

COMMONWEALTH OF MASSACHUSETTS

**E-FILED**

WORCESTER, ss.

SUPERIOR COURT DEPT.  
CIVIL ACTION NO.: 2385-cv-01359-B

DAVRON EQUIPMENT, LLC,

Plaintiff,

v.

FEEDBACK EARTH, INC.,

Defendant

**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM OF  
DEFENDANT FEEDBACK EARTH, INC.**

Defendant / Plaintiff-in-Counterclaim FeedBack Earth, Inc. ("FeedBack"), by and through its undersigned counsel, submits the following Answer to the *First Amended Verified Complaint and Demand for Jury Trial* of Plaintiff / Defendant-in-Counterclaim Davron Equipment, LLC ("Davron") as follows:



**PARTIES AND FACTS**

1. FeedBack admits the allegations in paragraph 1.
2. FeedBack admits the allegations in paragraph 2.
3. FeedBack admits the allegations in paragraph 3.
4. The allegations in paragraph 4 relate to a series of writings, the terms of which speak for themselves. To the extent the allegations in paragraph 4 are inconsistent with those writings, FeedBack denies them and leaves Davron to its proof:

5. The allegations in paragraph 5 relate to a written agreement or agreements, the terms of which speak for themselves. To the extent the allegations in paragraph 5 are inconsistent with such agreement or agreements, FeedBack denies them and leaves Davron to its proof.

6. FeedBack denies the allegations in paragraph 6.

7. FeedBack admits that it has paid Davron certain sums of money for certain services Davron performed on behalf of FeedBack. Further answering, FeedBack denies all allegations remaining in this paragraph 7.

8. FeedBack denies the allegations in paragraph 8.

9. FeedBack denies the allegations in paragraph 9.

**COUNT I**  
**(Breach of Contract – Construction Contract)**

10. FeedBack restates and incorporates herein its above responses to paragraphs 1-9 of the Complaint.

11. FeedBack denies the allegations of paragraph 11.

12. The allegations of paragraph 12 relate to a written agreement the terms of which speak for themselves. To the extent the allegations in paragraph 12 are inconsistent with that agreement, FeedBack denies them.

**COUNT II**  
**(Breach of Contract – Transportation Agreement)**

13. FeedBack restates and incorporates herein its above responses to paragraphs 1-12 of the Complaint.

14. The allegations of paragraph 14 relate to a written agreement the terms of which speak for themselves. To the extent the allegations in paragraph 14 are inconsistent with that agreement, FeedBack denies them.

15. The allegations of paragraph 15 relate to a written agreement the terms of which speak for themselves. To the extent the allegations in paragraph 15 are inconsistent with that agreement, FeedBack denies them.

16. The allegations of paragraph 16 relate to a written agreement the terms of which speak for themselves. To the extent the allegations in paragraph 16 are inconsistent with that agreement, FeedBack denies them.

17. The allegations of paragraph 17 relate to a written agreement the terms of which speak for themselves. To the extent the allegations in paragraph 17 are inconsistent with that agreement, FeedBack denies them.

18. The allegations of paragraph 18 relate to a series of writings, the terms of which speak for themselves. To the extent the allegations in paragraph 18 are inconsistent with those writings, FeedBack denies them and leaves Davron to its proof.

19. FeedBack denies the allegations of paragraph 19.

20. FeedBack denies the allegations of paragraph 20.

21. The allegations of paragraph 21 relate to a series of writings, the terms of which speak for themselves. To the extent the allegations in paragraph 21 are inconsistent with those writings, FeedBack denies them and leaves Davron to its proof.

22. FeedBack admits the allegations of paragraph 22.

23. FeedBack denies the allegations of paragraph 23.

24. FeedBack denies the allegations of paragraph 24.

25. FeedBack denies the allegations of paragraph 25.

26. FeedBack is without knowledge or information sufficient to respond to the allegations of paragraph 26 and therefore denies the same.

27. FeedBack denies the allegations of paragraph 27.

28. FeedBack denies the allegations of paragraph 28.

29. The allegations of paragraph 29 relate to a written agreement the terms of which speak for themselves. To the extent the allegations in paragraph 29 are inconsistent with that agreement, FeedBack denies them.

**COUNT III**  
**(Unjust Enrichment)**

30. FeedBack restates and incorporates herein its above responses to paragraphs 1-29 of the Complaint.

31. FeedBack admits that Davron provided it some services that rendered it some benefit. Further answering, FeedBack denies all remaining allegations of this paragraph 31.

