

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

OUTSOURCE SERVICES MANAGEMENT,
LLC, a Nevada limited liability company,

Plaintiff,

v.

Case No.: 6:09-CV-1928-ORL-22-KRS

LAKE AUSTIN PROPERTIES I, LTD, a
Florida limited partnership, *et al*,

Defendants.

_____ /

UNITED FORMING, INC.'S AFFIRMATIVE DEFENSES,
ANSWER, COUNTERCLAIM AND CROSS-CLAIM

COMES NOW Defendant UNITED FORMING, INC. ("UFI"), by and through its undersigned counsel, and hereby files and serves its Affirmative Defenses, Answer, Counterclaim and Cross-Claim to Plaintiff's Complaint filed by Outsource Services Management, LLC ("Outsource" or "Plaintiff") and shows the Court as follows:

First Affirmative Defense

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiff's Complaint fails for failure of consideration.

Third Affirmative Defense

Plaintiff's Complaint fails, in whole or in part by the doctrine of laches.

Fourth Affirmative Defense

Plaintiff's Complaint fails, in whole or in part, by the doctrine of estoppel.

Fifth Affirmative Defense

Plaintiff has waived its claims in whole or in part as it relates to the Claims of Lien filed on the Project.

Sixth Affirmative Defense

By way of answer to each and every allegation of the First Amended Complaint, UFI states as follows:

Jurisdiction and Venue

1. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint, and therefore denies the same.

2. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint, and therefore denies the same.

3. UFI denies the allegations contained in Paragraph 3 of the Plaintiff's Complaint.

4. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint, and therefore denies the same.

5. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint, and therefore denies the same.

The Parties

6. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint, and therefore denies the same.

7. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint, and therefore denies the same.

8. UFI admits the allegations contained in Paragraph 8 of the Complaint.

9. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint, and therefore denies the same.

10. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint, and therefore denies the same.

11. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint, and therefore denies the same.

12. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint, and therefore denies the same.

13. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint, and therefore denies the same.

14. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint, and therefore denies the same.

15. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint, and therefore denies the same.

16. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint, and therefore denies the same.

17. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint, and therefore denies the same.

18. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint, and therefore denies the same.

19. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint, and therefore denies the same.

20. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint, and therefore denies the same.

21. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint, and therefore denies the same.

22. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint, and therefore denies the same.

23. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint, and therefore denies the same.

24. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint, and therefore denies the same.

25. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint, and therefore denies the same.

26. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint, and therefore denies the same.

27. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 27 of the Complaint, and therefore denies the same.

28. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint, and therefore denies the same.

29. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint, and therefore denies the same.

30. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint, and therefore denies the same.

31. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 31 of the Complaint, and therefore denies the same.

32. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint, and therefore denies the same.

33. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint, and therefore denies the same.

34. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 34 of the Complaint, and therefore denies the same.

35. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint, and therefore denies the same.

36. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint, and therefore denies the same.

37. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint, and therefore denies the same.

38. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 38 of the Complaint, and therefore denies the same.

Common Allegations

39. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 39 of the Complaint, and therefore denies the same.

40. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 40 of the Complaint, and therefore denies the same.

41. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 41 of the Complaint, and therefore denies the same.

42. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 42 of the Complaint, and therefore denies the same.

43. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 43 of the Complaint, and therefore denies the same.

44. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 44 of the Complaint, and therefore denies the same.

45. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 45 of the Complaint, and therefore denies the same.

46. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 46 of the Complaint, and therefore denies the same.

47. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 47 of the Complaint, and therefore denies the same.

48. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 48 of the Complaint, and therefore denies the same.

49. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 49 of the Complaint, and therefore denies the same.

50. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 50 of the Complaint, and therefore denies the same.

51. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint, and therefore denies the same.

52. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 52 of the Complaint, and therefore denies the same.

53. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 53 of the Complaint, and therefore denies the same.

54. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint, and therefore denies the same.

55. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint, and therefore denies the same.

56. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint, and therefore denies the same.

57. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint, and therefore denies the same.

58. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint, and therefore denies the same.

59. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint, and therefore denies the same.

