IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

F.A.M.E. LLC d/b/a/ Falk Associates Management Enterprises a/k/a/ FAME, Plaintiff, v. EMTURN LLC AND EVAN TURNER, Defendants.	)	C.A. No. N22C-12-003 MMJ CCLD

DEFENDANT EVAN TURNER'S OPENING BRIEF IN SUPPORT OF HIS MOTION TO DISMISS THE COMPLAINT

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I. INTRODUCTION

In this lawsuit, Plaintiff F.A.M.E. LLC ("Plaintiff") seeks to enforce a written agreement against a non-contracting party, Evan Turner ("Mr. Turner"). Specifically, Plaintiff alleges that Mr. Turner and his company, EmTurn, LLC ("EmTurn") have breached contracts by failing to make payments for agent-related services provided by Plaintiff. Despite alleging that Plaintiff is a sophisticated and experienced sports agent, Plaintiff alleges that it entered into an oral agreement for millions of dollars with Mr. Turner in August 2010, which provided for payment of Plaintiff's services as Mr. Turner's agent. Plaintiff alleges that the oral agreement was "confirmed" in writing a few weeks later, executed between EmTurn and Plaintiff (the "Agency Agreement")—and notably, Mr. Turner was *not* a contracting party. Plaintiff now claims that it is entitled to $2,000,000, under both the alleged oral and Agency Agreement, associated with negotiating a marketing and endorsement contract between EmTurn and a Chinese apparel company, Li-Ning (the "Li-Ning Agreement"). In his Complaint, Plaintiff alleges multiple claims against Mr. Turner: an oral-breach-of-contract claim (First Cause of Action); a quantum-meruit claim (Third Cause of Action); and an unjust enrichment claim (Fourth Cause of Action).

Each of these claims alleged against Mr. Turner should be dismissed. As for the First Cause of Action, Plaintiff has failed to plead that an enforceable oral

contract exists between Mr. Turner and Plaintiff. It is not reasonably conceivable that Mr. Turner intended to be bound by the oral contract in light of Plaintiff's allegation that the Agency Agreement—that supposedly "confirms" the oral agreement—makes no mention of it. Nor does the alleged oral contract contain sufficiently defined terms that would make it enforceable. Ample Delaware precedent further warrants dismissal of the Third and Fourth Causes of Action for quantum meruit and unjust enrichment because a contract governs the parties' rights and obligations at issue here. In asserting these claims on the same subject as the Agency Agreement, Plaintiff effectively argues that Mr. Turner breached the Agency Agreement—even though he is indisputably not a contracting party. This Court should decline Plaintiff's unabashed request to enforce a written agreement against a non-contracting party.

Plaintiff finally asserts threadbare allegations that Mr. Turner is the "alter ego" of EmTurn, and he should be liable for any misconduct on EmTurn. Not only has Plaintiff fallen woefully short of the extremely high burden to state an alter ego claim, but this Court also lacks jurisdiction to pierce the corporate veil of EmTurn to hold Mr. Turner personally liable.

Accordingly, Mr. Turner requests that the Court grant this motion and dismiss each of the claims against him under Del. Sup. Ct. Civ. R. 12(b)(6), and dismiss him from this lawsuit.

II. FACTUAL ALLEGATIONS IN THE COMPLAINT

Plaintiff's Complaint sets forth the following allegations:[1]

Plaintiff is a sports marketing and management agency that was formed by a sports agent, David Falk ("Mr. Falk"), in or around 2007. (Compl. ¶ 7.) Plaintiff has allegedly represented the likes of Michael Jordan and Patrick Ewing over the past four decades. (*Id.* ¶ 8.) Mr. Turner is a former professional basketball player, who played with various NBA teams between 2010 and 2020. (*Id.* ¶ 9.)

On or around April 7, 2010, Mr. Turner announced that he would enter the 2010 NBA draft, where he was subsequently drafted by the Philadelphia 76ers. (*Id.* ¶¶ 18, 21.) On or about May 6, 2010, Plaintiff and Mr. Turner entered into an alleged oral agreement under which Plaintiff would serve as Mr. Turner's agent for the procurement and negotiation of marketing and endorsement opportunities. (*Id.* ¶ 19.) The oral agreement allegedly granted Plaintiff a 15-20% fee for compensation received by Mr. Turner, or any loan out company established on his behalf, from marketing and endorsement leads generated by Plaintiff. (*Id.* ¶ 20.) On the same day, Plaintiff allegedly identified a potential marketing and endorsement opportunity between Mr. Turner and Li-Ning, a sports and apparel brand in China. (*Id.* ¶¶ 20, 22.)