32. FeedBack is without knowledge or information sufficient to respond to the allegations of paragraph 32 and therefore denies the same.

33. FeedBack denies the allegations of paragraph 33.

34. FeedBack denies the allegations of paragraph 34.

**COUNT IV**  
**(Mechanics Lien)**

35. FeedBack restates and incorporates herein its above responses to paragraphs 1-34 of the Complaint.

36. The allegations of paragraph 36 relate to a writing, the terms of which speak for itself. To the extent the allegations in paragraph 36 are inconsistent with that writing, FeedBack denies them.

37. The allegations of paragraph 37 relate to a writing, the terms of which speak for itself. To the extent the allegations in paragraph 37 are inconsistent with that writing, FeedBack denies them.

38. FeedBack admits the allegations in paragraph 38.

39. Paragraph 39 calls for a legal conclusion to which no answer is required. To the extent an answer is deemed required, FeedBack denies the allegations.

40. Paragraph 40 calls for a legal conclusion to which no answer is required. To the extent an answer is deemed required, FeedBack denies the allegations.

41. FeedBack denies the allegations in paragraph 41.

42. FeedBack denies the allegations in paragraph 42.

The remainder of Davron's Complaint contains a Prayer for Relief and a Jury Demand, neither of which state any factual allegations to which is answer is required. To the extent an answer is deemed required, FeedBack denies any allegations stated and denies that Davron is entitled to any of the relief it seeks.

#### **AFFIRMATIVE DEFENSES**

Without assuming any burden of proof that it would not otherwise bear, FeedBack also asserts the following affirmative and additional defenses:

##### *First Affirmative Defense*

The Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

*Second Affirmative Defense*

Davron's claims are barred, in whole or in part, because Davron materially breached each of the contracts and agreements between the parties that are at issue.

*Third Affirmative Defense*

Davron's claims are barred, in whole or in part by the doctrines of estoppel, acquiescence, laches, and/or waiver.

*Fourth Affirmative Defense*

Davron's claims are barred, in whole or in part, because of Davron's own actions, inactions, and/or representations constitute a waiver of the claims asserted therein.

*Fifth Affirmative Defense*

Davron's claims are barred, in whole or in part, by the doctrines of bad faith and unclean hands.

*Sixth Affirmative Defense*

Davron's claims are barred, in whole or in part, because Davron failed to mitigate its damages, if any.

*Seventh Affirmative Defense*

Davron's alleged damages were caused in whole or in part by Davron's own intervening and superseding acts and omissions.

*Eighth Affirmative Defense*

Davron is barred from obtaining relief, in whole or in part, because the services Davron agreed to provide FeedBack Works were not in fact provided.

FeedBack hereby gives notice that it intends to rely on such other and further defenses as may become available or apparent during discovery and pretrial proceedings in this case and hereby reserve the right to amend to assert such defenses.

WHEREFORE, having fully answered, FeedBack Earth, Inc. prays that Davron's Complaint be dismissed with prejudice, in its entirety, and that the Court assess against Davron all costs, attorneys' fees, and expenses FeedBack incurred in responding to Davron's Complaint, and that the Court award to FeedBack all other relief to which it may be entitled.

**COUNTERCLAIM OF FEEDBACK EARTH, INC.**  
**AS TO DAVRON EQUIPMENT, LLC**

**INTRODUCTION**

Defendant / Plaintiff-in-Counterclaim, FeedBack Earth, Inc. ("FeedBack") brings this Counterclaim against Plaintiff / Defendant-in-Counterclaim, Davron Equipment, LLC ("Davron") upon a sequence of events that is all too common: business hires contractor; business pays contractor; contractor promises performance by a date certain; contractor assures business progress is being made, notwithstanding "unforeseen" and "unexpected" delays; business presses contractor, eventually independently investigating the matter; business finds contractor has lied about progress, lied about project status, lied about delivery orders, lied about sub-contractor status and involvement, and lied about performance; business undertakes to complete project with other, actually qualified and reputable, vendors; such vendors confirm that the work contractor actually did perform was so deficient as to not only need to be entirely redone but, if left unchecked and unresolved, constituted a serious life safety concern and code violation that would have left business in a far more precarious position than it could have imagined.

Such is the present situation that underlies the claims FeedBack now brings through its Counterclaim. The work Davron performed on behalf of FeedBack fell generally into four (4)

categories: warehouse repair and improvement; roof repair; construction management; and hauling. As set forth herein, Davron's performance of each category of work was deficient, untimely, fraught with error, constitutes a material breach of the applicable contract or agreement, and is the direct and proximate cause of the significant economic damages FeedBack has suffered.

