

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO: 8:23-cv-2093-WFJ-AAS

FINAL EXPENSE DIRECT,

Plaintiff

v.

PYTHON LEADS, LLC, JACQUELYN
LEAH LEVIN, DAVID LEVIN, AND
ALI RAZA

Defendants.

**PYTHON DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S SECOND AMENDED COMPLAINT, COUNTERCLAIM,
AND DEMAND FOR JURY TRIAL**

Defendants, Python Leads LLC (“Python”), Jacquelyn Leah Levin (“Jacquelyn”), and David Levin (“David”) (collectively, the “Python Defendants”), by and through their undersigned counsel and pursuant to Fed. R. Civ. P. 12, hereby respond to the Second Amended Complaint (the “Complaint”) [ECF No. 70], filed by Plaintiff, Final Expense Direct (“Plaintiff” or “FED”), and state as follows:

PARTIES

1. Without knowledge, and as such denied.
2. Admitted that Python is a limited liability company organized and existing under the laws of the State of Florida, with its principal business place of business in Sarasota, Florida at 5533 Marquesas Circle, Sarasota, Florida 34233, and that it may be served through its counsel of record. Otherwise, denied.

3. Admitted.
4. Admitted.
5. Without knowledge, and as such denied.

JURISDICTION AND VENUE

6. Admitted for jurisdiction purposes only.
7. Without knowledge, and as such denied.
8. Admitted that Python, Jacquelyn, and David are citizens of Florida for jurisdiction purposes only.
9. Admitted for purposes of establishing venue only.

CONDITIONS PRECEDENT

10. Without knowledge, and as such denied.

FACTUAL BACKGROUND

11. Without knowledge, and as such denied.
12. Admitted that Python is a lead generation company. Otherwise, denied.
13. Admitted that Python entered into an agreement with Final Expense whereby Python would generate telephone call leads and Python only signed the June 2021 agreement. Without knowledge regarding Plaintiff's standard custom and practice and received complaints, and as such denied. Python Defendants further deny the allegations in paragraph 13 in all other respects and state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.
14. Admitted that Python entered into an agreement with Final Expense whereby Python would generate telephone call leads. Without knowledge regarding

Plaintiff's standard custom or "key consideration(s)," and as such denied. Python Defendants further deny the allegations in paragraph 14 in all other respects and state the referenced document speak for themselves and are the best evidence of the content and terms thereof.

15. Without knowledge regarding Plaintiff's standard vendor contracts, and as such denied. Python Defendants further deny that Jacquelyn and Python agreed to indemnify Plaintiff and deny the allegations in paragraph 15 in all other respects.

16. Denied that Python Defendants executed, agreed to, or performed in accordance with the March 2021 agreement. Python Defendants further state the referenced document speaks for itself and is the best evidence of the content and terms thereof.

17. Denied that Python Defendants executed, agreed to, or performed in accordance with the March 2021 agreement. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

18. Admitted that the referenced payment was made to Jaquelyn's account while Python's corporate account was established, and all subsequent payments were made to Python's corporate account. Python Defendants deny that David is a co-owner of Jacquelyn's account and deny the allegations in paragraph 18 in all other respects. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

19. Denied that Python Defendants executed, agreed to, or performed in accordance with the March 2021 agreement and that Python Defendants requested to handle or were responsible for handling complaints. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

20. Admitted that Python entered into an agreement with Final Expense whereby Python would generate telephone call leads. Otherwise, denied.

21. Without knowledge regarding complaints directed at Plaintiff, and as such denied. Python Defendants deny they executed, agreed to, or were bound by the March 2021 agreement and deny they were responsible for handling complaints. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

22. Python Defendants deny they executed, agreed to, or were bound by the March 2021 agreement. Python Defendants further deny they were responsible for handling complaints or agreed to hold harmless and indemnify Plaintiff, and state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

23. Denied that Plaintiff provided notice of claims to Python Defendants and Python Defendants were responsible for handling complaints. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

24. Denied that Python proposed the reference opportunity. Python Defendants further state the referenced document speaks for itself and is the best evidence of the content and terms thereof.

