

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO. 16-14947 CA 01

LIPSCOMB, EISENBERG & BAKER, PL, a
Florida professional limited liability
company, and MICHAEL KEITH
LIPSCOMB, an individual,

Plaintiff,

v.

MALIBU MEDIA, LLC, a California limited
liability company, PILLAR LAW GROUP,
PLLC, a California professional law
corporation, DIGITAL CONTENT, INC., an
administratively dissolved Wyoming
corporation, DATA ANALYTICS, INC., a
foreign corporation

Defendant.

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant, DIGITAL CONTENT, INC., (“DCI”), by and through its undersigned counsel, hereby answer the Complaint filed by Plaintiffs, LIPSCOMB, EISENBERG & BAKER, PL (“LEB”) and MICHAEL KEITH LIPSCOMB (“Lipscomb”) (collectively, “Plaintiffs”), and state as follows:

GENERAL ALLEGATIONS

1. Admitted.
2. Admitted.
3. DCI is without sufficient knowledge to admit or deny the allegations contained in paragraph 3 and, therefore, denies the same.

4. Admitted that Pillar is a law office; however, DCI is without sufficient knowledge to admit or deny the remaining allegations contained in paragraph 4 and therefore denies the same.

5. Admitted.

6. Admitted.

JURISDICTION AND VENUE

7. Admitted that this Court has subject matter jurisdiction; however, denied that Plaintiffs are entitled to any amount of damage from DCI.

8. Admitted that Venue in Miami-Dade County, Florida is proper; however, denies the remaining allegations in paragraph 8.

FACTUAL BACKGROUND

9. DCI is without sufficient knowledge to admit or deny the allegations contained in paragraph 9 and, therefore, denies the same.

10. Admitted that DCI was contracted to perform services from LEB relating to Malibu.

11. The terms of the agreement with German American Services, Inc. (“GAS Agreement”) speaks for itself, therefore, DCI denies any allegations in paragraph 11 that are contradictory to the stated terms of the GAS Agreement.

12. Denied as stated.

13. DCI is without sufficient knowledge to admit or deny the allegations contained in paragraph 13 and, therefore, denies the same.

14. DCI is without sufficient knowledge to admit or deny the allegations contained in paragraph 14 and, therefore, denies the same.

15. DCI is without sufficient knowledge to admit or deny the allegations contained in paragraph 15 and, therefore, denies the same.

16. DCI is without sufficient knowledge to admit or deny the allegations contained in paragraph 16 and, therefore, denies the same.

17. DCI is are without sufficient knowledge to admit or deny the allegations contained in paragraph 17 and, therefore, denies the same.

18. Denied.

19. Admitted that DAI was created on or about February 2014; however, DCI denies the remaining allegations in paragraph 19. DAI was created months prior to the dissolution of DCI. Although some of the same owners and employees worked for DCI and DAI, DAI did not acquire any obligations and assets of DCI. DCI was dissolved without any debts due to creditors in May 2014. DAI is not a successors to DCI and was not assigned any assets and obligations from DCI.

20. DCI is without sufficient knowledge to admit or deny the allegations contained in paragraph 20 and, therefore, denies the same.

21. DCI is without sufficient knowledge to admit or deny the allegations contained in paragraph 21 and, therefore, denies the same.

COUNT I – CONTRIBUTION
(LEB V. MALIBU and DCI/DAI)

22. DCI realleges its responses to paragraphs 1 through 21 above as if fully set forth herein.

23. The term of the agreement with GAS Agreement speaks for itself, therefore, DCI/DAI Defendants deny any allegations in paragraph 11 that are contradictory to the stated terms of the GAS Agreement.

24. Denied as stated.

25. Denied.

26. DCI is without sufficient knowledge to admit or deny the allegations contained in paragraph 26 and, therefore, denies the same.

COUNT II – BREACH OF CONTRACT
(LEB v. Malibu)

27. DCI realleges its responses to paragraphs 1 through 21 above as if fully set forth herein.

28.-30. No answer is required as to the allegations contained in paragraphs 27 through 30, which are not directed to DCI. To the extent an answer is required, DCI incorporates by reference their responses to paragraphs 1 through 21 above as though fully set forth herein, and denies the allegations in paragraphs 27 through 30 and demands strict proof thereof.