Although FeedBack has now, finally, rectified the deficient, delinquent, and dangerous work Davron started, and finally completed the work Davron agreed to perform but never began, FeedBack's damages still persist. However, whatever satisfaction FeedBack realized from finally completing the work Davron failed to perform was short lived as FeedBack learned the tale of Davron's deficiencies and damage is far more common as four (4) other Massachusetts businesses have fallen victim to the same course of conduct and same deliberately deceptive business practices described here by foolishly trusting that Davron's lead project manager and authorized representative, Michael Hodgeman.

With the actions, inactions, delinquencies, and multiple material breaches of Davron finally laid bare, FeedBack is left with little choice but to bring this Counterclaim for Breach of Contract, Unjust Enrichment, Fraud, and violation of Massachusetts General Laws Chapter 93A in order to recover the substantial damages FeedBack has incurred and continues to incur as a direct result of Davron's shameful conduct.

### **FACTUAL ALLEGATIONS**

1. FeedBack is a business located in North Grafton, Massachusetts, engaged primarily in the business of receiving and converting food waste and discarded food into animal feed. In doing so, FeedBack helps ensure that the value of food waste is harnessed, the need to grow



additional crops for purposes of creating animal feed is lessened, and the creation of emission of harmful Carbon Dioxide is substantially mitigated.

2. FeedBack purchased the property at 109 Creeper Hill Road in North Grafton (the "Property") in or around the summer of 2021. The Property was in a state of disrepair at the time FeedBack acquired it, requiring FeedBack to invest substantial capital in order that the Property could be functional for its business purposes, let alone serve as a staging area for additional growth and development.

3. The essence of FeedBack's business operations relies upon three (3) pillars: the delivery of food waste that FeedBack will process; the food waste processing operations that take place within warehouse structures located on the Property that FeedBack created, designed, and operates using its proprietary technology and processes; and an animal feed loading, weighing, and distribution system by which animal feed FeedBack has created is loaded into hauling trucks which are then weighed on site at the Property before leaving the Property.

#### **FeedBack Enters the Transportation Agreement with Davron**

4. In or around October 2022, FeedBack entered into a certain "Transportation Agreement" with Davron, pursuant to which Davron agreed to provide to FeedBack certain hauling services according to the terms and conditions set forth in the Transportation Agreement as well as those explicitly identified and discussed between the parties during the negotiation and execution of the Transportation Agreement.

5. As a key condition of the Transportation Agreement, FeedBack informed Davron of the critical importance of keeping confidential the confidential and proprietary information of FeedBack which Davron would gain knowledge of while executing its duties under the Transportation Agreement. For instance, by entering the Transportation Agreement, Davron

would gain access to FeedBack pricing, delivery schedules, seasonal adjustment, customer needs and growth, and FeedBack production schedules and operations, all of which was non-public information integral to FeedBack's operations.

6. FeedBack made clear to Davron not only the need to keep such information confidential but also the damage that could befall FeedBack if such information were not kept confidential.

7. Davron repeatedly acknowledged FeedBack's concerns and legitimate business needs, promising not only to keep such information confidential but also to execute a Non-Disclosure Agreement that would simply memorialize the already-established and agreed-upon confidentiality obligations.

8. Additionally, FeedBack and Davron discussed and agreed upon certain competition and solicitation restrictions of reasonable and limited scope that are also necessary to protect FeedBack's legitimate business interests. Davron agreed to these conditions and restrictions as well.

9. Only after Davron's acknowledgement of the confidentiality and non-competition / non-solicitation restrictions and obligations FeedBack required, and only after Davron agreed to be bound by such restrictions, was FeedBack induced to, and thereafter entered, the Transportation Agreement.

10. Davron performed services under the Transportation Agreement for approximately one (1) year, until FeedBack terminated the Transportation Agreement for cause, as permitted by Paragraph 8 of the Transportation Agreement. FeedBack discovered that Davron had materially breached the Transportation Agreement by, among other conduct, overbilling FeedBack by overcharging for the time and materials Davron claimed to have expended in connection with its

services rendered under the Transportation Agreement, and repeatedly spilling materials at a key FeedBack customer's location which resulted in FeedBack losing the customer and the roughly \$25,000 per month such customer was benefiting FeedBack.