25. Admitted that Python executed the June 2021 agreement. Otherwise, denied. Python Defendants also state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

26. Denied.

27. Admitted that counsel for Python sent correspondence to Plaintiff, Python executed the June 2021 agreement, and the referenced documents speak for themselves and are the best evidence of the content and terms thereof. Without knowledge regarding the lawsuits received by Plaintiff, litigation expenses, or settlement costs, and as such denied. Python Defendants further deny the allegations in paragraph 26 in all other respects and state Plaintiff appears to allege the 2021 June agreement was executed in 2022.

28. Denied.

29. Without knowledge regarding the three lawsuits, litigation expenses, or settlement costs, and as such denied. Python Defendants further deny the allegations in paragraph 29 in all other respects and state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

30. Admitted that Ali Raza (“Ali”) was an independent contractor and/or vendor for Python, not a founder or employee of Python, Python did not own a Berkshire Hathaway insurance account, Jacquelyn, on behalf of Python, objected to

the March 2021 Agreement and never executed the March 2021 Agreement, and Ali concealed his signature block from Python in correspondence. Otherwise, denied.

31. Admitted that Plaintiff seeks damages for breach of contract and violations of the Florida Deceptive and Unfair Trade Practice Act. However, Python Defendants deny all allegations of “improper actions” and liability, that Python Defendants agreed to indemnify Plaintiff, and that Plaintiff is entitled to damages or relief as stated in the Complaint.

COUNT I – BREACH OF CONTRACT

32. Python Defendants reallege their responses to paragraphs 1 through 31 of the Complaint above as if fully set forth herein.

33. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

34. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

35. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

36. Denied.

37. Without knowledge regarding the alleged legal and settlement fees, and as such denied. Python Defendants further deny the allegations in paragraph 37 in all other respects.

38. Without knowledge regarding the “lawsuits,” and as such denied. Python Defendants further deny the allegations in paragraph 38 in all other respects.

39. Admitted that Plaintiff seeks damages in excess of \$75,000.00. However, Python Defendants deny that Plaintiff is entitled to any damages or relief as stated in the Complaint.

COUNT II – BREACH OF CONTRACT

40. Python Defendants reallege their responses to paragraphs 1 through 30 of the Complaint above as if fully set forth herein.

41. Admitted that Plaintiff brings an action for breach of contract against Jaquelyn, in the alternative, and Count II speaks for itself. However, Python Defendants deny all allegations of wrongdoing and/or liability and that Plaintiff is entitled to any damages or relief as stated in the Complaint.

42. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

43. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

44. Admitted that a payment was made to Jaquelyn's account while Python's corporate account was established. Python Defendants further deny the allegations in paragraph 44 in all other respects and state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

45. Denied.

46. Without knowledge regarding the alleged legal and settlement fees, and as such denied. Python Defendants further deny the allegations in paragraph 46 in all other respects.

47. Without knowledge regarding the “lawsuits,” and as such denied. Python Defendants further deny as stated the allegations in paragraph 47 in all other respects.

48. Admitted that Plaintiff seeks damages in excess of \$75,000.00. However, Python Defendants deny that Plaintiff is entitled to any damages or relief as stated in the Complaint.

COUNT III – BREACH OF IMPLIED-IN-FACT CONTRACT

49. Python Defendants reallege their responses to paragraphs 1 through 30 of the Complaint above as if fully set forth herein.

50. Admitted that Plaintiff brings an action for breach of implied-in-fact contract against Defendants, Python and Jaquelyn, in the alternative, and Count III speaks for itself. However, Python Defendants deny all allegations of wrongdoing and/or liability and that Plaintiff is entitled to any damages or relief as stated in the Complaint.

51. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

52. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

53. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

54. Admitted that Plaintiff seeks damages in excess of \$75,000.00. However, Python Defendants deny that Plaintiff is entitled to any damages or relief as stated in the Complaint.

COUNT IV – PROMISSORY ESTOPPEL

55. Python Defendants reallege their responses to paragraphs 1 through 30 of the Complaint above as if fully set forth herein.

56. Admitted that Plaintiff brings an action for promissory estoppel against Defendants, Python and Jaquelyn, in the alternative, and Count IV speaks for itself. However, Python Defendants deny all allegations of wrongdoing and/or liability and that Plaintiff is entitled to any damages or relief as stated in the Complaint.

57. Python Defendants deny they “promised” to indemnify Plaintiff. Python Defendants further deny as stated the allegations in paragraph 57 in all other respects and state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

58. Without knowledge, and as such denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

59. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

60. Without knowledge regarding Plaintiff’s legal counsel and the settlements, and as such denied. Python Defendants further deny the allegations in

paragraph 60 in all other respects and state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

61. Without knowledge regarding Plaintiff's legal TCPA claims' damages, and as such denied. Python Defendants further deny the allegations in paragraph 61 in all other respects.

62. Admitted that Plaintiff seeks damages in excess of \$75,000.00. However, Python Defendants deny that Plaintiff is entitled to any damages or relief as stated in the Complaint.

63. Denied.

COUNT V – QUANTUM MERUIT

64. Python Defendants reallege their responses to paragraphs 1 through 30 of the Complaint above as if fully set forth herein.

65. Denied.

66. Denied as stated.

67. Admitted that Python entered into an agreement with Final Expense whereby Python generated telephone call leads in exchange of payment. Otherwise, denied as stated.

68. Denied.

69. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

70. Denied.

71. Admitted that Plaintiff seeks damages in excess of \$75,000.00. However, Python Defendants deny that Plaintiff is entitled to any damages or relief as stated in the Complaint.

**COUNT VI – VIOLATION OF THE FLORIDA DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT**

72. Python Defendants reallege their responses to paragraphs 1 through 29 of the Complaint above as if fully set forth herein.

73. Admitted that Plaintiff brings an action for violations of the Florida and Unfair Trade Practices Act against Python Defendants and Count VI speaks for itself. However, Python Defendants deny all allegations of wrongdoing and/or liability and that Plaintiff is entitled to any damages or relief as stated in the Complaint.

74. The referenced statute speaks for itself and is the best evidence of its contents and terms thereof. Python Defendants further stated the allegations in paragraph 74 call for a legal conclusion, and as such no response is required. To the extend the Court requires a response, without knowledge, and as such denied.

75. The referenced statute speaks for itself and is the best evidence of its contents and terms thereof. Python Defendants further stated the allegations in paragraph 75 call for a legal conclusion, and as such no response is required. To the extend the Court requires a response, without knowledge, and as such denied.

76. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

77. Without knowledge, and as such denied.

78. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

79. Without knowledge regarding Plaintiff's legal and settlement fees, and as such denied. Python Defendants further deny the allegations in paragraph 79 in all other respects.

80. Admitted that Plaintiff seeks damages in excess of \$75,000.00. However, Python Defendants deny that Plaintiff is entitled to any damages or relief as stated in the Complaint.

COUNT VII – FRAUD IN THE INDUCEMENT

81. Python Defendants reallege their responses to paragraphs 1 through 30 of the Complaint above as if fully set forth herein.

82. Admitted that Plaintiff brings an action for fraud in the inducement against Python Defendants and Count VII speaks for itself. However, Python Defendants deny all allegations of wrongdoing and/or liability and that Plaintiff is entitled to any damages or relief as stated in the Complaint.

83. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

84. Denied.

85. Denied.

86. Denied.

87. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

88. Without knowledge regarding Plaintiff's legal and settlement fees, and as such denied. Python Defendants further deny the allegations in paragraph 88 in all other respects.