COUNT III – BREACH OF CONTRACT
(LEB v. Malibu)

31. DCI realleges its responses to paragraphs 1 through 21 above as if fully set forth herein.

32.-33. No answer is required as to the allegations contained in paragraphs 31 through 33, which are not directed to DCI. To the extent an answer is required, DCI incorporates by reference their responses to paragraphs 1 through 21 above as though fully set forth herein, and denies the allegations in paragraphs 31 through 33 and demands strict proof thereof.

COUNT IV – UNJUST ENRICHMENT
(LEB v. Malibu)

34. DCI realleges its responses to paragraphs 1 through 21 above as if fully set forth herein.

35.-39. No answer is required as to the allegations contained in paragraphs 34 through 39, which are not directed to DCI. To the extent an answer is required, DCI incorporates by reference

their responses to paragraphs 1 through 21 above as though fully set forth herein, and denies the allegations in paragraphs 34 through 39 and demands strict proof thereof.

COUNT V – DEFAMATION
(LEB and Lipscomb v. Pillar and Malibu)

40. DCI realleges its responses to paragraphs 1 through 21 above as if fully set forth herein.

41.45. No answer is required as to the allegations contained in paragraphs 40 through 45, which are not directed to DCI. To the extent an answer is required, DCI incorporates by reference their responses to paragraphs 1 through 21 above as though fully set forth herein, and denies the allegations in paragraphs 40 through 45 and demands strict proof thereof.

COUNT VI – DECLARATORY JUDGMENT- ACCOUNTING
(LEB v. Malibu)

46. DCI realleges its responses to paragraphs 1 through 21 above as if fully set forth herein.

47.-49. No answer is required as to the allegations contained in paragraphs 46 through 49, which are not directed to DCI. To the extent an answer is required, DCI incorporates by reference their responses to paragraphs 1 through 21 above as though fully set forth herein, and denies the allegations in paragraphs 46 through 49 and demands strict proof thereof.

COUNT VII – DECLARATORY JUDGMENT- LEB PROPERLY WITHDREW AND IS NOT LIABLE FOR PILLAR’S MALPRACTICE
(LEB v. Malibu and Pillar)

50. DCI realleges its responses to paragraphs 1 through 21 above as if fully set forth herein.

51.-54. No answer is required as to the allegations contained in paragraphs 50 through 54, which are not directed to DCI. To the extent an answer is required, DCI incorporates by reference

their responses to paragraphs 1 through 21 above as though fully set forth herein, and denies the allegations in paragraphs 50 through 54 and demands strict proof thereof.

COUNT VIII- BREACH OF CONTRACT
(LEB v. DCI and DAI)

55. DCI realleges its responses to paragraphs 1 through 21 above as if fully set forth herein.

56. Denied as stated. DCI is not a predecessor of DAI. DCI and DAI are independent corporations that provided services to LEB related to Malibu. DCI denies the remaining allegations in paragraph 56.

57. Denied.

58. Denied. LEB filed each and every case on behalf of Malibu, and, therefore, had knowledge of the number of cases caused to be filed or filed on behalf of Malibu. Because LEB was the sole law firm that filed cases for Malibu as it relates to the services provided in this matter, LEB suffered no damages from any alleged failure to account for cases caused by DCI.

COUNT IX- VIOLATION OF THE COMPUTER FRAUD AND ABUSE AND
DATA RECOVERY ACT
(LEB v. Pillar)

59. DCI realleges its responses to paragraphs 1 through 21 above as if fully set forth herein.

60.-65. No answer is required as to the allegations contained in paragraphs 59 through 65, which are not directed to DCI. To the extent an answer is required, DCI incorporates by reference their responses to paragraphs 1 through 21 above as though fully set forth herein, and denies the allegations in paragraphs 59 through 65 and demands strict proof thereof.

GENERAL DENIAL

DCI denies all matters alleged in the complaint not specifically admitted herein.

