

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

MARK DESHONG,

Plaintiff,

Case No.: 8:10-cv-01731-VMC-TBM

vs.

KEYPATH, LLC, DIRECTNIC, L.L.C.,  
THE PRODUCERS, INC.,  
INTERCOSMOS MEDIA GROUP INC. d/b/a  
DIRECTNIC.COM; DIRECTNIC, LTD.,  
PARKED.COM, LLC, MICHAEL H.  
GARDNER, Individually,

Defendants.

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**KEYPATH, LLC'S ANSWER AND  
AFFIRMATIVE DEFENSES TO COMPLAINT**

Defendant, KEYPATH, LLC ("Keypath"), by and through its undersigned counsel, serves its Answer and Affirmative Defenses to Plaintiff's Complaint. For its Answer, Keypath responds to the correspondingly numbered paragraphs of Plaintiff's Complaint as follows:

**PARTIES, PERSONAL JURISDICTION AND VENUE**

1. Denied.
2. Admitted that Plaintiff was an employee of Keypath in Keypath's Tampa office. Keypath is without knowledge as to the remaining allegations of this paragraph and, therefore, denies them.
3. Admitted that Keypath is a foreign limited liability company incorporated in Delaware with offices in Tampa. Otherwise denied.
4. Without knowledge, therefore denied.

5. Without knowledge, therefore denied.
6. Without knowledge, therefore denied.
7. Without knowledge, therefore denied.
8. Without knowledge, therefore denied.
9. Without knowledge, therefore denied.

### **GENERAL ALLEGATIONS**

10. Admitted that Keypath sent a termination letter to Plaintiff on April 19, 2010. However, Plaintiff failed to appear for work for several days before Keypath sent the termination letter. Otherwise, denied.

11. Denied.

12. Admitted that Butch Decossas, Greg Faia and Donnie Simonton are directors and shareholders of Keypath. Keypath is without knowledge as to the remaining allegations of this paragraph and, therefore, denies them.

13. Without knowledge as to what Plaintiff believes. Keypath denies that Mr. Simonton is the Chief Technical Officer of Keypath.

14. Denied.

15. Admitted that Decossas is the CFO and COO of Keypath. Keypath is without knowledge as to the remaining allegations of this paragraph and, therefore, denies them.

16. Admitted that Mr. Faia is a shareholder of Keypath and acts as its general counsel. Keypath is without knowledge as to the remaining allegations of this paragraph and, therefore, denies them.

17. Denied.

18. Denied.

19. Denied.

20. Because of the vague nature of the allegations of this paragraph, Keypath lacks sufficient knowledge to be able to admit or deny this paragraph. Plaintiff fails to define the meaning of “main shareholders” and does not define the “affiliated companies.”

21. Denied that Keypath makes the claim alleged in this paragraph. Keypath is without knowledge as to what the other Defendants may claim and, therefore, denies the allegations of this paragraph.

22. Denied.

23. Denied.

24. Admitted that Plaintiff was compensated by Keypath once he became a Keypath employee, otherwise denied.

25. Denied.

26. Denied.

27. Denied.

28. Without knowledge, therefore denied.

29. Denied.

30. Without knowledge, therefore denied.

31. Without knowledge, therefore denied.

32. Without knowledge, therefore denied.

**THE DEFENDANTS OPERATIONS**

33. Denied.

34. Without knowledge, therefore denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

**DOMAIN PARKING and ARBITRARGE: THE DEFENDANTS BUSINESS**

42. There are no allegations in this paragraph against Keypath. Therefore, Keypath is not obligated to respond to it. To the extent that any of the allegations of this paragraph are deemed to apply to Keypath, Keypath denies them.

43. There are no allegations in this paragraph against Keypath. Therefore, Keypath is not obligated to respond to it. To the extent that any of the allegations of this paragraph are deemed to apply to Keypath, Keypath denies them.

44. Denied.

45. Without knowledge, therefore denied.

46. There are no allegations in this paragraph against Keypath. Therefore, Keypath is not obligated to respond to it. To the extent that any of the allegations of this paragraph are deemed to apply to Keypath, Keypath denies them.