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[1] Mr. Turner does not concede the truth of the allegations set forth in this motion.

Later, in July 2010, Mr. Turner formed EmTurn, and served as its sole managing member, to run his endorsement activities. (*Id.* ¶¶ 10, 11, 26.) According to the Complaint, Mr. Turner caused EmTurn to be formed "[i]n order to effectuate and facilitate" the alleged oral agreement and for the "sole purpose of engaging in and facilitating the transactions alleged herein." (*Id*. ¶¶ 3, 17, 25.) The Complaint further alleges that Mr. Turner acted as the "alter ego" of EmTurn. (*Id.* ¶¶ 12-15, 17, 33.). Additionally, the Complaint alleges that, upon EmTurn's formation, EmTurn became an additional party to the oral agreement.[2] (*Id.* ¶ 27.)

On August 23, 2010, EmTurn and Li-Ning executed the Li-Ning Agreement, which guaranteed EmTurn minimum compensation totaling $15,000,000, to be paid over six years. (*Id.* ¶¶ 4, 28, 34.) The Li-Ning Agreement also allegedly provided EmTurn restricted shares of stock, also to be paid over six years. (*Id.* ¶ 29.)

Eight days later, on August 31, 2010, EmTurn and Plaintiff "confirmed the understanding" of the alleged oral agreement in the Agency Agreement (or, "Agreement")—even though the Agency Agreement does not, in any way, refer to

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[2] The Complaint does not allege that Mr. Turner assented to this purported modification of this alleged oral contract to include another party.

any prior oral discussions. (*Id.* ¶¶ 30-31; Ex. A, Agency Agreement.[3]) The Agency Agreement provided that Plaintiff was entitled to the "marketing fee" regardless of when EmTurn received compensation from any endorsement or marketing deals procured or negotiated by Plaintiff. (*Id.* ¶¶ 30, 31.) The terms of the Agency Agreement provide that it "shall continue for the length of any and all contracts negotiated by [Plaintiff]." (*See* Ex. A.) A review of the four corners of the Agency Agreement confirms that Mr. Turner was not a party to that Agreement. (*See id.*) Rather, Mr. Turner signed "on behalf of EmTurn" on September 9, 2010. (Compl. ¶ 30.)

According to the Complaint, Mr. Turner defrauded EmTurn by permitting Li-Ning to issue stock from the Li-Ning Agreement to Mr. Turner on September 3, 2010, which the Complaint claims was owed to EmTurn. (*Id.* ¶¶ 13, 32-33.) Then, over 11 years later, Mr. Turner sold a portion of the stock in September 2021, and received $10,000,000 for the sale. (*Id.* ¶ 37.) Subsequently, Plaintiff sent EmTurn an invoice for $2,000,000, 20% of the sale value, claiming that Plaintiff was

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[3] This Court may consider the Agency Agreement even though it is not attached to the Complaint; it is clearly "integral" to the claims, especially the Second Cause of Action. *See, e.g.*, *Cambridge Strategic Mgmt. Grp. v. IDT Domestic Telecom, Inc.*, 2013 WL 2480887, at *3 (Del. Super. Ct. Apr. 8, 2013) (noting that courts may consider documents attached to a motion to dismiss where they are "incorporated by reference into the complaint and are integral to the claims of the complaint").

entitled to its fees for the sale. (*Id.* ¶¶ 38-39.) Neither Mr. Turner nor EmTurn has paid the invoice. (*Id.* ¶¶ 40-42.)

Plaintiff has alleged four claims in this case: (1) breach of oral contract against Defendants; (2) breach of written contract against EmTurn; (3) quantum meruit against Defendants; (4) unjust enrichment against Defendants.

