

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ROBERT W. CLOUGH, II, individually and on behalf of a class of all persons and entities similarly situated,

Plaintiff,

v.

PLYMOUTH ROCK MANAGEMENT COMPANY OF NEW JERSEY, and JOHN DOE CORPORATION,

Defendants.

Case No.: 2:21-cv-19343 (JXN) (JBC)

Hon. Julien X. Neals, U.S.D.J.

Hon. James B. Clark, U.S.M.J.

**ANSWER, AFFIRMATIVE
DEFENSES, COUNTERCLAIM,
AND THIRD-PARTY COMPLAINT
OF PLYMOUTH ROCK
MANAGEMENT COMPANY OF
NEW JERSEY**

PLYMOUTH ROCK MANAGEMENT COMPANY OF NEW JERSEY, Third-Party Plaintiff,

v.

CONNECTTHECALLS.COM LLC, CONNECTTHELEADS LLC, and MARLEN RAPOPORT,

Third-Party Defendants.

Defendant Plymouth Rock Management Company of New Jersey (“Plymouth Rock” or “Defendant”), as and for its Answer and Affirmative Defenses in response to the Class Action Complaint (“Complaint”) filed on behalf of plaintiff Robert W. Clough, II (“Clough” or “Plaintiff”), states as follows:

AS TO PRELIMINARY STATEMENT

1. Paragraph 1 of the Complaint quotes a document, which speaks for itself. Defendant lacks information sufficient to admit or deny the remaining allegations of Paragraph 1.

2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Complaint.

3. Defendant admits only that it entered into a contractual agreement with CONNECTTHECALLS.COM LLC (“CTC”), which agreement confirms that CTC was not an agent or partner of Defendant and that CTC was required at all times to comply with state and federal law, including but not limited to the Telephone Consumer Protection Act, 47 U.S.C. §227 *et seq.* (“TCPA”), and state and federal do not call lists. Defendant denies the remaining allegations of Paragraph 3 of the Complaint.

4. Defendant admits only that Clough filed a previous lawsuit styled *Robert W. Clough, II v. Plymouth Rock Assurance Corporation, et al.*, Case No. 20-cv-00345-LM (D.N.H. 10/27/20), which was thereafter dismissed. Defendant denies the remaining allegations of Paragraph 4 of the Complaint.

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Complaint, except that Defendant denies the allegations of the first sentence thereof.

6. Defendant denies the allegations of Paragraph 6 of the Complaint.

AS TO PARTIES

7. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Complaint.

8. Defendant admits only that Plymouth Rock Management Company of New Jersey is a domestic corporation, but denies the remaining allegations of Paragraph 8 of the Complaint.

9. Defendant admits only that it entered into a contractual agreement with CTC, which agreement confirms that CTC was not an agent or partner of Defendant and that CTC was required

at all times to comply with state and federal law, including but not limited to the TCPA and state and federal do not call lists. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 9 of the Complaint.

AS TO JURISDICTION AND VENUE

10. Paragraph 10 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 10 of the Complaint.

11. The first sentence of Paragraph 11 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of the first sentence of Paragraph 11 of the Complaint. Defendant admits that it is registered to do business within the State of New Jersey. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 11 of the Complaint.

12. Defendant lacks knowledge or information sufficient to form a belief as to whether the telemarketing calls alleged by Plaintiff occurred in this District. The remainder of Paragraph 12 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies those allegations of Paragraph 12 of the Complaint.

AS TO THE TELEPHONE CONSUMER PROTECTION ACT

13. Paragraph 13 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 13 of the Complaint.

14. Paragraph 14 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 14 of the Complaint.

15. Paragraph 15 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 15 of the Complaint.

16. Paragraph 16 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 16 of the Complaint.

AS TO FACTUAL ALLEGATIONS

17. Defendant denies the allegations of Paragraph 17 of the Complaint.

18. Defendant admits only that it has entered into contractual agreements with certain independent, third-party companies that generate sales leads and are required at all times to comply with state and federal law, including but not limited to the TCPA and state and federal do not call lists. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 18 of the Complaint.

19. Defendant lacks knowledge or information sufficient to form a belief as to the activities of John Doe, and denies the remaining allegations of Paragraph 19 of the Complaint.

As to “The Calls to Mr. Clough”

20. Paragraph 20 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 20 of the Complaint.

21. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 of the Complaint.

22. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 of the Complaint.

23. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 of the Complaint.

24. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 of the Complaint.

25. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25 of the Complaint.

26. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 of the Complaint.

27. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27 of the Complaint.

28. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28 of the Complaint.

29. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29 of the Complaint.

30. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30 of the Complaint.

31. Defendant admits only that on August 11, 2021, CTC transferred a call purporting to be from a Mr. Robert Phillips seeking a New Jersey automobile insurance policy quote to an insurance agency authorized to issue Plymouth Rock automobile insurance policies. Defendant

lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 31 of the Complaint.

32. Defendant admits only that on August 11, 2021, CTC transferred a call purporting to be from a Mr. Robert Phillips seeking a New Jersey automobile insurance policy quote to an insurance agency authorized to issue Plymouth Rock automobile insurance policies. Defendant denies the truth of the remaining allegations of Paragraph 32 of the Complaint.

33. Defendant admits only that on August 11, 2021, CTC transferred a call purporting to be from a Mr. Robert Phillips seeking a New Jersey automobile insurance policy quote to an insurance agency authorized to issue Plymouth Rock automobile insurance policies. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 33 of the Complaint.

34. Defendant admits only that on August 11, 2021, a person purporting to be a Mr. Robert Phillips sought a New Jersey automobile insurance policy quote from an insurance agency authorized to issue Plymouth Rock automobile insurance policies and responded to questions in support of the same. Defendant denies the truth of the remaining allegations of Paragraph 34 of the Complaint.