Count I – Foreclosure of Mortgage on Real Property

60. UFI readopts, realleges and incorporates herein by reference its responses to Paragraphs 1 – 59 of the Complaint as if the same had been set forth at length herein.

61. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint, and therefore denies the same.

62. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 62 of the Complaint, and therefore denies the same.

63. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint, and therefore denies the same.

64. UFI admits only that it is filed a Claim of Lien on October 9, 2009 and Notice of Commencement on July 3, 2007. UFI denies any and all remaining allegations contained in Paragraph 64 of Plaintiff's Complaint.

65. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 65 of the Complaint, and therefore denies the same.

66. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 66 of the Complaint, and therefore denies the same.

67. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 67 of the Complaint, and therefore denies the same.

68. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 68 of the Complaint, and therefore denies the same.

69. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 69 of the Complaint, and therefore denies the same.

70. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 70 of the Complaint, and therefore denies the same.

71. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 71 of the Complaint, and therefore denies the same.

72. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 72 of the Complaint, and therefore denies the same.

73. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 73 of the Complaint, and therefore denies the same.

74. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 74 of the Complaint, and therefore denies the same.

75. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 75 of the Complaint, and therefore denies the same.

76. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 76 of the Complaint, and therefore denies the same.

77. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 77 of the Complaint, and therefore denies the same.

78. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 78 of the Complaint, and therefore denies the same.

79. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 79 of the Complaint, and therefore denies the same.

80. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 80 of the Complaint, and therefore denies the same.

81. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 81 of the Complaint, and therefore denies the same.

82. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 82 of the Complaint, and therefore denies the same.

83. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 83 of the Complaint, and therefore denies the same.

84. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 84 of the Complaint, and therefore denies the same.

85. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 85 of the Complaint, and therefore denies the same.

86. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 86 of the Complaint, and therefore denies the same.

87. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 87 of the Complaint, and therefore denies the same.

88. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 88 of the Complaint, and therefore denies the same.

89. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 89 of the Complaint, and therefore denies the same.

90. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 90 of the Complaint, and therefore denies the same.

91. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 91 of the Complaint, and therefore denies the same.

92. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 92 of the Complaint, and therefore denies the same.

WHEREFORE, UFI denies that Plaintiff is entitled to any relief whatsoever on Count I of its Complaint.

Count II – Foreclosure of Mortgage on Personal Property

93. UFI readopts, realleges and incorporates herein by reference its responses to Paragraphs 1 – 92 of the Complaint as if the same had been set forth at length herein.

94. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 94 of the Complaint, and therefore denies the same.

95. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 95 of the Complaint, and therefore denies the same.

96. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 96 of the Complaint, and therefore denies the same.

WHEREFORE, UFI denies that Plaintiff is entitled to any relief whatsoever on Count II of its Complaint.

Count III – Suit on Promissory Note

97. UFI readopts, realleges and incorporates herein by reference its responses to Paragraphs 1 – 96 of the Complaint as if the same had been set forth at length herein.

98. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 98 of the Complaint, and therefore denies the same.

99. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 99 of the Complaint, and therefore denies the same.

100. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 100 of the Complaint, and therefore denies the same.

WHEREFORE, UFI denies that Plaintiff is entitled to any relief whatsoever on Count III of its Complaint.

Count IV – Appointment of a Receiver

101. UFI readopts, realleges and incorporates herein by reference its responses to Paragraphs 1 – 100 of the Complaint as if the same had been set forth at length herein.

102. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 102 of the Complaint, and therefore denies the same.

103. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 103 of the Complaint, and therefore denies the same.

104. Upon information and belief, UFI admits the allegations contained in Paragraph 104 of Plaintiff's Complaint.

105. UFI is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 105 of the Complaint, and therefore denies the same.

WHEREFORE, UFI denies that Plaintiff is entitled to any relief whatsoever on Count IV of its Complaint.

Counterclaim and Cross-Claim

COMES NOW Defendant United Forming, Inc. (“UFI”), a Georgia corporation, by and through its undersigned counsel, and files this Counterclaim against Plaintiff Outsource Services Management, LLC, a Nevada limited liability company; and its Cross-claim against Lake Austin Properties, I, Ltd, a Florida limited partnership and alleges:

106. This Counterclaim and Cross-claim is made pursuant to Federal Rules of Civil Procedure 13 (a) and (g) and arises out of the transaction or occurrence that is the subject matter of the Complaint. The Plaintiff and Lake Austin are subject to jurisdiction and venue of this Court.