11. Since terminating the Transportation Agreement, FeedBack has discovered that Davron is in material breach of the non-competition / non-solicitation obligations to which it agreed to be bound as part of its obligations under the Transportation Agreement by performing hauling and transportation services for Bright Feeds, which company Davron is indisputably aware is the direct and only competitor of FeedBack.

12. Davron's material breach of the Transportation Agreement by its violation of the non-competition and non-solicitation restrictions has been compounded by Davron's possession of a significant amount of confidential and proprietary information that is vital to FeedBack's operations while it performs services for FeedBack's only competitor and that, upon information and belief, Davron is using in its relationship with Bright Feeds to the immediate and significant detriment and damage of FeedBack.

#### **FeedBack and Davron Enter the Roof Repair Contract**

13. After entering the Transportation Agreement with Davron, but while FeedBack still considered Davron a trusted business partner, FeedBack entered a series of agreements with Davron in April 2023 pursuant to which Davron agreed to perform specific repair work to the roof and related areas of the warehouse buildings located on the Property (the "Roof Repair Contract").

14. FeedBack agreed to pay Davron a total of approximately \$34,000 for Davron's satisfactory completion of all work under the Roof Repair Contract.

15. In accordance with the Roof Repair Contract, Davron agreed to repair various sections of the roofs of the warehouse buildings located on the Property to prevent active leaking which was disrupting FeedBack's operations and, in certain cases, damaging FeedBack's finished animal feed product to the point where it was rendered unusable.

16. FeedBack explained to Davron that the work under the Roof Repair Contract needed to be completed as soon as possible, which Davron assured FeedBack would not be a problem when it guaranteed FeedBack that the Roof Repair Contract work would be completed by May 2023.

17. Davron materially breached the Roof Repair Contract by, among other means, failing to begin work under the Roof Repair Contract until September 2023 (after guaranteeing FeedBack all work would be complete by May 2023), during which time FeedBack incurred significant and ongoing operational disruptions and operational loss due to the ongoing nature of the active leaks of which Davron was aware prior to entering the Roof Repair Contract, and by failing to perform the work specified under the Roof Repair Contract as required and agreed-upon.

18. Davron's material breaches of the Roof Repair Contract directly and proximately caused FeedBack substantial damage and caused FeedBack to continue to suffer the consequences of the very same leaking issues and resulting operational disruptions it entered the Roof Repair Contract with Davron to resolve.

**FeedBack Warehouse Fires and Davron's Retention as a General Contractor**

19. After entering the Transportation Agreement and the Roof Repair Contract with Davron, but before FeedBack was aware of Davron's material breaches of both prior agreements, and while FeedBack still considered Davron a trusted business partner, FeedBack experienced

two (2) devastating fires at the Property – the first on January 30, 2023 and the second on March 31, 2023 – each of which caused substantial damage to FeedBack’s facilities and resulted in the near-catastrophic interruption of FeedBack’s operations.

20. The nature and extent of these damaging fires required substantial construction efforts to remedy, not only so FeedBack could resume normal business operations but because of various regulations to which FeedBack is subject as administered by the Massachusetts Department of Environmental Protection as applicable to business under the purview of the DEP’s Solid Waste Management Program.

21. Being familiar with Davron’s operations and construction capabilities, FeedBack approached Davron to determine Davron’s interest in, capacity to, and ability to potentially assist FeedBack in making the repairs, modifications, and improvements needed at FeedBack’s warehouse facilities on the Property.

22. During these discussions that occurred in or about the Spring and early-Summer of 2023, FeedBack explicitly explained to Davron the regulatory oversight and permitting requirements within which FeedBack operated and the corresponding requirement that all warehouse repairs and improvements needed to be completed by August 2023, else FeedBack risked losing the permits necessary for its continued operation.

23. Davron acknowledged the time constraints associated with the construction services being discussed with FeedBack. Davron, through its authorized representatives David Fisher (“Fisher”) and Michael Hodgman (“Hodgman”), represented and warranted to FeedBack that it (Davron) could perform all needed services within the time constraints applicable to this project and in accordance with all standards of quality and craftsmanship FeedBack required and as would be customarily required for a similar project.

24. Further to the parties' discussions incorporating the construction-related services needed to be performed at the Property and the critical need to complete all such services by August 2023, Davron submitted to FeedBack in the Spring and early-Summer of 2023 for its review and acceptance a series of contracts by which Davron proposed to perform various construction, modification, and improvement work to FeedBack's warehouses located on the Property (collectively, the "Construction Contract").

25. In explicit reliance upon Davron's assurance that it could complete all services under the Construction Contract in the timeframe FeedBack required (i.e., August 2023), such assurance being repeated to Davron several times over by its authorized representative Hodgman, FeedBack entered the Construction Contract.