35. Defendant admits only that at the request of a person purporting to be a Mr. Robert Phillips and based on the representations of said person, an insurance agency authorized to issue Plymouth Rock automobile insurance policies forwarded a New Jersey automobile insurance policy quote to the email provided by said person. Defendant denies the truth of the remaining allegations of Paragraph 35 of the Complaint.

36. Defendant admits only that a person purporting to be a Mr. Robert Phillips requested and received the referenced call back number. Defendant denies the truth of the remaining allegations of Paragraph 36 of the Complaint.

37. Defendant denies the truth of the allegations of Paragraph 37 of the Complaint.

38. Defendant admits only that the email requested by a person purporting to be a Mr. Robert Phillips indicates it was sent from the referenced email address. Defendant denies the truth of the remaining allegations of Paragraph 38 of the Complaint.

39. Defendant admits only that the domain “@plymouthrock.com” belongs to Defendant. Defendant denies the truth of the remaining allegations of Paragraph 39 of the Complaint.

40. Defendant admits only that on August 11, 2021, a person purporting to be a Mr. Robert Phillips sought a New Jersey automobile insurance policy quote from an insurance agency authorized to issue Plymouth Rock automobile insurance policies and responded to questions in support of the same. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 30 of the Complaint.

41. Defendant denies the allegations of Paragraph 31 of the Complaint.

As to “Plymouth Rock’s Liability for John Doe’s Conduct”

42. Paragraph 42 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 42 of the Complaint.

43. Paragraph 43 of the Complaint quotes a document, which speaks for itself. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 43 of the Complaint.

44. Paragraph 44 of the Complaint quotes a document, which speaks for itself. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 44 of the Complaint.

45. Paragraph 45 of the Complaint quotes a document, which speaks for itself. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 45 of the Complaint.

46. Defendant denies the allegations of paragraph 46 of the Complaint.

47. Defendant denies the allegations of paragraph 47 of the Complaint.

48. Defendant denies the allegations of Paragraph 48 of the Complaint.

49. Defendant denies the allegations of Paragraph 49 of the Complaint.

50. Defendant denies the allegations of Paragraph 50 of the Complaint.

51. Paragraph 51 of the Complaint quotes a document, which speaks for itself. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 51 of the Complaint.

As to “Class Action Statement”

52. Defendant denies the allegations of Paragraph 52 of the Complaint.

53. Paragraph 53 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 53 of the Complaint.

54. Paragraph 54 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 54 of the Complaint.

55. Paragraph 55 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 55 of the Complaint.

56. Paragraph 56 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 56 of the Complaint.

57. Paragraph 57 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 57 of the Complaint.

58. Paragraph 58 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 58 of the Complaint.

59. Paragraph 59 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 59 of the Complaint.

60. Paragraph 60 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 60 of the Complaint.

61. Paragraph 61 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 61 of the Complaint.

62. Paragraph 62 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 62 of the Complaint.

63. Paragraph 63 of the Complaint states legal conclusions and arguments as to which no response is required. To the extent that further response is deemed required, Defendant denies the allegations of Paragraph 63 of the Complaint.

AS TO FIRST CAUSE OF ACTION
Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227)
(On Behalf of Plaintiff and the National Do Not Call Registry Class)

64. Defendant repeats its preceding responses and incorporates them by reference herein.

65. Defendant denies the allegations of Paragraph 65 of the Complaint.

66. Defendant denies the allegations of Paragraph 66 of the Complaint.

67. Defendant denies the allegations of Paragraph 67 of the complaint.

68. Defendant denies the allegations of Paragraph 68 of the Complaint.

Defendant further states that it is not required to respond to any headings in the Complaint, but to the extent a response is deemed required, Defendant denies the allegations in all headings of the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

To the extent the alleged injuries or causes of action arose prior to the applicable statutory periods, Plaintiff's claims and those of the putative class members are barred, in whole or in part, by applicable statutes of limitations or statutes or rules of repose.

THIRD AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims are barred by the failure to join an indispensable party or parties.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's requested relief would be so punitive and disproportionate to the gravity of the violations alleged in the Complaint as to amount to a violation of Defendant's rights under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and applicable state constitutional provisions by depriving Defendant of due process and exposing Defendants to multiple punishments and excessive, disproportionate, and penal fines, and would further be prohibited without bifurcating such issues from the issue of liability.

SIXTH AFFIRMATIVE DEFENSE

Some or all of the claims alleged by Plaintiff and on behalf of the putative class members are barred because their alleged damages, if any, were caused solely by their own respective acts, wrongs, or omissions, by intervening causes, or by other persons or entities over whom Defendant had no control and for which Defendant is not responsible.

SEVENTH AFFIRMATIVE DEFENSE

The damages suffered by Plaintiff and putative class members, if any, are due to the contributory fault of Plaintiff and the comparative or contributory fault of others. Any recovery should be reduced or barred in proportion to the degree or percentage of fault attributable to Plaintiff, putative class members, and other third parties responsible for the harm, if any, to Plaintiff and the putative class members.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's and the putative class members' claims are barred because, to the extent they have suffered any damages, they have failed to mitigate such damages.

NINTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims against Defendant are barred in whole or in part because Plaintiffs voluntarily and knowingly assumed any risks of any harms alleged by them.

TENTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims against Defendant are barred in whole or in part because the alleged John Doe and/or any other bad actor(s) was (were) not an agent of Defendant and/or had no authority to act on Defendant's behalf with regard to the alleged actions.

ELEVENTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims against Defendant are barred in whole or in part because the alleged John Doe and/or any other of Defendants' alleged agents acted outside the scope of any such alleged agency.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's and some or all of the putative class members' claims against Defendant, and Plaintiff's eligibility to act as class representative, are barred in whole or in part because the alleged John Doe and/or any other of Defendants' alleged agents were specifically barred by the terms of their contract(s) with Defendant from making the calls about which they complain.

THIRTEENTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims are barred in whole or in part because the calls about which they complain were not placed by Defendant or any agent of Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claim is barred because he has not suffered an injury from which he may recover and/or lacks standing.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff or members of the putative class, or both, provided prior express consent to receive the calls about which they complain.

SIXTEENTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims against Defendant are barred in whole or in part insofar as an applicable established business relationship authorized the calls at issue pursuant to 47 C.F.R. § 64.1200(f)(5).

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the Telephone Consumer

Protection Act and related regulations, including the establishment and maintenance of an internal do not call registry.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant is not liable because the call or calls alleged were placed to a wireless number that has been ported from wireline service and such call is a voice call; not knowingly made to a wireless number; and made within 15 days of the porting of the number from wireline to wireless service, provided the number is not already on the national do not call registry or caller's company-specific do not call list under 47 C.F.R. § 64.1200(a)(1)(iv).

NINETEENTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims against Defendant are barred in whole or in part insofar as any or all of the calls for they seek to recover were not to residential telephone numbers registered to them.

TWENTIETH AFFIRMATIVE DEFENSE

Defendant is not liable because the alleged calls were the result of error and, as part of Defendant's routine business practice, it meets the standards set forth in 47 C.F.R. § 64.1200(c)(2)(i) (written procedures, training, recording, and accessing national do-not-call registry).

TWENTY FIRST AFFIRMATIVE DEFENSE

Defendant is not liable because it falls within the safe harbor provisions of 47 C.F.R. § 64.1200(m) (reassigned telephone numbers for which express consent had been obtained).

TWENTY SECOND AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims are barred in whole or in part because the calls about which they complain were not placed using an autodialer.

TWENTY THIRD AFFIRMATIVE DEFENSE

Plaintiff and the putative class members are barred from recovery because the telephone calls at issue were made with the caller's reasonable reliance upon Plaintiff's and the putative class members' consent to receive the calls at issue, and therefore the calls fall within the "one-call" safe harbor established by the Federal Communications Commission. *See In re: Rules & Regs. Implementing the Tel. Consumer Prot. Act of 1991*, 30 F.C.C. Rcd. 7961, 7971-72 (2015).

TWENTY FOURTH AFFIRMATIVE DEFENSE

Plaintiff's and the putative class members' claims are barred by the doctrines of unclean hands and/or estoppel.

TWENTY FIFTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims are barred by misrepresentations, concealment, and/or omissions of material fact in statements and communications made by them.

TWENTY SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims, and his eligibility to act as class representative, are barred by his violation(s) of the New Jersey Insurance Fraud Prevention Act, N.J.S.A.17:33A-1, *et seq.*

TWENTY SEVENTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims against Defendant are barred by principles of equity because the equities here favor Defendant.

TWENTY EIGHTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims against Defendant are barred in whole or in part by the doctrines of accord and satisfaction, release, and/or waiver.

TWENTY NINTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims against Defendant are barred in whole or in part by the entire controversy doctrine and/or *res judicata*.

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims against Defendant are barred in whole or in part because Plaintiffs cannot satisfy the requirements of Federal Rule of Civil Procedure 23 for certification of a class.

THIRTY FIRST AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims are not eligible for certification of a class under Federal Rule of Civil Procedure 23 because individual issues predominate in those claims.

THIRTY SECOND AFFIRMATIVE DEFENSE

Some or all of Plaintiff's and the putative class members' claims are not eligible for certification of a class under Federal Rule of Civil Procedure 23 because the members of the putative class are not sufficiently ascertainable.

THIRTY THIRD AFFIRMATIVE DEFENSE

Defendant incorporates by reference as if fully set forth herein each and every defense asserted by each and every defendant in this matter as may be applicable to these Defendants.

RESERVATION OF RIGHTS AND DEFENSES

Defendant reserves the right to amend its Answer and to assert further Affirmative Defenses as they may become available during the course of this action.

WHEREFORE, Defendant Plymouth Rock Management Company of New Jersey respectfully requests that the Court:

- A. Enter judgment in favor of Defendant and against Plaintiff on all counts and causes of action alleged in the Complaint;
- B. Dismiss the Complaint in its entirety with prejudice;
- C. Award Defendant its reasonable costs and attorneys' fees; and
- D. Award such other and further relief as the Court deems just and proper.

RIKER DANZIG LLP

Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981
Tel.: (973) 538-0800
*Attorneys for the Defendant
Plymouth Rock Management Company of
New Jersey*

Dated: February 16, 2024

By: /s/ Derrick R. Freijomil
Derrick R. Freijomil, Esq.
N.J. Bar No.: 048631995

REQUEST FOR STATEMENT OF DAMAGES PURSUANT TO LOCAL RULE 8.1

Defendant hereby requests from Plaintiff a statement of all damages sought in this matter.

RIKER DANZIG LLP

Headquarters Plaza

One Speedwell Avenue

Morristown, NJ 07962-1981

Tel.: (973) 538-0800

Attorneys for the Defendant

*Plymouth Rock Management Company of
New Jersey*

Dated: February 16, 2024

By: /s/ Derrick R. Freijomil
Derrick R. Freijomil, Esq.
N.J. Bar No.: 048631995

COUNTERCLAIM

Defendant/Counterclaim-Plaintiff Plymouth Rock Management Company of New Jersey (“Plymouth Rock” or “Counterclaim-Plaintiff”), as and for its Counterclaim against Plaintiff/Counterclaim-Defendant Robert W. Clough, II (“Clough” or “Counterclaim-Defendant”), states as follows:

Introduction

1. Clough has deliberately solicited telephone calls, directly and/or indirectly, from insurance companies, like he did here as to Plymouth Rock, falsely misrepresenting his interest seeking automobile insurance policies and quotes, while fraudulently using a third-person’s identity without permission, solely and expressly for the purpose of concocting an otherwise meritless claim under the Telephone Consumer Protection Act, 47 U.S.C. §227, *et seq.* (“TCPA”). Clough has made a cottage industry of manufacturing such sham lawsuits under the TCPA, having previously filed other similar TCPA lawsuits. Clough’s fraudulent actions are prohibited under New Jersey common law and statutes.