COUNT VIII – NEGLIGENT SUPERVISION

89. Python Defendants reallege their responses to paragraphs 1 through 30 of the Complaint above as if fully set forth herein.

90. Admitted that Plaintiff brings an action for negligent misrepresentation against Defendant, Python, or in the alternative, Jacquelyn, and Count VIII speaks for itself. However, Python Defendants deny all allegations of wrongdoing and/or liability and that Plaintiff is entitled to any damages or relief as stated in the Complaint.

91. Denied as stated.

92. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

93. Without knowledge regarding Plaintiff's "settlement," and as such denied. Python Defendants further deny the allegations in paragraph 93 in all other respects.

COUNT IX – FRAUDULENT MISREPRESENTATION

94. Python Defendants reallege their responses to paragraphs 1 through 30 of the Complaint above as if fully set forth herein.

95. Admitted that Plaintiff brings an action for fraudulent misrepresentation against Python Defendants and Count IX speaks for itself. However, Python Defendants deny all allegations of wrongdoing and/or liability and that Plaintiff is

entitled to any damages or relief as stated in the Complaint. Python Defendants further deny the allegations in paragraph 95 in all other respects and state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

COUNT X – NEGLIGENT MISREPRESENTATION

96. Python Defendants reallege their responses to paragraphs 1 through 30 of the Complaint above as if fully set forth herein.

97. Admitted that Plaintiff brings an action for negligent misrepresentation against Python Defendants, in the alternative to Count IX, and Count X speaks for itself. However, Python Defendants deny all allegations of wrongdoing and/or liability and that Plaintiff is entitled to any damages or relief as stated in the Complaint.

98. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

99. Without knowledge regarding Plaintiff's legal and settlement fees, and as such denied. Python Defendants further deny the allegations in paragraph 99 in all other respects and state the referenced document speaks for itself and is the best evidence of the content and terms thereof.

COUNT XI – CIVIL CONSPIRACY

100. Python Defendants reallege their responses to paragraphs 1 through 29 of the Complaint above as if fully set forth herein.

101. Admitted that Plaintiff brings an action for civil conspiracy against Python Defendants and Count XI speaks for itself. However, Python Defendants deny

all allegations of wrongdoing and/or liability and that Plaintiff is entitled to any damages or relief as stated in the Complaint.

102. Denied. Python Defendants further state the referenced documents speak for themselves and are the best evidence of the content and terms thereof.

103. Without knowledge regarding Plaintiff's settlements, and as such denied. Python Defendants further deny the allegations in paragraph 103 in all other respects.

COUNT XII – FRAUDULENT MISREPRESENTATION

104. Defendants reallege their responses to paragraphs 1 through 30, 71-87, and 95-103 of the Complaint above as if fully set forth herein.

105. The allegations set forth in paragraph 105 of the Complaint are not directed toward the Python Defendants, and as such no response is required from the Python Defendants. To the extent a response is required, the Python Defendants deny the allegations and/or lack the information sufficient to form a belief as to the truth or falsity of the allegations (and therefore deny the allegations).

106. The allegations set forth in paragraph 106 of the Complaint are not directed toward the Python Defendants, and as such no response is required from the Python Defendants. To the extent a response is required, the Python Defendants deny the allegations and/or lack the information sufficient to form a belief as to the truth or falsity of the allegations (and therefore deny the allegations).

107. The allegations set forth in paragraph 107 of the Complaint are not directed toward the Python Defendants, and as such no response is required from the Python Defendants. To the extent a response is required, the Python Defendants deny

the allegations and/or lack the information sufficient to form a belief as to the truth or falsity of the allegations (and therefore deny the allegations).

108. The allegations set forth in paragraph 108 of the Complaint are not directed toward the Python Defendants, and as such no response is required from the Python Defendants. To the extent a response is required, the Python Defendants deny the allegations and/or lack the information sufficient to form a belief as to the truth or falsity of the allegations (and therefore deny the allegations).