26. Further to the parties' discussions incorporating the construction-related services needed to be performed at the Property and the critical need to complete all such services by August 2023, on or about May 23, 2023, Davron submitted a separate "Construction Management" Contract for FeedBack's review and acceptance.

27. Under this Construction Management Contract, Davron, through its authorized representatives Fisher and Hodgman, proposed to FeedBack that, among other services:

- a. Davron would procure three (3) competitive bids for all sub-contractor jobs;
- b. Davron would schedule and manage all sub-contractor work, which included managing all related safety, inspection, quality, and scheduling aspects of all sub-contractor jobs;
- c. Davron would maintain a safe and clean working environment;
- d. Davron would ensure all work would remain on budget;

- e. Davron would ensure all workmanship met both FeedBack's and Davron's standards and expectations; and
- f. Davron would ensure all required materials were available for all sub-contractors to continue working efficiently.

28. In explicit reliance upon Davron's assurance that it would complete all services under the Construction Management Contract, such assurance being repeated to Davron several times over by its authorized representative Hodgman, FeedBack entered the Construction Management Contract on or about May 24, 2023.

29. In explicit reliance upon Davron's assurance that it could complete all services under the Construction Contract in the timeframe FeedBack required (i.e., August 2023) and upon repeated assurances from Davron—specifically including but not limited to through its authorized representative Hodgman—that the work under the Construction Contract was proceeding according to FeedBack's timing requirements, after entering the Construction Contract and throughout the Summer and Fall of 2023, FeedBack made certain representations to the Massachusetts Department of Environmental Protection regarding the status of Davron's construction-related work and construction management in accordance with the DEP's requirement for updates and timely completion of the work being performed under the Construction Contract.

30. In explicit reliance upon Davron's assurance that it could complete all services under the Construction Contract in the timeframe FeedBack required (i.e., August 2023) and upon repeated assurances from Davron—specifically including but not limited to through its authorized representative Hodgman—that the work under the Construction Contract was proceeding according to FeedBack's timing requirements, after entering the Construction

Contract and throughout the Summer and Fall of 2023, FeedBack made certain representations to FeedBack's insurance company investigating and providing casualty coverage for FeedBack's losses stemming from both warehouse fires regarding the status of Davron's construction-related work and construction management in accordance with the insurance company's requirement that it be kept apprised of all repair work related to the warehouse fires.

31. FeedBack has paid Davron substantial sums in accordance with the Construction Contract and the Construction Management Contract.

32. After entering both the Construction Contract and the Construction Management Contract, FeedBack consistently requested from Davron updates as to the status of the work to be completed under the Construction Contract and whether the project was proceeding according to the timeline that FeedBack informed Davron prior to entering the Construction Contract was required and that Davron represented and warranted it would meet.

33. Davron, most often through its authorized representative Hodgman, repeatedly assured FeedBack that all Construction Contract work was on schedule, that all necessary project materials and components had been ordered and were scheduled to be delivered for installation as required, and that multiple bids had been procured from sub-contractors as guaranteed under the Construction Management Contract. When not falsely assuring FeedBack that the project was proceeding on schedule, Davron, most often through its authorized representative Hodgman, would fail to respond to FeedBack's requests for status updates for days, sometimes weeks.

34. Davron's representations to FeedBack were all false.

35. Following close to five (5) months of delays in Davron's performance of the work required under the Construction Contract, and after an approximately seven (7) week period of no activity at all during August and September 2023, but during which Hodgman continued to



provide deliberately false and misleading updates to FeedBack as to the status of Davron's work under the Construction Contract, FeedBack investigated the status of the project itself.

36. FeedBack's findings were disastrous and included, among other items:

- a. Davron billed FeedBack approximately \$156,000 for warehouse erection-related work under the Construction Contract, but an independent insurance audit confirmed the accurate value of the work billed was \$98,000.
- b. Davron was required under the Construction Management Contract to produce three (3) competitive bids for each sub-contractor job. For its warehouse erection-related work, Davron only secured two (2) bids: one from Davron and another from a company Hodgman identified. FeedBack attempted to contact this second bidder only to find that the company did not exist and there was a disconnected telephone line. When FeedBack confronted Davron about this discovery, its authorized representative Hodgman offered to "magically" create another competitive bid; FeedBack declined Davron's offer.
- c. Davron was required under the Construction Contract to perform certain grading and similar site work, only a fraction of which Davron ultimately performed. FeedBack was forced to perform this work itself at an additional expense.
- d. Davron was required under the Construction Contract to design, procure, and install off-shelf warehouse doors where trucks would back into for purposes of unloading their haul of food waste. Davron designed incorrect doors (custom rather than stock) but, worse, Hodgman repeatedly informed FeedBack that the doors and the materials for the doors had been ordered. FeedBack discovered Davron's representations—made through its authorized representative