2. Clough’s fraud has caused actual harm to Plymouth Rock, which has been compelled to expend time and resources in connection with the handling of Clough’s fraudulent telephonic solicitations for an automobile insurance quote proposal in which he had no genuine interest. Clough’s fraud has caused further actual harm to Plymouth Rock in responding to such false claims and defending against the concocted lawsuits based thereon, including as to all litigation costs and fees (including but not limited to attorneys’ fees).

Parties

3. Plymouth Rock is a corporation organized and existing in good standing under the laws of the State of New Jersey, with its principal place of business at 581 Main Street, Ste. 400,

Woodbridge, New Jersey 07095. Plymouth Rock is a citizen of the State of New Jersey within the meaning of 28 U.S.C. §§ 1332(a) and 1332(c)(1).

4. Upon information and belief, Clough is a natural person domiciled in the State of New Hampshire, residing at 20 Lesley Circle, Derry New Hampshire 03038-4448. Clough is a citizen of the State of New Hampshire within the meaning of 28 U.S.C. § 1332(a).

Jurisdiction and Venue

5. This Court has subject matter jurisdiction over this Counterclaim pursuant to 28 U.S.C. § 1332(a)(1) because Plymouth and Clough are citizens of different States and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest or costs.

6. This Court also has supplemental jurisdiction over this Counterclaim pursuant to 28 U.S.C. § 1367(a) because the Counterclaim is so related to the claims asserted by Clough on his own behalf in his Complaint herein that they form part of the same case or controversy under Article III of the United States Constitution, and Clough's individual claims are within the original jurisdiction of Court pursuant to 28 U.S.C. § 1331.

7. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(b)(3) because a substantial part of the events or omissions giving rise to the claim are alleged to have occurred in this District, and because Clough is subject to the personal jurisdiction of this Court. Venue in this District is further proper pursuant to principles of pendent venue.

Factual Background

8. On September 27, 2021, Clough filed a Class Action Complaint (the "Complaint") against Plymouth Rock alleging violations of the TCPA based on alleged calls made by telemarketers to Clough, including a call made on August 11, 2021 (the "August 11th Call").

9. All the alleged calls identified in the Complaint, including the August 11th Call, were not initiated by Plymouth Rock.

10. Upon information and belief, the August 11th Call was initiated by CONNECTTHECALLS.COM LLC (“CTC”).

11. Plymouth Rock’s sole relationship with CTC was via a contract, which confirmed that CTC was at all relevant times an independent party and not an agent or partner of Plymouth Rock and that CTC was to provide only telephone transfers that were in compliance with all state and federal laws, specifically including the TCPA and state and federal do not call laws and regulations.

12. During the initial part of the August 11th Call, on information and belief, Clough falsely represented to CTC that he was a New Jersey resident interested in obtaining an automobile insurance policy quote and that he wanted to speak with someone to obtain that quote.

13. During the initial part of the August 11th Call, on information and belief, Clough asked CTC to transfer the call, or assented to the transfer of the call, to an insurance agency authorized to issue Plymouth Rock automobile insurance policies.

14. During the August 11th Call, Clough was transferred by CTC to Mr. Marck Borre, who works for an insurance agency authorized to issue Plymouth Rock automobile insurance policies.

15. During the August 11th Call, Clough agreed that he was being transferred to Mr. Borre to be assisted with obtaining an automobile insurance policy quote.

16. During the August 11th Call, Clough authorized, accepted, consented, and/or ratified to being transferred from CTC to Mr. Borre.

17. At no time during the August 11th Call, including after it was transferred to Mr. Borre, did Clough ever object to the call or say that it was made without his consent or authorization.

18. Following the transfer of the August 11th Call from CTC to Mr. Borre, Clough explicitly and implicitly made numerous false and fraudulent misrepresentations to Mr. Borre, including but not limited to the following:

- a. That the telephone number on which he was called belonged to a Mr. Robert Phillips;
- b. That he (Clough) was Mr. Robert Phillips;
- c. That he was married to a Mrs. Karen Phillips;
- d. That he was authorized to obtain an automobile insurance quote proposal on behalf of and in the names of Mr. Robert Phillips and/or Mrs. Karen Phillips;
and
- e. That he lived in New Jersey, specifically at 4 Eric Drive, Kinnelon, New Jersey.

19. The aforementioned misrepresentations all were false.

20. Upon information and belief, Clough improperly appropriated and used the names and identities of Mr. Robert Phillips and/or Mrs. Karen Phillips during the August 11th Call.

21. At no time during the August 11th Call did Clough disclose his true identity.

22. At no time during the August 11th Call did Clough disclose his true purpose.

23. During the August 11th Call, Clough continued to conceal the aforementioned false misrepresentations.

24. At no time during the August 11th Call did Clough try to correct any of the aforementioned false misrepresentations or the recipient's reliance thereon.

25. During the August 11th Call, Clough requested that Mr. Borre provide an automobile insurance policy quote from Plymouth Rock based on the aforementioned false information and misrepresentations, and Mr. Borre provided that quote during the call based on the false information and misrepresentations of Clough.

26. Also during the August 11th Call, Clough requested that Mr. Borre email him a copy of the automobile insurance policy quote from Plymouth Rock, and after that call, Mr. Borre did so based on the request from Clough.

27. Approximately nine days later, Clough's counsel sent an August 20, 2021, letter to Plymouth Rock alleging a violation of the TCPA based upon the August 11th Call and making a claim for payment of damages.

28. Approximately two months thereafter, on October 27, 2021, Clough filed the instant Complaint, again alleging a violation of the TCPA based upon the August 11th Call and making a second claim for payment of damages.