109. The allegations set forth in paragraph 109 of the Complaint are not directed toward the Python Defendants, and as such no response is required from the Python Defendants. To the extent a response is required, the Python Defendants deny the allegations and/or lack the information sufficient to form a belief as to the truth or falsity of the allegations (and therefore deny the allegations).

DAMAGES

110. Admitted that Plaintiff seeks damages in excess of \$75,000.00. However, Python Defendants deny all allegations of wrongdoing and/or liability and that Plaintiff is entitled to any damages or relief as stated in the Complaint.

ATTORNEYS' FEES & COST

111. Admitted that Plaintiff seeks attorneys' fees and costs. However, Python Defendants deny that Plaintiff is entitled to any damages or relief as stated in the Complaint.

PRAYER

112. Admitted that Plaintiff seeks damages against Python Defendants. However, Python Defendants deny all allegations of wrongdoing and/or liability and that Plaintiff is entitled to any damages or relief as stated in the Complaint.

DEFENDANTS' GENERAL DENIALS

113. To the extent the "WHEREFORE" clauses contained within the Complaint set forth allegations against the Python Defendants, Python Defendants deny same.

114. To the extent the "INTRODUCTION" clause contained within the Complaint set forth allegations against the Python Defendants, Python Defendants deny same.

115. To the extent the headings, subheadings and/or subsections contained within the Complaint set forth allegations against the Python Defendants, Python Defendants deny same.

116. The Python Defendants deny all allegations set forth in the Complaint that are not specifically admitted herein (including subparts) and demand strict proof thereof.

117. The Python Defendants deny that Plaintiff is entitled to judgment or to the relief sought against the Python Defendants herein.

118. The Python Defendants deny any and all allegations of liability, legal cause, and damages of any kind.

PYTHON DEFENDANTS' AFFIRMATIVE DEFENSES

First Affirmative Defense

The Second Amended Complaint is an improper pleading. Plaintiff fails to set forth each claim with clarity, brevity, and precision. Plaintiff does not separate each count or the transaction or occurrences that each claim is founded on, and reincorporates allegations of prior counts, as well as the general allegations. Shotgun pleadings violate Rule 8's requirement that a complaint contain a short and plain statement of the claim and are improper because they fail "to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Arrington v. Green*, 757 Fed. Appx. 796, 797 (11th Cir. 2018).

Second Affirmative Defense

Plaintiff is barred from pursuing any and all claims relating to and/or in connection with the 2021 March agreement since the alleged 2021 March agreement is unsigned by Python as required by the agreement, Python did not intend to be bound by the terms of, and the 2021 March Agreement was superseded and/or invalidated by the 2021 June agreement – at the very least with regard to the indemnification provision at issue. Accordingly, the alleged 2021 March agreement is not a legally valid, effective, and/or enforceable document (nor is it definite and/or certain in all of its essential elements). There was no meeting of the minds on the 2021 March agreement, despite Plaintiff's attempt to demonstrate otherwise.

Third Affirmative Defense

Plaintiff is barred from pursuing any and all indemnification claims against the Python Defendants because Plaintiff failed to provide notice of the alleged underlying claims and an opportunity to appear and defend the claims. Plaintiff fails to allege it made Python Defendants aware of the alleged underlying claims/lawsuits, let alone that these claims/lawsuits were based on a lead transferred by Python. Plaintiff also fails to establish actual liability on behalf of Python Defendants and that the alleged underlying settlements were reasonable to bind Python Defendants to the settlement agreements. Plaintiff cannot seek indemnification from Python Defendants because it voluntarily, unilaterally and unreasonably chose to settle the claims without notice to, or involvement and consent of Python Defendants.

Fourth Affirmative Defense

Plaintiff is barred from pursuing any and all claims against Python Defendants because Plaintiff failed to name and join Python Defendants as a certain indispensable and necessary parties, without whom complete relief could not be granted, and chose to not engage Python Defendants in negotiations of settlement with the claimants. Plaintiff destroyed any forum for determining whether Plaintiff or Python Defendants were at fault in the underlying lawsuits.