Hodgman—were false when it called the material supply company and was informed: the doors were custom designed (they were not supposed to be); the materials had not been ordered (Davron falsely said they had and had already arrived at the sub-contractor); no delivery or installation had been scheduled (Davron falsely said the materials were set to be delivered on a specific date); and the supply company had never actually “cancelled” its installation work at FeedBack’s facilities that FeedBack, and certainly had not done so several times (Davron, through Hodgman, falsely stated it had).

- e. Davron was required under the Construction Contract to perform certain warehouse erection-related work that included, but was not limited to, installing paneling, support cables, and structural connecting bolts. Davron failed to complete the paneling work such that an entire side of one of the warehouses was improperly open (i.e., it did not have a wall) and lacked this required material and FeedBack was required to perform this work itself. Davron failed to install many of the structural connecting bolts properly such that they were free-spinning or loose on the primary beam connections and on multiple girts and purlins. Davron failed to install and even failed to order structural girts after informing FeedBack in writing that it had ordered the required material. Davron failed to properly install tension cables and tension rods, such that the tension rods as-installed bent and thus needed to be removed, straightened, and reinstalled by FeedBack. Davron failed to install approximately 300 bolts to primary-to-secondary and secondary-to-secondary joints.

37. Davron's deficient and deliberately deceptive work under the Construction Contract and the Construction Management Contract constitutes a material breach of both contracts.

38. Davron's deficient and deliberately deceptive work under the Construction Contract and the Construction Management Contract may have been deemed a building code violation given the dangerous and unsafe environment it created.

39. Davron's deficient and deliberately deceptive work under the Construction Contract and the Construction Management Contract placed in serious jeopardy FeedBack's permitting under the Massachusetts Department of Environmental Protection and caused FeedBack direct and incidental damages directly arising from efforts FeedBack needed to undertake with the DEP to secure continuances and accommodations in order to complete the warehouse repair, modification, and improvement work Davron agreed—but failed—to perform under the Construction Contract and the Construction Management Contract.

40. Davron's deficient and deliberately deceptive work under the Construction Contract and the Construction Management Contract caused FeedBack to lose significant additional business opportunities as a direct result of not having the facilities it anticipated and told Davron it required and that Davron agreed—but failed—to fabricate and provide via the Construction Contract and the Construction Management Contract.

41. FeedBack grossly overpaid Davron for the work and services it provided, and in several instances failed to provide yet still billed FeedBack for.

42. FeedBack has also paid additional sums to replacement contractors and sub-contractors, as well as undertaking various aspects of the Construction Contract work itself, all because Davron either failed or refused to perform the services required and promised under the Construction Contract and the Construction Management Contract.

**COUNT I**  
**(Breach of Construction Contract)**

43. FeedBack incorporates paragraph 1 through 42 of the Counterclaim as if fully set forth herein.

44. Davron entered into a written agreement with FeedBack to provide certain construction-related services—the Construction Contract—as described and alleged herein.

45. Davron's work in furtherance of the Construction Contract has been negligent, incomplete, defective, and improper, resulting in numerous, various, and significant problems to and at the Property.

46. Davron has without excuse or justification failed and refused to perform the duties, services, and obligations owed to FeedBack under the Construction Contract.

47. Davron's work in furtherance of the Construction Contract as more fully alleged herein constitutes a material breach of the Construction Contract.

48. FeedBack has fully complied with its duties and obligations under the Construction Contract.

49. As a direct result of Davron's material breach of the Construction Contract, FeedBack has suffered substantial damages in an amount to be proven at trial, together with the costs and expenses incurred in completing the work under the Construction Contract as well as in pursuing its remedies against Davron.

**COUNT II**  
**(Breach of Construction Management Contract)**

50. FeedBack incorporates paragraph 1 through 49 of the Counterclaim as if fully set forth herein.

51. Davron entered into a written agreement with FeedBack to provide certain construction-related services—the Construction Management Contract—as described and alleged herein.

52. Davron's work in furtherance of the Construction Management Contract has been negligent, incomplete, defective, and improper, resulting in numerous, various, and significant problems to and at the Property.