29. Based upon Clough's false and fraudulent conduct, Plymouth Rock was and continues to be damaged, including but not limited to expending time and resources (i) in connection with the handling of Clough's fraudulent telephonic solicitations for automobile insurance quote proposals in which he had no genuine interest, and (ii) in responding to and defending against false claims and concocted lawsuits based thereon, including as to all litigation costs and fees (including but not limited to attorneys' fees).

FIRST COUNT

(N.J. Ins. Fraud Prevention Action, N.J.S.A. 17:33A-1, *et seq.*)

30. Plymouth repeats the preceding allegations of this Counterclaim as if set forth at length.

31. The purpose of the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1, *et seq.* (“IFPA”), is “to confront aggressively the problem of insurance fraud in New Jersey”

32. Section 4 of the IFPA provides in part as follows:

§ 17:33A-4. Violations

a. A person or a practitioner violates this act if he:

* * *

(4) Prepares or makes any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining:

(a) a motor vehicle insurance policy, that the person to be insured maintains a principal residence in this State when, in fact, that person’s principal residence is in a state other than this State; or

(b) an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract;

(5) Conceals or knowingly fails to disclose any evidence, written or oral, which may be relevant to a finding that a violation of the provisions of paragraph (4) of this subsection a. has or has not occurred

* * *

b. A person or practitioner violates this act if he knowingly assists, conspires with, or urges any person or practitioner to violate any of the provisions of this act.

c. A person or practitioner violates this act if, due to the assistance, conspiracy or urging of any person or practitioner, he knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this act.

N.J.S.A. 17:33A-4 a.(4, 5), -4 b., -4 c.

33. During the August 11th Call, and/or in other communications to Plymouth Rock directly and/or through downstream intermediaries that Clough knew would relay the content of the communications to Plymouth Rock, Clough made oral and/or written statements intended to be presented to Plymouth Rock and/or an insurance agency authorized to issue Plymouth Rock

automobile insurance policies for the purpose of obtaining a motor vehicle insurance quote and/or policy, including the false claim that Clough maintained a principal residence in the State of New Jersey when, in fact, his principal residence is in a state other than New Jersey, all in violation of the IFPA, N.J.S.A. 17:33A-4(a)(4)(a).

34. During the August 11th Call, and/or in other communications to Plymouth Rock directly and/or through downstream intermediaries that Clough knew would relay the content of the communications to Plymouth Rock, Clough made oral and/or written statements intended to be presented to Plymouth Rock and/or an agency authorized to issue Plymouth Rock automobile insurance policies for the purpose of obtaining an insurance quote and/or policy, knowing that the statements contained false or misleading information concerning any fact or thing material to an insurance application, policy, or quote, all in violation of the IFPA, N.J.S.A. 17:33A-4(a)(4)(b).

35. During the August 11th Call, and thereafter up until the August 20, 2021, demand letter, Clough concealed and/or knowingly failed to disclose any evidence, written or oral, relevant to a finding that either or both of the two aforementioned violations of the IFPA had occurred, all in violation of the IFPA, N.J.S.A. 17:33A-4(a)(5).

36. In continuing and pursuing the August 11th Call, in other communications to Plymouth Rock directly and/or through downstream intermediaries that Clough knew would relay the content of the communications to Plymouth Rock, and/or in making claims against Plymouth Rock via his August 20, 2021, demand letter and Complaint, Clough knowingly assisted, conspired with, and/or urged his counsel and/or knowingly assisted and/or urged the parties with whom he communicated and spoke to violate the provisions of the IFPA as set forth herein, all in violation of the IFPA, N.J.S.A. 17:33A-4(b).

37. In continuing and pursuing the August 11th Call, in other communications to Plymouth Rock directly and/or through downstream intermediaries that Clough knew would relay the content of the communications to Plymouth Rock, and/or in making claims against Plymouth Rock via his August 20, 2021, demand letter and Complaint, Clough, due to the aforementioned assistance, conspiracy, or urging of any person or practitioner, knowingly sought to benefit, directly or indirectly, from the proceeds derived from a violation of the IFPA as set forth herein, all in violation of the IFPA, N.J.S.A. 17:33A-4(c).

38. Clough's misrepresentations and concealments as aforesaid were of presently existing or past facts that were material in connection with his dealings, directly or indirectly, with Plymouth Rock.

39. Clough made his misrepresentations and concealments of fact as aforesaid, knowingly or with the belief of their falsity.

40. Clough made his misrepresentations and concealments of fact as aforesaid, with an intent that Plymouth Rock, directly or indirectly, would rely thereon.

41. Plymouth Rock is an insurance company within the meaning of the IFPA.

42. Plymouth Rock was damaged and continues to be damaged as a result of Clough's violations of the IFPA as set forth herein, including but not limited to expending time and resources (i) in connection with the handling of Clough's fraudulent telephonic solicitations for automobile insurance quote proposals in which he had no genuine interest, and (ii) in responding to and defending against false claims and concocted lawsuits based thereon, including as to all litigation costs and fees (including but not limited to attorneys' fees).

43. Upon information and belief, Clough has engaged in five or more related violations of the IFPA involving either the same victim or the same or similar actions by him.

WHEREFORE, Counterclaim-Plaintiff demands judgment in its favor and against Counterclaim-Defendant, for the following relief:

- A. Compensatory damages;
- B. Treble damages;
- C. Attorneys' fees;
- D. Costs of suit; and
- E. Such other and further relief as the Court deems just and proper.

SECOND COUNT
(Fraud)

44. Plymouth Rock repeats the preceding allegations of this Counterclaim as if set forth at length.

45. Clough's misrepresentations and concealments as aforesaid were of presently existing or past facts that were material in connection with his dealings, directly or indirectly, with Plymouth Rock.