Fifth Affirmative Defense

Defendants, Jaquelyn and David, are not, and cannot, be responsible individually for contracts, agreements, promises, debts and/or obligations of Python. The law is clear that an LLC exists as an entity separate and apart from its owners,

members, or employees. Defendants, Jaquelyn and David, did not execute the alleged March agreement or the June agreement in their individual capacity, act in their individual capacity, or were parties to the agreement. The alleged business dealings were between Plaintiff and Python only.

Sixth Affirmative Defense

Plaintiff fails, and cannot, set forth the proper elements to pierce Python's corporate veil. Python is not a sham entity and Plaintiff cannot pierce a veil based on a single payment to a personal account while a corporate account was established, a couple's marital status, or the possible ownership stake in unrelated companies.

Seventh Affirmative Defense

Plaintiff's tort claims are barred due to the independent tort doctrine. In Counts VI (FDUTPA), VII (fraud in the inducement), VIII (negligent supervision), IX (fraudulent misrepresentation), X (negligent misrepresentation), and XI (civil conspiracy), Plaintiff alleges a tort against Python Defendants that is not independent of the alleged operating agreement between Plaintiff and Python, which is attached to the Complaint.

Eighth Affirmative Defense

Plaintiff is barred from pursuing a negligent supervision claim against Defendant, Python, or alternatively, Jacquelyn because Plaintiff fails to, and cannot, allege ultimate facts to support that prior to the alleged underlying incident in the Complaint, Python or Jacquelyn became or should have become aware of problems with any specific employee that indicated that employee's unfitness; and failed to take

further actions upon becoming aware of any specific employee's unfitness. Plaintiff has not, and cannot, allege a previous incident separate and apart from the underlying claim.

Ninth Affirmative Defense

Python is not liable to the Plaintiff insofar as the alleged employees were, at all material times hereto, independent contractors and/or vendors of Python. To the extent the Court and/or trier of fact finds that Python Defendants can be liable for the acts of Python's independent contractors and/or vendors, Python Defendants are not liable for the alleged employees herein to the extent their actions were unforeseeable, outside the scope of their relationship with Python, and/or represented a "frolic."

Tenth Affirmative Defense

Plaintiff is barred from pursuing fraud-based claims against Python Defendants, including Counts VII (fraudulent inducement), IX (fraudulent misrepresentation), and X (negligent misrepresentation), because Plaintiff cannot provide with particularity ultimate facts on each element of the claims. Plaintiff relies on statements of opinion, belief, and expectation, and fails to state a cause of action.

Eleventh Affirmative Defense

Plaintiff is barred from pursuing a civil conspiracy claims against Defendant because Plaintiff has failed to establish the existence of an agreement between the parties to allege a conspiracy and fails to set forth a required underlying wrong. Plaintiff relies on conclusory statements of opinion, belief, and expectation, and fails to state a cause of action.

Twelfth Affirmative Defense

Plaintiff's alleged damages were caused by its own negligence and/or failure to mitigate damages. Plaintiff failed to mitigate its damages, including but not limited to: (a) failing to defend the alleged underlying lawsuits and claims; and (b) failing to obtain reasonable settlements.

Thirteenth Affirmative Defense

Any damages allegedly incurred by Plaintiff herein are the result of its unilateral mistake – more specifically, Plaintiff's alleged belief that Python and Plaintiff's agreement required Python to hold harmless and/or indemnify Plaintiff.

Fourteenth Affirmative Defense

Plaintiff's claims fail because Python Defendants were not the proximate cause of Plaintiff's alleged damages. Any damages sustained by Plaintiff were the direct and/or proximate result of conduct of Plaintiff or other persons, entities, or vendors, regardless of whether parties named in this action.