47. Without knowledge, therefore denied.

48. Without knowledge, therefore denied.

49. Denied.

50. Denied.

51. There are no allegations in this paragraph against Keypath. Therefore, Keypath is not obligated to respond to it. To the extent that any of the allegations of this paragraph are deemed to apply to Keypath, Keypath denies them.

52. Without knowledge, therefore denied.

53. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

54. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

55. It is unknown to which Defendant Plaintiff refers in this paragraph. Keypath denies any involvement in the allegations set forth in this paragraph. Keypath is without knowledge as to the other Defendants.

56. There are no allegations in this paragraph against Keypath. Therefore, Keypath is not obligated to respond to it. To the extent that any of the allegations of this paragraph are deemed to apply to Keypath, Keypath denies them.

57. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

58. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

59. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

60. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

61. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

62. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

63. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

64. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

65. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

66. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

67. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

68. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

69. Denied.

70. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

71. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

72. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

73. Denied.

74. Without knowledge, therefore denied.

75. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

76. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

77. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

78. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

79. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

80. Denied.

81. Denied.

82. Without knowledge, therefore denied.

83. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

84. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

**COUNT I VIOLATION OF FLORIDA'S  
WHISTLEBLOWER ACT AGAINST KEYPATH, LLC**

85. Keypath realleges and incorporates its responses to paragraphs 9 through 84 as if fully set forth herein.

86. Admitted that Keypath employs more than 10 employees. Keypath is without knowledge as to the remaining allegations of this paragraph and therefore denies them.

87. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

88. Admitted that Plaintiff sent an April 5, 2010 letter to Keypath and that Greg Faia and Butch Decossas received it. Keypath is without knowledge as to the remaining allegations of this paragraph and, therefore, denies them.

89. The referenced letter speaks for itself. Otherwise denied.

90. The referenced letter speaks for itself. Otherwise denied.

91. Denied.

92. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

93. Without knowledge, therefore denied.

94. Without knowledge, therefore denied.

95. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

96. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

97. Denied.

98. Denied that Mr. Gardner had authority to act on behalf of Keypath. Without knowledge as to any communications between Mr. Gardner and Plaintiff. Otherwise denied.



99. Denied as to Keypath. Keypath is without knowledge as to the remaining allegations of this paragraph and, therefore, denies them.

100. Denied that Mr. Gardner acted with the authority and knowledge of Keypath. Keypath is without knowledge as to the remaining allegations of this paragraph and, therefore, denies them.

101. Without knowledge, therefore denied.

102. Without knowledge, therefore denied.

103. Admitted that employees of Keypath communicate on a routine daily basis with ICQ, otherwise denied.

104. Admitted that Keypath sent Plaintiff a letter on April 19, 2010, otherwise denied.

105. Denied.

106. Admitted that Plaintiff sought to extort an unreasonable severance package, otherwise denied.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

**COUNT II CIVIL CONSPIRACY TO VIOLATE  
F.S. 440.102 AGAINST ALL NAMED DEFENDANTS**

111. Keypath realleges and incorporates its responses to paragraphs 9 through 83 as if fully set-forth herein.

112. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

113. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

114. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

115. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

116. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

117. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

118. Without knowledge, therefore denied.

119. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

120. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

121. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

122. Denied as to Keypath. Keypath is without knowledge as to the other Defendants.

Keypath denies all allegations of the Complaint that it did not specifically admit.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover from Keypath because Michael Gardner is not an officer, director or shareholder of Keypath and had no authority to act on its behalf.

Thus, even if Mr. Gardner took the actions alleged in Count I, he was not acting on Keypath's behalf. Accordingly, Plaintiff cannot establish the necessary elements of his Whistleblower claim and Count I fails to state a claim on which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover from Keypath because he breached his employment agreement with Keypath. Among other things, Plaintiff failed to perform his contractual obligations and abandoned his job with Keypath.