107. This Court has ancillary jurisdiction over this Counterclaim and Cross-claim.

108. On or about June 14, 2007, UFI and Lake Austin entered into a written contract agreement (“Agreement”) whereby UFI agreed to provide labor, materials, equipment, and services for the concrete formwork and vertical concrete placement for the project that is the subject of this civil action. A true and correct copy of the Agreement is attached as Exhibit “A” hereto.

109. On or about October 9, 2009, UFI recorded under Clerk’s File No. 20090600640 in Official Records Book 9946 at pages 1464-1465 of the Public Records

of Orange County, Florida, a Claim of Lien on the Property for the labor, services, and materials that it provided. A true and correct copy of the Claim of Lien is attached as Exhibit "B" hereto.

110. By letter dated October 12, 2009, a true and correct copy of which is attached as Exhibit "C" hereto, UFI served a copy of the Claim of Lien on Lake Austin.

111. UFI last provided labor, services or materials for the Project on July 31, 2009.

112. UFI substantially completed and performed all work required under the Subcontract; however, Lake Austin failed and refused to pay UFI sums due and owing for its work on the Project, in the principal amount of Two Million, Five Hundred Eighty-Nine Thousand, Nine Hundred Twenty-One and 08/100 Dollars (\$2,589,921.08).

113. Lake Austin breached the Agreement with UFI by failing or refusing to pay all of the amounts due under the Agreement, and UFI has suffered damages as a direct and proximate result of this breach.

114. All conditions precedent to the bringing of this action and to the recovery of the relief sought herein have occurred, been waived or have otherwise been fully performed.

115. UFI has retained the undersigned attorneys to represent it in this matter, and has agreed and obligated itself to pay a reasonable fee for their services on its behalf.

Count I

Action to Enforce Claim of Lien (As to Plaintiff and Lake Austin)

116. UFI realleges and incorporates Paragraphs 106 through 115 of this Counterclaim and Cross-claim as though fully set forth herein.

117. This Counterclaim and Cross-claim seek to enforce a claim of lien.

118. Lake Austin owns the Property as defined in the Claim of Lien attached hereto as Exhibit "B."

119. Pursuant to the Agreement, UFI provided labor, services, supervision, and materials for formwork and vertical concrete placement for the Project.

120. UFI has satisfactorily performed its obligations under the contract, and the work has been accepted by Lake Austin.

121. All of the labor, services, supervision, and materials have been incorporated into the Project located on the Property; UFI last performed work on or about July 31, 2009.

122. Accordingly, under the Agreement, UFI is entitled to payment in the principal amount of Two Million, Five Hundred Eighty-Nine Thousand, Nine Hundred Twenty-One and 08/100 Dollars (\$2,589,921.08).

123. Despite the demands of UFI for payment, Lake Austin has refused to and failed to pay the same.

124. As a direct and proximate result, UFI has suffered damages.

125. UFI properly and timely recorded its Claim of Lien, and promptly served a copy on Lake Austin.

126. On December 11, 2009, UFI gave to Lake Austin, as owner, a duly executed Contractor's Final Payment Affidavit as provided by Florida Statutes § 713.06(3)(d). UFI reserves the right to amend this Counterclaim and Cross-claim after 5 days from giving such Affidavit, to proceed with these claims to enforce UFI's lien and lien rights.

127. UFI has timely filed this Counterclaim and Cross-claim within one (1) year of recording its claim of lien and has complied with or will satisfy all other

conditions precedent as required by the contract and all statutory prerequisites under Florida law.

WHEREFORE, UFI respectfully demands entry of judgment of foreclosure in the amounts due UFI, including principal, interest, costs, expenses and attorneys' fees, and if such sums are not paid within the time set by this Court, that the Property be sold to satisfy UFI's claims, and, should a deficiency occur after application of the proceeds of the sale, that UFI be granted a deficiency decree against Lake Austin, along with such other and further relief as this Court deems appropriate.