Fifteenth Affirmative Defense

Plaintiff is entitled to a set-off or deduction for any sums which the Plaintiff has received in relation to the allegations described in the Complaint herein, including but not limited to any settlement, agreement, and/or insurance payments received by Plaintiff.

Sixteenth Affirmative Defense

Plaintiff is barred from pursuing any and all claims relating to and/or in connection with the contract because Python performed its obligations under the

contract or was excused from performance due to Plaintiff's breach of the contract and failure to perform under the contract.

Seventeenth Affirmative Defense

Plaintiff's claims are barred by waiver because Plaintiff's relinquished any alleged right under the 2021 March agreement when the 2021 June agreement superseded and/or invalidated it and Plaintiff failed to raise any objection. Plaintiff expressly or by implied conduct waived its rights, and upon information and belief, Plaintiff intended to relinquish those rights, and cannot reclaim those rights without consent of Python Defendants.

Eighteenth Affirmative Defense

Plaintiff's claims are barred by the doctrines of unclean hands and/or estoppel because Plaintiff represented that it would be 100% responsible for any and all TCPA claims, Python reasonably relied upon those representations, and Plaintiff has since changed its position to Python's detriment in reliance upon the Plaintiff's representations. Plaintiff now alleges Python Defendants agreed to indemnify it for any claims and voluntarily and unilaterally chose to settle the unknown claims without notice to, or involvement and consent of Python Defendants.

Nineteenth Affirmative Defense

Plaintiff's claims are barred by laches because Plaintiff failed to act with diligence by waiting over a year after the 2021 June agreement to raise any objection to that agreement and Python Defendants have suffered prejudice as a result thereof.

Twentieth Affirmative Defense

Plaintiff's claims fail to the extent Plaintiff has failed to properly and sufficiently allege any viable, legal duties owed by Python Defendants and have failed to set forth facts sufficient to state a cause of action for which relief can be granted.

Reservation of Rights as to Affirmative Defenses

Python Defendants reserve the right to amend or supplement the above-referenced affirmative defenses as additional information is obtained through discovery or otherwise.

WHEREFORE, Python Defendants respectfully request entry of judgment in their favor and against Plaintiff, an award of costs, and such other and further relief as is just and proper.

**COUNTER-PLAINTIFF, PYTHON LEADS LLC'S,
COUNTERCLAIM AGAINST COUNTER-DEFENDANT,
FINAL EXPENSE DIRECT**

Defendant/Counter-Plaintiff, Python Leads LLC ("Python" or "Counter-Plaintiff"), by and through its undersigned counsel, hereby files this Counterclaim against Plaintiff/Counter-Defendant, Final Expense Direct, Inc. ("FED" or "Counter-Defendant"), and in support thereof state as follows:

PARTIS, JURISDICTION AND VENUE

1. This matter involves FED's failure to pay Python for services received.

2. More specifically, FED's actions have resulted in a loss to Plaintiff in excess of \$3,294.00, excluding interest, costs, and attorneys' fees.

3. Python is a limited liability company organized under the laws of Florida with its principal place of business located at 5533 Marquesas Circle, Sarasota, FL 34230.

4. Python is a citizen of Florida because Jacquelyn Levin, a citizen of Florida, is the sole member and 100% owner of Python.

5. FED is a Florida corporation with its principal place of business located at 6201 Bonhomme Road, Suite 110S, Houston, TX 77036.

6. Jurisdiction and venue are proper as the causes of action set forth herein are counterclaims in this pending lawsuit.

GENERAL ALLEGATIONS

7. FED entered into a Python Leads Agreement with Python for leads services in exchange of a fee per lead (the "Agreement"). A true and correct copy of the Agreement is attached hereto as **Exhibit A**.

8. The Agreement establishes in part the rate as \$20 per billable lead. *See* Ex. A, p. 1.

9. Python provided leads to FED pursuant to the Agreement.

10. FED failed to make full payment to Python as required by the Agreement.

11. There is an outstanding balance currently due and owing to Python in excess of \$3,294.00. A true and correct copy of the Invoice is attached hereto as **Exhibit B**.