III. LEGAL STANDARD

Under Delaware law, a court may grant a motion to dismiss when "it appears to a reasonable certainty that under no state of facts which could be proved to support the claim asserted would plaintiff be entitled to relief." *Encore Preakness, Inc. v. Chestnut Health & Rehab. Gp., Inc*, 2017 WL 5068753, at *2 (Del. Super. Ct. Nov. 1, 2017) (citing *Fish Eng'g Corp. v. Hutchinson*, 162 A.2d 722, 724 (Del. 1960)). "The test for sufficiency of a complaint challenged by a [Del. Sup. Ct. R.] 12(b)(6) motion to dismiss is whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint." *Graham v. Del. Golf & Travel, Ltd. Liab. Co.*, 2017 WL 283389, at *1 (Del. Super. Ct. Jan. 20, 2017). For the following reasons, no "reasonably conceivable set of circumstances" supports any of the claims against Mr. Turner. *See id.*

IV. ARGUMENT

A. The breach-of-oral-contract claim against Mr. Turner should be dismissed (First Cause of Action).

Plaintiff's First Cause of Action alleges a breach-of-oral-contract against Mr. Turner and EmTurn. To state a breach-of-contract claim, Plaintiff must allege, as a threshold matter, the existence of an enforceable contract. *Clouser v. Marie*, 2022 WL 453551, at *4 (Del. Super. Ct. Feb. 14, 2022), *aff'd*, 285 A.3d 839 (Del. 2022). For a contract to be enforceable, it must contain three elements: (1) intention of the parties to be bound, (2) sufficiently definite terms, and (3) consideration. *Handler Corp. v. W. Am. Ins. Co.*, 2022 WL 175769, at *2 (Del. Super. Ct. Jan. 19, 2022). Even when viewing the Complaint's allegations in Plaintiff's favor, Plaintiff has failed to establish both an intent of Mr. Turner to be bound by the alleged oral contract and sufficiently definite terms of that contract. *See id.* Accordingly, the First Cause of Action should be dismissed.

1. The Complaint does not sufficiently allege that Mr. Turner intended to be bound by the alleged oral contract.

Plaintiff has failed to allege that the parties—and specifically, Mr. Turner—had the requisite intent to be bound by the alleged oral contract. Of course, this Court "cannot know what was in the minds of the parties [thirteen] years ago when the [alleged oral] [a]greement allegedly came into being." *See Black Horse Capital, LP v. Xstelos Hldgs., Inc.*, 2014 WL 5025926, at *16 (Del. Ch. Sept. 30, 2014). For that reason, Plaintiff must allege sufficient facts to support "overt manifestation of assent—not subjective intent." *Id.* at *12 (citing *Indus. Am., Inc. v. Fulton Indus., Inc.*, 285 A.2d 412, 415 (Del. 1971)). Specifically, courts, when

faced with a motion to dismiss, "look to the parties' outward manifestations of intent and construe them according to the meaning they would have in the eyes of a reasonable person in like circumstances—*i.e.*, their objective meaning." *Id.* at *16; *Hyetts Corner, LLC v. New Castle Cnty.*, 2021 WL 4166703, at *7 (Del. Ch. Sept. 14, 2021) (same).

Against this exacting standard, Plaintiff's allegations do not pass muster. Relevant here, the Complaint alleges that, on or about May 6, 2010, Plaintiff and Mr. Turner entered into an oral contract under which Plaintiff would serve as Mr. Turner's agent. (Compl. ¶ 19.) (This alleged oral contract presumably entitles Plaintiff to recovery from Mr. Turner *individually*.) Around two months later, on August 23, 2010, Plaintiff allegedly negotiated the Li-Ning Agreement on behalf of Mr. Turner. (*Id.* ¶¶ 24-25.) A week after that, on August 31, 2010, the parties executed the Agency Agreement, which "confirmed" the alleged oral agreement. (*Id.* ¶ 30.) The Agency Agreement, however, does not refer to the Li-Ning Agreement, nor does it refer to the oral contract allegedly executed around two months earlier. It is not "reasonably conceivable" to conclude that Plaintiff (an allegedly sophisticated agency that has represented the likes of Michael Jordan or Patrick Ewing) would somehow fail to refer in any way to the oral contract in a written contract that presumably "confirms" it. (*Id.* ¶¶ 8, 30.) More important, it is not reasonably conceivable—indeed, it is inconceivable—that Plaintiff somehow

decided not to memorialize in writing that Mr. Turner individually, and not just EmTurn, owed Plaintiff contractual obligations *on the same subject matter*. Quite simply, Plaintiff's claim is unabashed attempt to enforce the Agency Agreement against a non-contracting party, Mr. Turner. Equally important, Plaintiff's claim is a disguised and misguided request to pierce the corporate veil without having to justify why corporate formalities should be disregarded. *See BASF Corp. v. POSM II Properties P'ship, L.P.*, 2009 WL 522721, at *8, n.50 (Del. Ch. Mar. 3, 2009) ("Delaware public policy does not lightly disregard the separate legal existence of corporations.").