46. Clough made his misrepresentations and concealments of fact as aforesaid, knowingly or with the belief of their falsity.

47. Clough made his misrepresentations and concealments of fact as aforesaid, with an intent that Plymouth Rock, directly or indirectly, would rely thereon.

48. Plymouth Rock detrimentally relied upon Clough's misrepresentations and concealments of fact as aforesaid.

49. Clough's misrepresentations and concealments as aforesaid have caused injury and damages to Plymouth Rock as set forth herein.

WHEREFORE, Counterclaim-Plaintiff demands judgment in its favor and against Counterclaim-Defendant, for the following relief:

- A. Compensatory damages;
- B. Punitive damages;
- C. Costs of suit; and
- D. Such other and further relief as the Court deems just and proper.

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*Attorneys for the Defendant-Counterclaim
Plaintiff*

*Plymouth Rock Management Company of
New Jersey*

Dated: February 16, 2024

By: /s/ Derrick R. Freijomil
Derrick R. Freijomil, Esq.
N.J. Bar No.: 048631995

THIRD-PARTY COMPLAINT

Defendant/Third-Party Plaintiff Plymouth Rock Management Company of New Jersey, as and for its Third-Party Complaint against Third-Party Defendants CONNECTTHECALLS.COM LLC, CONNECTTHELEADS LLC, and MARLEN RAPOPORT, states as follows:

Parties

1. Defendant/Third-Party Plaintiff Plymouth Rock Management Company of New Jersey (“Plymouth Rock” or “Third-Party Plaintiff”) is a corporation organized and existing in good standing under the laws of the State of New Jersey, with its principal place of business at 581 Main Street, Ste. 400, Woodbridge, New Jersey 07095. Plymouth Rock is a citizen of the State of New Jersey within the meaning of 28 U.S.C. §§ 1332(a) and 1332(c)(1).

2. Third-Party Defendant CONNECTTHECALLS.COM LLC (“CTC”) was at all relevant times a domestic limited liability company organized and existing under the laws of the State of New Jersey (Bus. I.D. No. 0450396341), with its main business address at 360 Iverson Place, East Windsor, New Jersey 08520, and its sole member is Marlen Rapoport at the same address. CTC is a citizen of the State of New Jersey within the meaning of 28 U.S.C. § 1332(a).

3. Third-Party Defendant CONNECTTHELEADS LLC (“CTL”) is a domestic limited liability company organized and existing under the laws of the State of New Jersey (Bus. I.D. No. 0450696174), with its main business address at 90 East Halsey Street, Ste. 333 #1977, Parsippany, New Jersey 07054, and its sole member is Marlen Rapoport at the same address. CTL is a citizen of the State of New Jersey within the meaning of 28 U.S.C. § 1332(a).

4. Third-Party Defendant Marlen Rapoport (“Rapoport,” and together with CTC and CTL as “Third-Party Defendants”) is a natural person domiciled in the State of New Jersey,

residing at 360 Iverson Place, East Windsor, New Jersey 08520. Rapoport is a citizen of the State of New Jersey within the meaning of 28 U.S.C. § 1332(a).

Jurisdiction and Venue

5. This Court has supplemental jurisdiction over this Counterclaim pursuant to 28 U.S.C. § 1367(a), because the Third-Party Complaint is so related to the claims asserted by Plaintiff in his Complaint herein that they form part of the same case or controversy under Article III of the United States Constitution, and the individual claims of Plaintiff are within the original jurisdiction of Court pursuant to 28 U.S.C. § 1331.

6. Venue in this District is proper pursuant to 28 U.S.C. § 1391(a) because each of the Third-Party Defendants resides within this District. Venue in this District is further proper pursuant to 28 U.S.C. §§1391(b)(2) and 1391(b)(3) because a substantial part of the events or omissions giving rise to the claim are alleged to have occurred in this District, and because each of the Third-Party Defendants is subject to the personal jurisdiction of this Court. Venue in this District is further proper pursuant to principles of pendent venue.

Factual Background

7. On March 19, 2020, Plymouth Rock entered into a “Lead Purchase Agreement (CONNECT THE CALLS),” effective as of October 7, 2019 (the “LPA”), with CTC.

8. The LPA states that CTC was “in the business of soliciting and sourcing telephone and/or online users interested in receiving offers for insurance or other products or services” and that Plymouth Rock “desire[d] to purchase such products and/or services from [CTC].”

9. The LPA included the following representations and warranties by CTC to Plymouth:

IV. COVENANTS, REPRESENTATIONS AND WARRANTIES

* * *

C. **Seller[/CTC] Representations and Warranties.** Seller represents and warrants to Purchaser[/Plymouth Rock] that:

1. Seller has all right, title, and power necessary to provide Lead Data to Purchaser;

* * *

4. at all times Seller shall comply with all applicable state and federal laws, rules and Federal Communications Commission and Federal Trade Commission regulations, including the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the “**CAN-SPAM Act**”), Telephone Consumer Protection Act (the “**TCPA**”), Telemarketing Sales Rule, and state and federal do not call lists (the “**Do Not Call Lists**”);

* * *

6. Lead Data shall be collected only from individuals who have provided prior express written consent as defined in and required by the TCPA and Do Not Call Lists (“**Written Consent**”) so that Purchaser may call any telephone or mobile phone number contained in the Lead Data for the purpose of providing insurance quotes and/or connecting the individual with insurance agents or carriers, including the use of artificial or pre-recorded voice calls or an automatic telephone dialing system, and such individual has been informed that his or her consent is not a condition of purchasing any property, goods or services[.]