DEFENSES AND AFFIRMATIVE DEFENSES

Plaintiffs are not entitled to the relief it seeks based on the following defenses. Discovery and investigation of Plaintiffs' claims are ongoing and DCI its right to assert any and all additional affirmative defenses that may become known. DCI asserts the following defenses without assuming the burden of proof where such burden is otherwise on the Plaintiffs.

FIRST AFFIRMATIVE DEFENSE

Estoppel

1. Plaintiffs are not entitled to recover the relief it seeks by the doctrine of estoppel, based upon the conduct and representations of its agents, upon which DCI relied. Plaintiffs represented to DCI that DCI would not be obligated to pay any monies in relation to the GAS Agreement. As admitted by Plaintiffs in Count II of the Complaint against Malibu, Malibu and LEB each agreed to pay half of the total GAS debt. As further confirmation of this agreement, LEB has paid all of the monies to GAS pursuant to the GAS Agreement since the execution of the same. Therefore, Plaintiffs have not been damaged by DCI's alleged failure to pay its portion of the GAS Agreement.

SECOND AFFIRMATIVE DEFENSE

Waiver

2. Plaintiffs waived its claims by the conduct of its agent, including, but not limited to, representing to DCI that DCI would not be obligated to pay any monies in relation to the GAS Agreement. As admitted by Plaintiffs in Count II of the Complaint against Malibu, Malibu and LEB each agreed to pay half of the GAS debt. As a confirmation of this agreement, LEB has paid all of the monies to GAS pursuant to the GAS Agreement since the execution of the same.

Therefore, Plaintiffs have not been damaged by DCI's alleged failure to pay its portion of the GAS Agreement.

THIRD AFFIRMATIVE DEFENSE

Fraudulent Misrepresentation

3. Plaintiffs are not entitled to the relief it seeks based upon the fraudulent misrepresentations made by Plaintiffs in representing to DCI prior to entering into the GAS Agreement, that LEB would be paying any and all monies to GAS due pursuant to the GAS Agreement and that DCI, and its successors and assigns, would not need to pay any monies in relation to the GAS Agreement. Plaintiffs intentionally and fraudulently represented this promise to DCI in an attempt to induce DCI into entering into the GAS Agreement. As a confirmation of this agreement, LEB has paid all of the monies to GAS pursuant to the GAS Agreement since the execution of the same.

FOURTH DEFENSE

No Cause of Action- Count I

4. The allegations in the Complaint fail to state a cause of action upon which relief may be granted in that Plaintiffs represented to DCI that DCI would not need to pay any monies to GAS pursuant to the GAS Agreement, and that LEB would pay all of the funds due for DCI Defendants. Therefore, Plaintiffs cannot seek damages against DCI/DAI Defendants for failure to pay their alleged portion of the GAS Agreement based on this representation that DCI Defendants relied upon.

FIFTH DEFENSE

Damages Caused by Others

5. Any damages Plaintiffs suffered were caused by Plaintiffs' own conduct in consenting and agreeing to pay all monies owed by DCI to GAS for the GAS Agreement.

SIXTH DEFENSE

Unclean Hands

6. Plaintiffs' claims are barred by the doctrine of unclean hands. Plaintiffs' own conduct including, but not limited to, representing to DCI that LEB would pay all monies to GAS owed by DCI under the terms of the GAS Agreement. It would be inequitable and unjust for Plaintiffs to recover from DCI after representing to DCI that it did not have to pay anything to GAS pursuant to the GAS Agreement.

SEVENTH DEFENSE

No Cause of Action- Count VIII

7. The allegations in the Complaint fail to state a cause of action upon which relief may be granted in that Plaintiffs were not damaged by any failure by DCI to count the number of cases filed by LEB as LEB had direct knowledge of the same. Any failure by DCI would be *de minimis* as this information was readily available to LEB.

Respectfully submitted,

SCHLESINGER & ASSOCIATES, P.A.

Attorney for DCI/DAI Defendants

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was served by e-mail upon those listed below on
July 28, 2016.

M. Keith Lipscomb, Esq. LIPSCOMB, EISENBERG & BAKER, PL <i>Attorney for Plaintiff</i>	klipscomb@lebfirm.com
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 /s/ *Heloiza Correa*
HELOIZA A. CORREA