, CDI can recover the $4,000 it spent on employing a security firm to investigate the breach as well as the $1,500 CDI paid its' own employees for assisting in the investigation. Additionally, CDI has proven that they can recover $5,500 which is above the statutory requirement of $5,000 making this recovery permissible.

However, CDI may not be able to recover consequential damages from Sidecar. Consequential damages can only be recovered for losses that occurred from an "interruption of services." (Slalom). Slalom cites Selvage Pharm which further states that §1030(e)(11) shall be read narrowly and "lost revenues and consequential damages qualify as losses only when the plaintiff experiences an interruption of service." The damage must result from the interruption of services. Like in Slalom, the reimbursement to CDI's customer occurred before the interruption of service, and thus was not a result of the interruption. This means that the $75,000 refund paid by CDI to its customer is not recoverable and Sidecar will not be held liable for this amount. Additionally, the court in Ridley Mfg., stated that "most cases based on lost revenue and consequential damages involve such things as deletion of critical files that cost plaintiff a lucrative business opportunity, or the alteration of system-wide passwords. Neither of these issues occurred here. CDI's customer cancelled their $125,000 contract because of the breach by Smith not because of interruption of service, deletion of business files, or alteration of passwords. The contract was cancelled on July 9th while the interruption of services did not occur until July 11th. Just like in Slalom, there has been no evidence offered that the cancellation of the contract was in anyway tied to the interruption of services. Thus CDI cannot recover the $125,000 in lost revenues from the cancellation of the contract. Additionally, the Slalom court cited Demidoff confirming that "courts have consistently refused to include punitive damages within the definition of economic damages." Thus, CDI is also not able to recover any punitive damages.

Conclusion

In conclusion Sidecar is liable for Smith's violation of the CFAA when he accessed customer information on July 5th. Additionally, Sidecar will be liable for $5,500 in damages that

occurred to CDI. However, Sidecar is not liable for the amount of money paid to upgrade its security system, that CDI paid back to its customer, nor are they liable for the cancellation of the contract between CDI and its customer.

MPT-2 — Sample Answer 3

TO: Damien Breen

FROM: Examinee

RE: Sidecar Design Matter

DATE: July 30, 2024

MEMORANDUM

I. Introduction

This memo addresses two questions regarding Sidecar's potential liability and damages to Conference Display Innovations (CDI) for violation of the federal Computer Fraud and Abuse Act (CFAA). The CFAA was created to address a public concern regarding hackers. The CFAA was expanded in 2021 to cover any computer with internet access. Van Buren v. US. The CFAA has been applied in both criminal and civil contexts. US v. Nosal.

II. Analysis

A. Is Sidecar liable to CDI under the CFAA?

To maintain a civil cause of action, a person violates the CFAA when they "intentionally access a computer without authorization, or exceeds authorized access... information from any protected computer." Section 1030. A person can also violate the CFAA by exceeding authorized access knowingly and with an intent to defraud to obtain anything of value. Id. Exceeding authorized access in the statute means obtaining or altering information the accessor is not entitled to access or obtain. Id. The Supreme Court recently overturned a police officer's conviction in Van Buren for searching the police database for a woman's license plate for payment because the officer only broke department policy, not a technical barrier. 141 S. Ct. at 1662. The Supreme Court found "exceeds authorized access" means accessing data a person does not have the technical right to access like locating files in areas of the computer off limit to the person. Id. The court in Homefresh v. Amity extended this decision as persuasive authority in 2022 to find that once an employee leaves their job, the employee may no longer use passwords or employer computers under the CFAA. The Homefresh court held an employee accessing customer data outside its work did not violate the CFAA because the employee still had access to the data while employed. However, any access after employment did violate the CFAA. Id.

Here, CDI contracted with Sidecar to create a website and payment system online. This payment system stored credit card information to bill CDI customers protected by a password that Sidecar knew while making the system. Sidecar's employee John Smith, an engineer, charged 25k to one of CDI's customers to be deposited into Smith's bank account. This payment likely did not violate the CFAA because John did not exceed authorized access by accessing data the engineer did not have the technical right to access. As an engineer, John had the ability to access the payment system he was helping to create. He even had the password to access this system. The payment system was not off limits to him. Sidecar will likely not be liable for this first 25k payment under the CFAA because John Smith did not perform the duties of a hacker under the CFAA. However, Sidecar may be liable for John Smith's 50k payment after Sidecar's contract with CDI ended. After the first charge, Sidecar's contract ended, and Sidecar recommended CDI change the password for the payment system. A few days later, John charged an additional 50k to the same CDI customer to be deposited into his bank account. In this payment, John acted as a hacker under the CFAA and exceeded his authorized access. Although John had the password, he was not supposed to be accessing any files as the contract had ended. This follows the persuasive authority under Homefresh, so this decision is not binding on this case.

Therefor, Sidecar is likely not liable to CDI under the CFAA for John Smith's payment of 25k because this was during the scope of his employment. There is persuasive authority to suggest that Sidecar may be liable to CDI under the CFAA for the 50k payment that occurred after Sidecar's contract ended.