10. The LPA further provided for CTC to defend, indemnify, and hold harmless

Plymouth Rock as follows:

V. INDEMNIFICATION. Seller shall indemnify, defend and hold harmless Purchaser and its affiliates, and its respective members, managers, officers, directors, employees, contractors and agents from and against any and all claims, suits, losses, damages, liabilities, costs and expenses (including attorneys’ fees and expenses) arising out of or related to: (i) any third party action, including an action or investigation commenced by any governmental entity or regulatory body, to the extent that such indemnified claim, loss, damage, liability, cost or expense is the result of any breach by Seller (including its employees or agents) of its obligations, representations or warranties set forth herein or the willful misconduct of Seller; (ii) any failure of Seller (including its employees, agents, or any third party acting on Seller’s behalf) to comply with TCPA and/or Do Not Call Lists; and (iii) any breach by Seller (including its employees, agents, or any third party acting on

Seller's behalf) of its obligations, representations or warranties set forth herein or the willful misconduct of Seller.

11. Section VII.D of the LPA, entitled "Remedies," includes the following: "If any legal action is brought by a Party to enforce this Agreement, the prevailing Party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive."

12. Section VII.H of the LPA, entitled "No Agency," states as follows: "Nothing contained herein shall be construed as creating an agency, partnership or other form of joint enterprise between the Parties."

13. On or about October 27, 2021, Plaintiff Robert W. Clough, II ("Plaintiff") filed a Class Action Complaint ("Complaint") against Plymouth Rock and John Doe Corporation.

14. As set forth more particularly in the Complaint, Plaintiff alleges that he received phone calls in violation of the TCPA, and its implementing regulations, including that Plaintiff's telephone number was on the National Do Not Call Registry.

15. Plaintiff alleges in the Complaint that he received those calls from a telemarketer, including a call on August 11, 2021 (the "August 11th Call").

16. Plaintiff alleges in the Complaint that, during the August 11th Call, the telemarketer promoted Plymouth Rock's insurance services.

17. As set forth more fully in the Complaint, Plaintiff alleges that the August 11th Call was in violation of the TCPA and its implementing regulations.

18. On behalf of himself and those similarly situated, as alleged in the Complaint, Plaintiff seeks to hold Plymouth Rock vicariously liable for the August 11th Call and all other such calls made by such telemarketers.

19. On August 11, 2021, an insurance agency authorized to issue Plymouth Rock automobile insurance policies received a call transfer from CTC of a person for whom CTC purported to have authorization and consent to call and transfer and who represented to be a Mr. Robert Phillips, whom the Complaint alleges was in fact Plaintiff misrepresenting himself to be Mr. Phillips.

20. CTC's actions in connection with the above-referenced calls and call transfer and any and all other calls and call transfers during the relevant period were governed by and subject to all the terms and conditions of the LPA.

21. By letter of counsel dated August 20, 2021, Plaintiff specifically alleged his receipt of the August 11th Call, asserted that Plymouth Rock had violated TCPA, and demanded payment of liquidated damages.

22. By letter to CTC dated August 25, 2021, ("First Indemnity Demand"), Plymouth Rock enclosed a copy of Plaintiff's August 20, 2021, demand letter and afforded written notice to CTC of a claim subject to indemnification pursuant to the LPA.

23. The First Indemnity Demand was addressed to CTC with attention to Rapoport and was sent on August 25, 2021, via email to Rapoport at his CTC email and sent by overnight mail to CTC's main business address, 360 Iverson Place, East Windsor, New Jersey 08520.

24. On August 27, 2021 – only two (2) days later – Rapoport executed and filed a Certificate of Dissolution and Termination for CTC with the State of New Jersey, Department of the Treasury, Division of Revenue and Enterprise Services (the "Division"). A true copy of the Certificate of Dissolution is annexed hereto as **Exhibit A**.

25. CTC's Certificate of Formation identified its main business address at 360 Iverson Place, East Windsor, New Jersey 08520, and its sole and managing member as Marlen Rapoport

with the same address (360 Iverson Place, East Windsor, New Jersey 08520). A true copy of the Certificate of Formation is annexed hereto as **Exhibit B**.

26. On August 31, 2021 – only four (4) days after dissolving CTC – a Certificate of Formation for CTL was filed with the Division, identifying its main business address at 90 East Halsey Rd., Ste. 333 #1977, Parsippany, New Jersey 07054, and its sole and managing member as Marlen Rapoport with the same address (90 East Halsey Rd., Ste. 333 #1977, Parsippany, New Jersey 07054). A true copy of the Certificate of Formation is annexed hereto as **Exhibit C**.

27. The within action was commenced by Plaintiff’s filing of the Complaint on October 27, 2021.

28. By letter to CTC and Rapoport dated October 29, 2021 (“Second Indemnity Demand”), Plymouth Rock enclosed a copy of the Complaint herein and demanded that CTC defend and indemnify Plymouth Rock on all claims asserted therein.

29. As further set forth herein, Rapoport and CTL are liable for the debts and obligations of CTC under the doctrines of veil piercing, alter ego, and successor liability.

30. None of the Third-Party Defendants has taken any measures to defend or indemnify Plymouth Rock with respect to the claims in the Complaint in this action.

31. While denying all liability as to any and all claims in the Complaint, Plymouth Rock is entitled to a defense, indemnification, contribution, and breach of contract damages from Third-Party Defendants.

FIRST COUNT
(Breach of Contract/Defense/Indemnification vs. CTC)

32. Plymouth Rock repeats the preceding allegations of this Third-Party Complaint as if set forth at length.

33. Pursuant to Section V of the LPA, CTC is obligated to defend and indemnify Plymouth Rock with respect to claims in the Complaint.

34. The defense to be provided under the LPA includes but is not limited to payment of all defenses costs and expenses (including attorneys' fees and expenses).

35. CTC has breached its obligations under Section V of the LPA in failing to defend and indemnify Plymouth Rock with respect to claims in the Complaint.

36. While denying all liability as to any and all claims in the Complaint, in the event Plymouth Rock is found liable thereunder, CTC further breached its obligations under Section IV.C of the LPA as aforesaid.