Count II

Action for Breach of Contract **(As to Defendant Lake Austin)**

128. UFI realleges and incorporates Paragraphs 101 – 127 of this Counterclaim and Cross-Claim as though fully set forth herein.

129. This is an action, for breach of contract to recover damages in the principal amount of Two Million, Five Hundred Eighty-Nine Thousand, Nine Hundred Twenty-One and 08/100 Dollars (\$2,589,921.08), and for interest, costs, and attorneys' fees.

130. Pursuant to the Agreement, UFI provided labor, services, supervision, and materials for formwork and vertical concrete placement for the Project.

131. UFI satisfactorily performed its obligations under the Subcontract, and Lake Austin accepted the work.

132. Accordingly, under the Agreement, UFI is entitled to payment in the principal amount of Two Million, Five Hundred Eighty-Nine Thousand, Nine Hundred Twenty-One and 08/100 Dollars (\$2,589,921.08).

133. Despite the demands of UFI for payment, Lake Austin has refused to and failed to pay the same.

134. Lake Austin breached the Agreement with UFI by failing or refusing to pay all of the amounts now justly due and owing under the Subcontract.

135. As a direct and proximate result of Lake Austin's breach, UFI has suffered damages.

WHEREFORE, UFI respectfully demands entry of judgment against Lake Austin for damages in the principal amount of Two Million, Five Hundred Eighty-Nine Thousand, Nine Hundred Twenty-One and 08/100 Dollars (\$2,589,921.08), plus interest, costs, and attorneys' fees, and such other and further relief as this Court deems appropriate.

Count III

Quantum Meruit (Plaintiff and Lake Austin)

136. UFI incorporates herein by reference the allegations contained in paragraphs 101 through 127 of this Counterclaim and Cross Claim against Plaintiff and Lake Austin as if fully set forth herein.

137. At the request and insistence of Lake Austin and for the benefit of Plaintiff through its Assignment, UFI provided labor, materials, and equipment for use in the performance of the Agreement more specifically described as the concrete components of the Project.

138. Lake Austin and Plaintiff, through its Assignment, accepted said labor, materials, services and equipment with the knowledge that UFI expected to be paid the reasonable value thereof.

139. As a consequence of the foregoing actions, there exists an implied promise by Lake Austin and Plaintiff, through its Assignment, to pay or reimburse UFI the reasonable value of the labor, materials, and equipment provided by UFI for use in the performance of the Agreement more specifically described as the concrete components of the Project.

140. Accordingly, under the doctrine of quantum meruit, Lake Austin and Plaintiff, through its Assignment is liable to UFI in the amount of Two Million, Five Hundred Eighty-Nine Thousand, Nine Hundred Twenty-One and 08/100 Dollars (\$2,589,921.08) representing the reasonable value of labor, materials, services and equipment provided by UFI, which amount has not been paid.

WHEREFORE as an alternative theory of recover, UFI respectfully demands entry of judgment against Lake Austin and Plaintiff for damages in the principal amount of Two Million, Five Hundred Eighty-Nine Thousand, Nine Hundred Twenty-One and 08/100 Dollars (\$2,589,921.08), which constitutes the reasonable value of the work performed by UFI, plus interest, costs, and attorneys' fees, and such other and further relief as this Court deems appropriate.

COUNT IV

Unjust Enrichment (Against Plaintiff and Lake Austin)

141. UFI incorporates herein by reference the allegations contained in paragraphs 101 through 140 of this Counterclaim and Cross-Claim as if fully set forth and realleged herein.

142. Plaintiff and Lake Austin has benefited from the unlawful taking of monies and other things of value, including the work performed by UFI. Lake Austin's use of those monies and things of value to its benefit has unjustly enriched Lake Austin

and in the event Plaintiff is entitled to foreclose on UFI's Claim of Lien, Plaintiff will benefit unjustly for the work performed by UFI.

143. UFI has been damaged by Lake Austin and Plaintiff's unjust enrichment. Accordingly, UFI is entitled to recover its actual damages resulting from Lake Austin and Plaintiff's unjust enrichment.