Delaware courts are reluctant to permit breach-of-oral-contract claims to survive a Rule 12(b)(6) motion when faced with more detailed allegations. *See, e.g.*, *Black Horse*, 2014 WL 5025926, at *18 (granting motion to dismiss breach-of-contract claim because the complaint failed to allege intent-to-be-bound requirement); *Hyetts Corner, LLC*, 2021 WL 4166703, *7-8 (same). For instance, in *Black Horse Capital*, the Court of Chancery granted a motion to dismiss a breach-of-oral contract claim because it was not "reasonably conceivable" that the parties intended to be bound by the oral contract. *Id*. There, the complaint alleged that the parties executed an oral contract providing that the defendants would transfer certain assets of the target company to plaintiff. *Id.* at *1. But, when the target company was acquired and a series of written agreements were subsequently

executed, including provisions regarding post-closing operation and management, *none* of the agreements—much like the Agency Agreement here—made any reference to the alleged oral contract. *Id*. Among other things, the lack of reference to the oral agreement in any subsequent written agreement compelled the conclusion that, objectively, the parties' outward manifestations of intent did not support a reasonable inference of intent to be bound. *Id*. at *12-13; *see id.* *17 ("[T]he behavior of the parties in the days and weeks surrounding the alleged oral . . . [a]greement undermines the possibility that the Court could find it reasonably conceivable that they had such a shared intent [to be bound].")

Based on these allegations, Plaintiff has failed to allege facts that objectively support Mr. Turner's intent to be bound.

2. The Complaint has failed to identify sufficiently definite terms.

Even if Plaintiff sufficiently alleged that Mr. Turner intended to be bound by the alleged oral contract, Plaintiff fails to identify "sufficiently definite" terms. *See Clouser*, 2022 WL 453551, at *4; *see also id.* (granting motion to dismiss oral-breach-of-contract-claim for failing to identify "sufficiently definite" terms); *Litle v. Waters*, 1992 WL 25758, at *6 (Del. Ch. Feb. 11, 1992) (same). Under Delaware law, "material provisions of an agreement can be so indefinite that the agreement will not be enforced." *Litle*, 1992 WL 25758, at *6 (citing *Hindes v. Wilmington Poetry Society*, Del. Ch., 138 A.2d 501, 503 (1958)). "The material

terms are uncertain where they fail to provide a reasonable basis for determining the existence of a breach and for giving the appropriate remedy." *Id.*

Plaintiff's Complaint sets forth no "reasonable basis" for supporting the "existence of a breach." *See id.* The sole allegation identifying the terms of the allegation of the alleged oral contract (executed thirteen years ago) is paragraph 20; that paragraph, in relevant part, provides:

> Turner agreed to pay Plaintiff a fee in the amount of 15% of all **compensation** received by Turner, and any loan out company established on his behalf, from marketing and endorsement leads generated by Plaintiff, or 20% of such **compensation** in the event that the compensation from those leads in the aggregate was greater than $2,000,000 in any given year.

(Compl. ¶ 20 (emphasis added).) But the term "compensation" is too indefinite—Plaintiff identifies no basis for the parties (and this Court) to assume that the term encompassed "stock" such that Plaintiff would be entitled to the monies received by Mr. Turner upon sale of the stock. (*See id*. ¶ 37.) The Complaint elsewhere acknowledges the difference between "compensation" and "stock" and that the two terms are hardly interchangeable or synonymous. (*See id.* ¶¶ 28-29 (referring to "stock" and the "minimum guaranteed compensation" allegedly permitted under the Li-Ning Contract); *id.* ¶¶ 35 (acknowledging that EmTurn paid the

"compensation" received under the Li-Ning Contract).)[4] Plainly put, paragraph 20 "fail[s] to provide a reasonable basis for determining the existence of a breach and for giving the appropriate remedy." *See Litle*, 1992 WL 25758, at *6; *Hyetts Corner*, 2021 WL 4166703, at *6, n.35 (granting motion to dismiss breach-of-contract claim in part because allegedly "essential" terms were "vague and subject to conditions"); *see generally Gallagher v. E.I. Dupont De Nemours & Co.*, 2010 WL 1854131, at *4 (Del. Super. Ct. Apr. 30, 2010) (granting judgment on oral-breach-of-contract claim because alleged compensation terms were not "sufficiently defined").