**THIRD AFFIRMATIVE DEFENSE**

Count II of Plaintiff's Complaint is titled, "Civil Conspiracy to Violate F.S. 440.102 Against All Named Defendants." Section 440.102, *Florida Statutes*, is part of Florida's Workers' Compensation Law. Section 440.102 deals with drug-free workplace program requirements. Section 440.102 has no application to the allegations of Plaintiff's Complaint; therefore, Count II fails to state a claim on which relief can be granted.

**FOURTH AFFIRMATIVE DEFENSE**

Count II of Plaintiff's Complaint is titled, "Civil Conspiracy to Violate F.S. 440.102 Against All Named Defendants." Section 440.102, *Florida Statutes*, is part of Florida's Workers' Compensation Law. Section 440.102 deals with drug-free workplace program requirements. Plaintiff lacks standing to sue Keypath under section 440.102.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff demands punitive damages in the "Wherefore" clauses of both Counts of his Complaint. Plaintiff is not entitled to recover punitive damages from Keypath on its claims as a matter of law and because Plaintiff has failed to proffer evidence of malicious

behavior by Keypath. At a minimum, Plaintiff's demand for punitive damages at the pleading stage is premature and improper and should be stricken.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover from Keypath because neither count of the Complaint alleges personal jurisdiction over Keypath. Paragraph 3 of the Complaint alleges that Keypath is a foreign corporation, but paragraph 3 is not realleged and incorporated into either count.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover from Keypath because neither count of the Complaint alleges that Plaintiff's alleged damages exceed the jurisdictional threshold of this Court.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover from Keypath because he was motivated for a bad faith purpose in discussing the matter with Mr. Gardner. In addition, Plaintiff unlawfully sought to extort money and property from Keypath in exchange for his statements that he would not discuss aspects of Keypath's business with third parties.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover from Keypath because all conditions precedent to Plaintiff's claims had not occurred. Among other things, Plaintiff failed to provide written notice to his supervisor before filing suit to provide Keypath an opportunity to remedy the allegedly improper conduct or practice(s).

**TENTH AFFIRMATIVE DEFENSE**

Any damages to which Plaintiff may be entitled to recover must be set-off against, or reduced by, the damages Keypath has suffered as a result of Plaintiff's improper retention of the company laptop computer Keypath bought for him. Keypath asked Plaintiff to return the computer, but Plaintiff has failed to return it.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover from Keypath to the extent that he destroyed evidence. As alleged in the preceding Affirmative Defense, Plaintiff improperly retained a laptop computer Keypath bought for him to use to fulfill his employment duties. Keypath asked Plaintiff to return the computer, but Plaintiff failed to return it. That laptop likely has discoverable information on it. The improper retention of the laptop gives rise to a possible cause of action against Plaintiff. In addition, Plaintiff has a legal duty to preserve evidence that is relevant to the claims in this action. Taking the laptop computer and refusing to return it amounts to a destruction of that evidence. That destruction significantly impairs Keypath's ability to prove some of its defenses, which may cause the imposition of damages against Keypath that would not be imposed but for Plaintiff's destruction of the exculpatory and other relevant evidence.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff is estopped from recovering from Keypath because he knowingly and willingly participated in the conduct about which he complains.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover from Keypath since Keypath was not engaged in unlawful conduct and there can be no recovery under Plaintiff's asserted theories unless Keypath had engaged in unlawful conduct.

**DEMAND FOR ATTORNEYS' FEES**

Keypath demands its attorneys' fees according to section 448.104, *Florida Statutes*, and reserves the right to demand its attorneys' fees pursuant to FED.R.CIV.P. Rule 11.

*s/ Brett D. Divers*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12th day of October, 2010, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: **Mitchell L. Feldman, Esq.**, Feldman, Fox & Morgado, P.A., 2701 N. Rocky Point Dr., Ste. 1000, Tampa, FL 33607 and **V. Stephen Cohen, Esq.**, Bajo, Cuva, Cohen & Turkel P.A., 100 N. Tampa St., Ste. 1900, Tampa, FL 33602.

*s/ Brett D. Divers*

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Attorney