53. Davron has without excuse or justification failed and refused to perform the duties, services, and obligations owed to FeedBack under the Construction Management Contract.

54. Davron's work in furtherance of the Construction Management Contract as more fully alleged herein constitutes a material breach of the Construction Management Contract.

55. FeedBack has fully complied with its duties and obligations under the Construction Management Contract.

56. As a direct result of Davron's material breach of the Construction Management Contract, FeedBack has suffered substantial damages in an amount to be proven at trial, together with the costs and expenses incurred in completing the work under the Construction Management Contract as well as in pursuing its remedies against Davron.

**COUNT III**  
**(Breach of Roof Repair Contract)**

57. FeedBack incorporates paragraph 1 through 56 of the Counterclaim as if fully set forth herein.

58. Davron entered into a written agreement with FeedBack to provide certain construction-related services—the Roof Repair Contract—as described and alleged herein.

59. Davron's work in furtherance of the Roof Repair Contract has been negligent, incomplete, defective, and improper, resulting in numerous, various, and significant problems to and at the Property.

60. Davron has without excuse or justification failed and refused to perform the duties, services, and obligations owed to FeedBack under the Roof Repair Contract.

61. Davron's work in furtherance of the Roof Repair Contract as more fully alleged herein constitutes a material breach of the Roof Repair Contract.

62. FeedBack has fully complied with its duties and obligations under the Roof Repair Contract.

63. As a direct result of Davron's material breach of the Roof Repair Contract, FeedBack has suffered substantial damages in an amount to be proven at trial, together with the costs and expenses incurred in completing the work under the Roof Repair Contract as well as in pursuing its remedies against Davron.

**COUNT IV**  
**(Breach of Transportation Agreement)**

64. FeedBack incorporates paragraph 1 through 63 of the Counterclaim as if fully set forth herein.

65. Davron entered into a written agreement with FeedBack to provide certain transportation and hauling-related services—the Transportation Agreement—as described and alleged herein.

66. Davron has without excuse or justification failed and refused to perform the duties, services, and obligations owed to FeedBack under the Transportation Agreement.

67. Davron's actions in relation to the Transportation Agreement, as more fully alleged herein, constitutes a material breach of the Transportation Agreement.

68. FeedBack has fully complied with its duties and obligations under the Transportation Agreement.

69. As a direct result of Davron's material breach of the Transportation Agreement, , FeedBack has suffered substantial damages in an amount to be proven at trial, together with the costs and expenses incurred in pursuing its remedies against Davron.

#### **COUNT V**

#### **(Breach of Express and Implied Warranty of Performance in a Workmanlike Manner)**

70. FeedBack incorporates paragraph 1 through 69 of the Counterclaim as if fully set forth herein.

71. Davron entered into written agreements with FeedBack to provide certain construction-related services—the Construction Contract, the Construction Management Contract, and the Roof Repair Contract—as described and alleged herein.

72. Davron's work in furtherance of each of the Construction Contract, the Construction Management Contract, and the Roof Repair Contract has been negligent, incomplete, defective, and improper, resulting in numerous, various, and significant problems to and at the Property.

73. Davron's negligent work may be deemed building code violations and, more importantly, poses dangerous problems and safety issues.

74. Despite FeedBack's repeated request to Davron that it complete and/or fix the construction problems and defects it caused, Davron has refused or otherwise failed to do so.

75. Davron's actions constitute a breach of its express warranty and the implied warranty of performance in a workmanlike manner and in accordance with industry practices.

76. As a direct result of Davron's breach of warranties, FeedBack has suffered substantial damages in an amount to be proven at trial, together with the costs and expenses incurred in pursuing its remedies against Davron.

**COUNT VI  
(Fraud)**

77. FeedBack incorporates paragraph 1 through 76 of the Counterclaim as if fully set forth herein.

78. Davron falsely represented to FeedBack the status of the completion of its contractually-obligated services owed FeedBack under the Construction Contract and the Construction Management Contract.

79. Davron falsely represented and warranted to FeedBack that it would perform the services contracted for under each of the Construction Contract and the Construction Management Contract, in exchange for the consideration FeedBack paid Davron under each agreement.

80. FeedBack reasonably relied upon Davron's representations in entering into each of the Construction Contract and the Construction Management Contract, reasonably relied upon Davron's representations in paying to Davron sums in accordance with each of the Construction Contract and the Construction Management Contract, and reasonably relied upon Davron's representations in communicating with and offering updates and assurances to the Massachusetts Department of Environmental Protection regarding the status and timing for completion of the services Davron agreed to provide under each of the Construction Contract and the Construction Management Contract.