Beyond the undefined "compensation" term, Plaintiff has failed to identify other material or essential terms of the alleged oral agreement. For example, the Complaint does not identify any critical, key terms, including the rights of the parties to terminate the oral agreement or the term length of the oral agreement. Nor does the Complaint identify the scope of Plaintiff's representation as Mr. Turner's agent, such as whether Plaintiff is owed fees for any endorsement deals that come to EmTurn or Mr. Turner regardless of Plaintiff's involvement. "If [such] terms are left open or uncertain, this tends to demonstrate that an offer and acceptance did not occur." *See Hyetts Corner,* 2021 WL 4166703, at *6, n.35.

[4] To the extent the Agency Agreement "confirms" the alleged oral contract, the Agreement is of no use because it says nothing about stock either.

And because Plaintiff has failed to identify these material or essential terms of the alleged oral contract, this Court should decline to supply them instead—especially in light of Plaintiff's attempt to enforce an oral agreement that was allegedly executed thirteen years ago. *See, e.g.*, *Black Horse*, 2014 WL 5025926, at *17 ("Delaware courts will not supply essential terms to the contract, in this case, I conclude that [p]laintiffs' argument regarding . . . the [alleged] [oral] [a]greement would require the Court to do just that . . . .") (internal quotation marks omitted). Plainly put, the Complaint does not set forth "sufficiently defined" terms.

Accordingly, this Court should dismiss the First Cause of Action.

B. The unjust enrichment and quantum meruit claims against Mr. Turner should be dismissed (Third and Fourth Causes of Action).

Plaintiff's other claims against Mr. Turner are improper attempts to undermine the well-settled contract principle that non-contracting parties cannot be held liable for breach of contract. "Delaware courts consistently have held that where a contract exists no person can be sued for breach of contract who has not contracted either in person or by an agent." *Encore Preakness, Inc*., 2017 WL 5068753, at *3 (citing *Vichi v. Koninklijke Philips Electronics N. V*, 62 A.3d 26, 58-59 (Del. Ch. 2012)). Applying this principle, courts have reasoned that unjust enrichment claims "cannot be used to circumvent this principle merely by substituting one person or debtor for another." *Id.*; *see also Ameristar Casinos, Inc. v. Resorts Int'l Holdings, LLC*, 2010 WL 1875631, at *13 (Del. Ch. May 11,

2010) ("[c]ourts generally dismiss claims for quantum meruit on the pleadings when it is clear from the face of the complaint that there exists an express contract that clearly controls."). The reason for this rule is obvious: "[T]he inability of a party to a contract to fulfill an obligation thereunder cannot serve as a basis to conclude that other entities, who are not party to the contract, are liable for that obligation." *Id.* Unsurprisingly, Delaware courts have not hesitated to protect non-contracting parties from disguised breach-of-contract claims. *See, e.g.*, *Tygon Peak Capital Mgmt., LLC v. Mobile Invs. Investco,* 2022 WL 34688, at *15 (Del. Ch. Jan. 4, 2022), *reargument granted in part*, 2022 WL 414399 (Del. Ch. Feb. 10, 2022) (granting motion to dismiss unjust enrichment claim because of plaintiff's attempt to "circumvent" this principle); *Kuroda v. SPJS Holdings, LLC*, 971 A.2d 872, 892 (Del. Ch. 2009) (dismissing unjust enrichment claim because plaintiff "cannot use a claim for unjust enrichment to extend the obligations of a contract to [other individuals] who are not parties to the contract").