WHEREFORE, UFI respectfully demands entry of judgment against Lake Austin and Plaintiff for damages in the principal amount of Two Million, Five Hundred Eighty-Nine Thousand, Nine Hundred Twenty-One and 08/100 Dollars (\$2,589,921.08), which constitutes the amount Plaintiff and Lake Austin would be unjustly enriched, plus interest, costs, and attorneys' fees, and such other and further relief as this Court deems appropriate.

COUNT V

Equitable Lien (Plaintiff)

144. UFI incorporates herein by reference the allegations contained in paragraphs 101 through 143 of this Counterclaim and Cross-Claim as if fully set forth and realleged herein.

145. On information and belief, Plaintiff is the assignee and successor to the rights and obligations of Marshall Financial Group, LLC, the original lender on a construction loan, the proceeds of which were intended to pay for improvement on the real estate on which the project is situated ("Loan Proceeds").

146. UFI furnished labor, materials, and services for improvements to the project and is owed Two Million, Five Hundred Eighty-Nine Thousand, Nine Hundred Twenty-One and 08/100 Dollars (\$2,589,921.08) for its work.

147. On information and belief, there are Loan Proceeds, which should have been disbursed, to pay for improvement to the project, including those which should have been disbursed to pay UFI, in whole or in part.

148. If Plaintiff is allowed to retain the undisbursed Loan Proceeds, Plaintiff will be unjustly enriched at the expense of UFI. Therefore, UFI is entitled to make and establish equitable lien on any undisbursed Loan Proceeds in Plaintiff's possession or control.

WHEREFORE, UFI respectfully demands entry of judgment of foreclosure of the equitable lien against Plaintiff in such amount determined to be due to UFI, including principal, interest, costs, expenses, and attorney's fees.

Dated this the 14th day of December, 2009.

Respectfully submitted,

/s/ Gregory A. Hearing
GREGORY A. HEARING
Florida Bar No.: 817790
BRIAN C. USSERY
Florida Bar No.: 0514993
THOMPSON, SIZEMORE, GONZALEZ
& HEARING, P.A.
One Tampa City Center
201 N. Franklin St., Suite 1600
Tampa, Florida 33602-5246
P.O. Box 639
Tampa, Florida 33601-0639
Tel: (813) 273-0050
Fax: (813) 273-0072
Email: ghearing@tsghlaw.com
bussery@tsghlaw.com

Counsel for United Forming, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and CM/ECF filing on this 14th day of December, 2009, to the following:

Paul Andrew McDermott, Esq.
William Keith Frederick, Esq.
Holland & Knight, LLP
100 N. Tampa Street, Suite 1400
P.O. Box 1288
Tampa, FL 33601-1288

Counsel for Plaintiff
Rodney L. Russell, Esq.
Russell Law Offices, P.A.
1030 N. Orange Ave.
P.O. Box 2741
Orlando, FL 32802

*Counsel for Defendant Da Pau
Enterprises II, Inc.*

Charlotte L. Warren, Esq.
Carlton Fields, P.A.
P.O. Box 1171
Orlando, Florida 32802-1171

*Counsel for Defendant Synergy
Group, Inc.,
d/b/a Synergy Group SE, Inc.*

Michael C. Sasso, Esq.
Michael C. Sasso, P.A.
1031 W. Morse Blvd., Suite 260
Winter Park, Florida 32779

*Counsel for Defendant Progressive
Plumbing, Inc.*

Mi Angela M. Covington, Esq.
Michael R. Carey, Esq.
Carey, O'Malley, Whitaker & Manson, P.A.
712 S. Oregon Ave.
Tampa, FL 33606-2543

*Counsel for Defendant Ron Kendall
Masonry, Inc.*
David C. Willis, Esq.
Rumberger, Kirk & Caldwell
Lincoln Plaza, Suite 1400
300 North Orange Avenue
P.O. Box 1873
Orlando, Florida 32802-1873

*Counsel for Defendant P&A Roofing and
Sheet Metal, Inc.*

Sherry Lambson Eisele, Esq.
Miller, Hester, & Eisele, P.A.
429 S. Keller Road, Suite 310
Orlando, Florida 32810