81. As a direct result of Davron's fraudulent activity and actions, FeedBack has sustained substantial damages in an amount to be proven at trial, together with the costs and expenses incurred in pursuing its remedies against Davron.



**COUNT VII  
(Conversion)**

82. FeedBack incorporates paragraph 1 through 81 of the Counterclaim as if fully set forth herein.

83. FeedBack entrusted Davron with the monies tendered it in furtherance of each of the Construction Contract, Construction Management Contract, and the Roof Repair Contract.

84. Davron has intentionally and wrongfully exercised acts of ownership, control, and dominion over the amounts FeedBack has tendered it in furtherance of the aforementioned agreements, which Davron was obligated to return to FeedBack upon Davron's failure to perform the work and obligations it agreed to perform in each of the aforementioned agreements.

85. Davron has deprived FeedBack of the amounts FeedBack tendered in furtherance of the aforementioned agreements of such conversion.

**COUNT VIII  
(Violation of MASS. GEN. LAWS c. 93A, § 11)**

86. FeedBack incorporates paragraph 1 through 85 of the Counterclaim as if fully set forth herein.

87. Davron violated MASS. GEN. LAWS c. 93A by knowingly breaching a clearly owed contractual obligation with the intent being to obtain ill-gotten gains.

88. Davron deliberately failed and refused to fulfill its contractual obligations in an effort to achieve a wrongful economic benefit. This conduct violated MASS. GEN. LAWS c. 93A.

89. Davron also violated MASS. GEN. LAWS c. 93A by making deliberate misrepresentations, through Hodgman and otherwise, to induce FeedBack into entering each of the Construction Contract, the Construction Management Contract, and the Roof Repair Contract, and to induce FeedBack's payment of funds under each of the Construction Contract,

Construction Management Contract, and Roof Repair Contract, despite knowing it was not going to perform the contractually-agreed upon services under each of the aforementioned agreements and lying about its failure to perform.

90. Although FeedBack hired Davron with the good faith belief and reliance that all construction-related work pursuant to each of the Construction Contract, Construction Management Contract, and Roof Repair Contract would be overseen and handled by a qualified and licensed business in Davron, FeedBack was misled and deceived.

91. Davron's unjustified failure to perform its obligations under each of the Construction Contract, Construction Management Contract, and Roof Repair Contract, as well as its nefarious and fraudulent conduct concerning the sub-contractors and misrepresenting the status of its work under each of the aforementioned agreements, constitute unfair and deceptive acts and practices under the provisions of MASS. GEN. LAWS c. 93A.

92. Davron's conduct in violating MASS. GEN. LAWS c. 93A was done willfully.

93. FeedBack has sustained substantial damages in an amount to be proven at trial as a consequence of Davron's violations of MASS. GEN. LAWS c. 93A.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff-in-Counterclaim FeedBack Earth, Inc. hereby demands that the Court afford it the following relief:

- A. Enter Judgment in favor of FeedBack and against Davron as to each of Count I through Count VII made in the Counterclaim and in so doing award FeedBack its damages in an amount to be determined at trial, including but not limited to interest, and attorneys' fees and other costs;

- B. Enter Judgment in favor of FeedBack and against Davron as to Count VIII made in the Counterclaim, Violation of Mass. Gen. Laws c. 93A, and in so doing award FeedBack its damages in an amount to be determined at trial, including treble damages, interest, and attorneys' fees and other costs; and
- C. Such other relief as the Court deems fair and just to compensate FeedBack for the wrongful and damaging conduct of Davron.

Respectfully submitted,  
FEEDBACK EARTH, INC.

By its Attorneys,

*/s/ Brian M. Haney*

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Brian M. Haney (BBO #: 661674)  
Alana V. Rusin (BBO #: 681826)  
CASNER & EDWARDS, LLP  
303 Congress Street  
Boston, MA 02210  
(617) 426-5900  
(haney@casneredwards.com)  
(rusin@casneredwards.com)

DATED: February 6, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the following by electronic mail on February 6, 2024:

Donald C. Keavany, Jr., Esq.  
Andrew P. DiCenzo, Esq.  
Christopher Hays, Wojcik & Mavricos, LLP  
370 Main Street, Suite 970  
Worcester, MA 01608  
(dkeavany@chwmlaw.com)  
(adicenzo@chwmlaw.com)

*/s/ Brian M. Haney*

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Brian M. Haney

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