To the extent that EmTurn justifiably refuses to fulfill a certain alleged contractual obligation does not mean that Mr. Turner himself—individually—is "liable for that obligation." *See Encore Preakness Inc.*, 2017 WL 5068753, at *3. Mr. Turner does not dispute that the Agency Agreement governs resolution of Plaintiff's claims. As provided in the Complaint, the Agency Agreement covered the marketing services provided by Plaintiff. (Compl. ¶¶ 30-31.) The claims for

unjust enrichment and quantum meruit indisputably arise out of the same subject matter covered by the Agency Agreement. (*Compare id.* ¶ 50 (alleging that EmTurn failed to pay the invoice for marketing services) *with id.* ¶ 57 (alleging that EmTurn and Mr. Turner have not paid the agreed price for marketing services).) For that reason, Plaintiff may not seek to substitute Mr. Turner, a non-contracting party, for EmTurn in the Agency Agreement to recover for unjust enrichment and quantum meruit.

Accordingly, the Third and Fourth Causes of Action should be dismissed.

C. Mr. Turner should not be held liable under a piercing-the corporate-veil-theory for any of the claims against EmTurn.

Even if Plaintiff's claims against Mr. Turner in his individual capacity are dismissed, Plaintiff presses that Mr. Turner should be held liable for any alleged misconduct of EmTurn's part under an "alter ego" theory. (Compl. ¶¶ 12, 15, 17.) This Court is without jurisdiction to pierce the corporate veil of EmTurn to hold Mr. Turner personally liable for the claims against EmTurn.[5]

An abundance of Delaware precedent has held that only the Court of Chancery may pierce the corporate veil. *See Del. Div. of Unemployment Ins. v. Scott*, 2012 WL 2580820, at *3 (Del. Super. Ct. June 21, 2012) ("It is well-settled

[5] "'Piercing the corporate veil' and 'alter ego theory' are used interchangeably throughout Delaware precedent." *Vepco Park, Inc. v. Custom Air Servs.*, 2016 WL 1613654, at *3 (Del. Super. Ct. Feb. 25, 2016).

that this Court lacks jurisdiction to pierce the corporate veil. As an equitable remedy, the Court of Chancery has sole jurisdiction over actions to pierce the corporate veil."); *Hanna v. Baier*, 2020 WL 391924, at *6 (Del. Super. Ct. Jan. 22, 2020); *Green v. House of Wright Mortuary, Inc.*, 2005 WL 2249510, at *2 (Del. Super. Ct. June 21, 2005); *Thomas v. Hobbs*, 2005 WL 1653947, at *2 (Del. Super. Ct. Apr. 27, 2005). When this Court has previously been asked to pierce the corporate veil, it has granted motions to dismiss for lack of such jurisdiction. *See Graham v. Del. Golf & Travel, Ltd. Liab. Co.*, 2017 WL 283389, at *2; *State ex rel. Higgins v. SourceGas, LLC*, 2012 WL 1721783, at *5 (Del. Super. Ct. May 15, 2012); *Zhai v. Stein*, 2012 WL 1409358, at *7 (Del. Super. Ct. Jan. 6, 2012). Accordingly, this Court should dismiss Mr. Turner from this lawsuit for any alleged misconduct on EmTurn's part.

Additionally, Delaware courts have held that "[v]eil piercing is a tough thing to plead and a tougher thing to get, and for good reason. Delaware is in the business of forming entities, and so 'Delaware public policy does not lightly disregard their separate legal existence.'" *Verdantus Advisors, LLC v. Parker Infrastructure Partners, LLC*, 2022 WL 611274, at *2 (Del. Ch. Mar. 2, 2022) (dismissing claim where plaintiff argued for alter ego theory of liability "because Phillips is the sole owner of Verdantus and [] he observed few if any corporate formalities. But that allegation could be said of most single-member LLCs,

particularly given the few statutorily mandated formalities imposed on those entities. This is not the exceptionally rare stuff of veil-piercing."). Accordingly, this Court should dismiss Mr. Turner from this lawsuit for any alleged misconduct on EmTurn's part.

D. CONCLUSION

For the reasons stated above, Mr. Turner respectfully requests that the Court dismiss the claims against him, and dismiss him from this lawsuit.

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January 23, 2023

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 23, 2023 a true and correct copy of the foregoing ***Defendant EmTurn LLC's Answer, Affirmative Defenses, And Counterclaim*** has been served via File&Serve*Express* upon the following counsel of record:

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