*Counsel for Defendant Southern Pool
Designs, Inc.*

Kimberly A. Ashby, Esq.
Akerman Senterfitt
P.O. Box 231
Orlando, Florida 32802-0231

*Counsel for Defendant Jr. David
Construction Co., Inc.*

Hardy L. Roberts, III, Esq.
Mark A. Smith, Esq.
Carlton Fields, P.A.
4221 W. Boy Scout Blvd.
Tampa, Florida 33607

*Counsel for Defendant 84 Lumber
Company*

and via U.S. Mail to the following:

Eric G. Robart
2210 S. Atlantic Avenue
Cocoa Beach, Florida 32931

John Frith
1028 W. Washington Street
Orlando, Florida 32805

Architectural Specialties of Brevard, Inc.
c/o Robert A. Baugher, Registered Agent
2210 S. Atlantic Avenue
Cocoa Beach, Florida 32931

Access Control Technologies, Inc.
Attn: President
1028 W. Washington St.
Orlando, Florida 32805

Lake Austin Properties I, Ltd.
Attn: Paul Oxley, Registered Agent
3050 Michigan Avenue
Kissimmee, Florida 34744

Wayne Automatic Fire Sprinklers, Inc.
c/o Wayne H. Gey, Registered Agent
222 Capitol Court
Ocoee, Florida 34761-3019

Bergelectric Corp.
c/o CT Corporation Systems, Registered
Agent
1200 South Pine Island Road
Plantation, Florida 33324

Wall & Sign Concepts, LLC
c/o Ernest F. Miller, Jr., Registered Agent
8543 US Highway 441
Leesburg, Florida 34788

Del-Air Hearing, Air Conditioning &
Refrigeration, Inc.
Attn: Robert G. Dello Russo, President
531 Codisco Way
Sanford, Florida 32771

Rose Fence Company
c/o Wright, Fulford, Moorhead,
& Brown, Registered Agent
Attn: Jeremy S. Sharon, Esq.
145 Magnolia Avenue
Orlando, Florida 32801

United Rentals, Inc.
c/o Corporation Services Co.,
Registered Agent
1201 Hayes Street
Tallahassee, Florida 32301-2525

United Rentals – A20
c/o Thomas Dozier
9301 Bachman Road
Orlando, Florida 32824

Thyssenkrupp Elevator Corp.
c/o Corporation Services Co.,
Registered Agent
1201 Hayes Street
Tallahassee, Florida 32301-2525

Casselberry Construction, Inc.
c/o Charlie W. Cecil, Registered Agent
1511 Seminole Blvd., Suite 1053
Casselberry, Florida 32707

Professional Services Industries, Inc.
Attn: Mr. James Keeney
1748 33rd Street
Orlando, Florida 32839

Creative Touch Interiors, Inc.
c/o Corporate Creations Network, Inc.
Registered Agent
11380 Prosperity Farms Road #221E
Palm Beach Gardens, Florida 33410

Southern Pool Designs, Inc.
c/o David L. Montague, Registered Agent
201 Specialty Point
Sanford, Florida 32771

Elegant Aluminum Products, inc.
c/o Frank Kowalewicz, Registered Agent
16965 Masonic
Fraser, MI 48026

Empire Window, Inc.
c/o Kip Braden, Registered Agent
3400 Ohio Avenue
Sanford, Florida 32773

Stone Wood Sales, inc.
c/o Roy L. Dixon, Registered Agent
1309 N. Daytona Avenue
Flagler Beach, Florida 32136

Wm. B. Dodson, Inc.
c/o. Wm B. Dodson, Registered Agent
1 Sunshine Blvd.
Ormond beach, Florida 32174

The Sherwin-Williams Co
c/o Corporation Service Co., Registered
Agent
1201 Hayes Street
Tallahassee, Florida 32301-2525

Riveiro Painting, inc.
c/o William R. Riveiro, Registered
Agent
3738 Morris Bridge Rd.
Zephyrhills, Florida 33543

RSC Equipment Rental, Inc.
c/o CT Corporation Systems, Registered
Agent
1200 South Pine Island Road
Plantation, Florida 33324

/s/ Gregory A. Hearing

Attorney