B. Assuming Sidecar is liable, what damages can CDI recover under the CFAA?

The second issue assumes Sidecar is liable under the CFAA and asks what damages CDI can recover from Sidecar. CDI is alleging 606k in damages, and CFAA damages are governed by the CFAA and Franklin case law. It is helpful to divide these damages into three categories: (1) cost of investigation, (2) lost business, and (3) punitive damages.

1. Cost of Investigation Damages

Under Franklin law, a binding 15th Circuit case, Slalom Supply v. Bonilla, found a defendant liable under the CFAA for the costs of an investigation into a computer hacking and the plaintiff's own employees who assisted in the investigation, but the defendant was not liable for costs spent to upgrade a security system. The court in Slalom based its analysis on CFAA Section 1030. Under the CFAA, losses may be recovered if the claimant's losses exceed 5k during any 1 year period. Id. These losses include "the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense." Id. Based on this definition of losses, the Slalom court found the defendant liable for the payment to a cybersecurity firm to investigate and its own employees assisting the cybersecurity firm during the investigation. The defendant in Slalom was held not liable for any upgrades to the

plaintiff's security system after the breach, because these upgrades did not restore the system to its condition before the offense. CFAA Section 1030.

Here, CDI is seeking the total cost of investigation damages, 6k, for a security firm to investigate the breach (4k), upgrade the security systems ($500), and use its own employees to assist the investigation ($1500). This case is similar to Slalom in that it has resulted from a misuse of a security system, and the analysis around damages is the same. Like the defendant in Slalom, Sidecar will be held liable for CDI's losses incurred in responding to the offense, conducting a damage assessment, and restoring the system to its prior condition. CFAA Section 1030. CDI will be able to recover the 5.5k paid to the security firm to investigate the breach (4k) and the overtime pay for CDI's employees to help assist with the investigation (1.5k). However, CDI will not be able to recover the $500 spent to upgrade its security systems because these upgrades do not restore the system to its condition before the offense. This upgrade restores the system to a better condition than the one before the offense.

Therefor, the plaintiff Sidecar will be liable to CDI for 5.5k for the cost of the investigation.

2. Lost Business Damages

Under the CFAA, a compensable loss includes "any revenue lost, cost incurred, or other consequential damages incurred because of an interruption of service." Section 1030.

Lost revenue cases usually involve costing the plaintiff a lucrative business opportunity (Ridley v. Chan) or altering passwords for internet systems (Marx Florals v. Teft). The "interruption of service" provision of the CFAA has been applied narrowly to dismiss actions that fail to allege facts showing an interruption of services (Selvage v. George), and find 10 million dollar revenue losses are not recoverable because the losses did not interrupt services (Next Corp v. Adams). This interruption of service need only be temporary to be recoverable, but the damages must result from the interruption. (Cyranos v. Lollard). The court in Slalom found a former employee who hacked into its former employer's network to divert two customer payments was not liable for lost business damages including the two payments. The Slalom court reasoned that although the employer was forced to pause its operations, the hacking did not impair or alter the system. In addition, the employer fulfilled the customer orders before the investigation. Id.

Here, CDI is seeking damages for Sidecar's employee charging 25k before Sidecar warned CDI to change its password, and the employee charging an additional 50k after this recommendation.This is similar to the Slalom case where a former employee diverted two customer payments to its own account, and CDI is unlikely to receive the 75k Sidecar's employee received from a CDI customer. This amount of money is not the result of a temporary interruption of service. This offense also did not impair or alter CDI's system. CDI chose to close down its

website for 5 days after the money was moved, but this decision was made after the 75k was transferred from the client's account. In addition, the customer terminated a 125k contract it had with CDI for future work. Like the court in Next Corp which found a 10 million dollar revenue loss not recoverable due to no interruption in services, CDI has not shown how this 125k contract loss for future work was because of its interruption in services. This loss is more attributable to a client who lost 75k not wanting to continue to do business with said company. To recover for these lost business damages, CDI would have to specifically allege facts to show how the damages result from a temporary interruption of services. These damages resulted "before that interruption, not as a result of it." Slalom.

Therefor, without more facts, Sidecar is unlikely to be liable to CDI for lost business damages.

2. Punitive Damages

Under the CFAA, the recovery of damages in civil cases is limited to economic damages. The courts in the 15th Circuit have declined to include punitive damages into the definition of economic damages under the CFAA. Demidoff v. Park (15th Cir. 2014).

Here, CDI is seeking 400k in punitive damages from Sidecar. Because the 15th Circuit has found punitive damages do not fit under the definition of economic damages under the CFAA, Sidecar will not be liable for punitive damages to CDI under the CFAA.

Therefor, Sidecar will not be liable to CDI in punitive damages.

III. Conclusion

Sidecar could be liable under the CFAA to CDI for its employees access to a 50k customer payment after Sidecar's contract had ended based on persuasive authority. Under the CFAA, losses may be recovered if the claimant's losses exceed 5k during any 1 year period Sidecar will be liable to CDI for 5.5k relating to the costs of the investigation, and likely no liability for lost business or punitive damages. This 5.5k amount in losses satisfies the CFAA's requirement that losses exceed 5k during a 1 year period.