37. Section VII.D of the LPA further permits Plymouth Rock to recover, as a prevailing party, all its attorneys' fees, court costs, and other collection expenses.

38. Plymouth Rock is not in breach of any obligations to CTC pursuant to the LPA.

39. As a result of CTC's breach of the LPA, Plymouth Rock has incurred, and will continue to incur, injury and damages.

WHEREFORE, Third-Party Plaintiff demands judgment in its favor and against Third-Party Defendant CONNECTTHECALLS.COM LLC, for the following relief:

- A. Compensatory damages;
- B. Costs of defense and suit, including but not limited to litigation costs and expenses (including but not limited to attorneys' fees) and other defense, litigation, and collection costs and expense;
- C. Interest, including prejudgment interest; and
- D. Such other and further relief as the Court deems just and proper.

SECOND COUNT

(Common Law/Statutory Indemnification/Contribution vs. CTC)

40. Plymouth Rock repeats the preceding allegations of this Third-Party Complaint as if set forth at length.

41. The Complaint alleges liability based upon the actions of CTC as telemarketers.

42. The Complaint seeks to hold Plymouth Rock vicariously liable for the actions of CTC.

43. While denying all liability as to any and all claims in the Complaint, in the event Plymouth Rock is found liable thereunder, Plymouth Rock is entitled to indemnification and/or contribution from CTC pursuant to common law and/or statute (including but not limited to the New Jersey Joint Tortfeasors Contribution Act, N.J.S.A. 2:53A-1, *et seq.*, and the Comparative Negligence Act, N.J.S.A. 2A:15-5.1, *et seq.*), as any alleged liability of Plymouth Rock is secondary, passive, and/or vicarious, and any alleged liability of CTC is primary, active, direct, and/or contributory.

WHEREFORE, Third-Party Plaintiff demands judgment in its favor and against Third-Party Defendant CONNECTTHECALLS.COM LLC, for the following relief:

- A. Compensatory damages in the form of indemnification and/or contribution;
- B. Reasonable attorneys' fees and costs of suit;
- C. Interest, including prejudgment interest; and
- D. Such other and further relief as the Court deems just and proper.

THIRD COUNT

(Successor Liability vs. CTL)

44. Plymouth Rock repeats the preceding allegations of this Third-Party Complaint as if set forth at length.

45. Upon information and belief, all significant assets of CTC – including its contact lists, trade and confidential information – were transferred to CTL at the time of or in connection with the dissolution of CTC.

46. Upon information and belief, since its formation CTL has continued to conduct the same business as had been conducted by CTC prior to its dissolution.

47. CTC and CTL shared and continued the same ownership and/or management by Rapoport.

48. Upon information and belief, CTC and CTL shared and continued to share the same employees and representatives.

49. CTL is a “mere continuation” of CTC, and as such is subject to successor liability for all debts and obligations of CTC, including CTC’s obligation to Plymouth Rock for defense, indemnification, and/or contribution under contract, common law, and/or statute.

50. CTL has failed to provide a defense, indemnification, and/or contribution to Plymouth Rock in respect of the claims in the Complaint.

WHEREFORE, Third-Party Plaintiff demands judgment in its favor and against Third-Party Defendant CONNECTTHELEADS LLC, for the following relief:

- A. Compensatory damages;
- B. Reasonable attorneys’ fees and costs of suit;
- C. Interest, including prejudgment interest; and
- D. Such other and further relief as the Court deems just and proper.

FOURTH COUNT
(Piercing the Veil/Alter Ego Joint & Several Liability vs. Third-Party Defendants)

51. Plymouth Rock repeats the preceding allegations of this Third-Party Complaint as if set forth at length.

52. At all times relevant to this action there has been such a unity of ownership and interest between CTC and CTL on the one hand, and Rapoport on the other hand, that any separateness has ceased to exist, and they conduct their business interchangeably and their management, record keeping, and ownership is unified.

53. Upon information and belief, Rapoport has used CTC and is using CTL to assist in his efforts to frustrate the ability of Plymouth Rock to, among other things, enforce its right to indemnity and defense pursuant to the LPA.

54. CTC and CTL are, upon information and belief, the *alter egos* of Rapoport.

55. Upon information and belief, at all times relevant to this action, Rapoport has dominated and controlled CTC and CTL to such an extent that their corporate form was completely disregarded, and they are nothing more than shell entities that Rapoport utilizes to hinder, delay and defraud creditors of each of them.

56. As such, CTC, CTL, and Rapoport are jointly and severally liable for the debts and obligations of the others as set forth herein, including but not limited to any and all debts and obligations owed to Plymouth Rock.

WHEREFORE, Third-Party Plaintiff demands judgment in its favor and against the Third-Party Defendants, jointly and severally, for the following relief:

- A. Compensatory damages;
- B. Reasonable attorneys' fees and costs of suit;
- C. Interest, including prejudgment interest; and
- D. Such other and further relief as the Court deems just and proper.

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*Attorneys for the Defendant-Third-Party
Plaintiff*

*Plymouth Rock Management Company of
New Jersey*

Dated: February 16, 2024

By: /s/ Derrick R. Freijomil
Derrick R. Freijomil, Esq.
N.J. Bar No.: 048631995

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

To the best of my knowledge, information and belief, I certify that the matter in controversy is not the subject of any action pending in any court, or of a pending arbitration or administrative proceeding.

I certify under the penalty of perjury that the foregoing is true and correct.

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Tel.: (973) 538-0800

Attorneys for the Defendant

*Plymouth Rock Management Company of
New Jersey*

Dated: February 16, 2024

By: /s/ Derrick R. Freijomil

Derrick R. Freijomil, Esq.

N.J. Bar No.: 048631995

CERTIFICATE OF SERVICE

I, Derrick R. Freijomil, hereby certify under penalty of perjury that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants.

/s/ Derrick R. Freijomil
Derrick R. Freijomil

Dated: February 16, 2024

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