COUNT I
BREACH OF CONTRACT

12. Counter-Plaintiff realleges the allegations contained in paragraphs 1 through 11 above as if fully set forth herein.

13. FED entered into the Agreement with Python for lead services.

14. Python provided lead services as required by the Agreement and otherwise abided by the terms of the Agreement.

15. FED breached the Agreement with FED by, *inter alia*, failing to pay Python the full amounts for the services as required under the Agreement.

16. Despite demand for payment, Python has failed to make full payment as required by the Agreement.

17. As a result thereof, Python has suffered damages to which it is entitled to recover from FED.

18. Accordingly, Plaintiff is entitled to an award of damages in excess of \$3,400.00, plus fees, interest, and costs permissible under law.

WHEREFORE, Counter-Plaintiff, Python Leads LLC, demands judgment against Counter-Defendant, Final Expense Direct, Inc., for damages, plus costs, with interest thereon, and such other and further relief as is just and proper.

COUNT II
UNJUST ENRICHMENT
(IN THE ALTERNATIVE)

19. Counter-Plaintiff realleges the allegations contained in paragraphs 1 through 11 above as if fully set forth herein.

20. Python conferred a benefit on FED by providing certain services to FED pursuant to the Agreement, which negate the idea that the services were gratuitous.

21. As set forth above, FED has failed to provide Python with the full payment that was agreed to by the parties in exchange for Plaintiff's services.

22. FED's failure to pay Python constitutes voluntary acceptance and retention of benefits conferred upon it.

23. It would be inequitable to allow FED to accept services provided by Python without paying the value thereof to Python.

24. As a result, FED has been unjustly enriched at Python's expense and detriment.

WHEREFORE, Counter-Plaintiff, Python Leads LLC, demands judgment against Counter-Defendant, Final Expense Direct, Inc., for damages, plus costs, with interest thereon, and such other and further relief as is just and proper.

COUNT III
ACCOUNT STATED
(IN THE ALTERNATIVE)

25. Counter-Plaintiff realleges the allegations contained in paragraphs 1 through 11 above as if fully set forth herein.

26. Python had an agreement with FED, setting forth the amounts due with respect to their transactions, namely the sale of services provided by Python.

27. Python had an express or implied agreement with Counter-Plaintiff that the balance reflected in the account stated or invoice was correct and due, and an express or implied promise that FED would pay Python that amount.

28. Python presented FED with an account stated in the amount of \$3,294.00, based upon the services provided to FED by Python.

29. FED did not contest the accuracy of the statement of account stated or invoice nor pose any objection to the amounts owed to Python.

30. Payment for the account stated has been demanded by Python and has not been made by FED.

31. By reason of the foregoing, Python has and will continue to suffer substantial damages.

32. Accordingly, Python is entitled to the amount set forth in the foregoing account statement or invoice.

WHEREFORE, Counter-Plaintiff, Python Leads LLC, demands judgment against Counter-Defendant, Final Expense Direct, Inc., for damages, plus costs, with interest thereon, and such other and further relief as is just and proper.

PRAYER FOR RELIEF

WHEREFORE, Counter-Plaintiff, Python Leads LLC, prays for the following relief:

1. Judgment in favor of Python and against FED, in excess of \$3,294.00;

2. An award for damages, including: (a) accruing interest to the date of entry of judgment; (b) post-judgment interest at the applicable rate; and (c) all other amounts due to Python under the Agreement and applicable law; and
3. Such other and further relief as the Court determines is just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Python Defendants demand a trial by jury as to all issues so triable.

Dated: October 21, 2024.

FOX ROTHSCHILD LLP

By: /s/ Seth B. Burack

Seth B. Burack
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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, thus serving all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

By: /s/ Seth B. Burack
Seth B. Burack