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Representing Defendants Relentless, Inc. and Sean Kelly

IN THE COURT OF COMMON PLEAS FOR LANCASTER COUNTY

DONUTNV FRANCHISING, INC.,
Plaintiff

Case No. CI-25-00737

v.

RELENTLESS, INC. AND SEAN KELLY,
Defendants

NOTICE TO PLEAD

To: Plaintiff DonutNV Franchising, Inc.

You are hereby notified to file a written response to the enclosed Defendants' Answer With New Matter And Counterclaim within twenty (20) days from service hereof or a judgment may be entered against you.

Date: 4/4/25

LANCASTER TECH LAW PLLC

By: Brandon Harter
Brandon S. Harter, Esquire
Attorney No. 307676

*Representing Defendants Relentless, Inc.
and Sean Kelly*

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Plaintiff

Case No. CI-25-00737

v.

RELENTLESS, INC. AND SEAN KELLY,
Defendants

**ANSWER WITH NEW MATTER AND
COUNTERCLAIM**

Relentless, Inc. ("Relentless") and Sean Kelly, through their legal counsel Lancaster Tech Law, PLLC, files this Answer with New Matter and Counterclaim, and states:

INTRODUCTION

1. Admitted.
2. Admitted in part and denied in part. Defendants admit that Relentless owns the website known as Unhappy Franchisee (the "Website"). Defendants further admit that Mr. Kelly operates the Website. Defendants deny that Mr. Kelly owns the Website in his individual capacity.
3. Denied. Defendants deny extorting money, posting or otherwise publishing defamatory statements, and offering to remove them in exchange for money. The remaining allegations are denied as conclusions of law.

4. Admitted in part and denied in part. Defendants admit that DonutNV has been the subject of posts on the Website. Defendants deny DonutNV's mischaracterization of itself as a victim. Defendants further deny attempting intimidation of DonutNV. The remaining allegations are denied as conclusions of law.

5. Denied. Defendants deny the existence of any scheme, wrongful or otherwise. The remaining allegations are denied as conclusions of law.

6. Denied as a conclusion of law.

THE PARTIES

7. Denied. After a reasonable investigation, Defendants are without knowledge or information sufficient to form a belief about DonutNV's principal place of business, and therefore, these allegations are denied.

8. Admitted.

9. Admitted.

10. Admitted in part and denied in part. Defendants incorporate by reference their responses to paragraphs 2 and 9 above.

JURISDICTION AND VENUE

11. Denied as a conclusion of law.

12. Denied. Defendants deny that their actions form the basis for any claim against them. The remaining allegations are denied as conclusions of law.

BACKGROUND

13. Admitted upon information and belief.

14. Admitted upon information and belief.

15. Admitted in part and denied in part. Defendants admit upon information and belief that DonutNV has business relationships with its current franchisees and various franchise promoters. Denied. After a reasonable investigation, Defendants without knowledge or information sufficient to form a belief about what prospective franchisees DonutNV is referencing, and therefore, these allegations are denied. Similarly, Defendants lack sufficient information to form a belief about DonutNV's contractual relationships, and therefore, these allegations are denied. Defendants deny that DonutNV's business relationships are valuable for its franchisees.

16. Admitted in part and denied in part. Defendants incorporate their response to paragraph 2 above.

17. Admitted in part and denied in part. Defendants admit that Relentless publishes content about the franchise industry on the Website. Defendants deny the mischaracterization that Mr. Kelly posts content on his own behalf.

18. Admitted in part and denied in part. Defendants admit that Relentless publishes the opinions and experiences submitted to it by current or former franchisees. These opinions and experiences are published as submissions from third parties, not as facts. Defendants deny that the publications are limited to such experiences. Relentless also publishes comments and feedback from franchisors, along with information from publicly available business filings.

19. Denied. Defendants deny DonutNV's mischaracterization of the Website's purpose. The Website is to provide transparency in the franchise process. The remaining allegations are denied as conclusions of law.

20. Denied as a conclusion of law. By way of further response, DonutNV's allegations of bribery, extortion, and blackmail bear no relevance to the claims and defenses. Such allegations are scandalous, impertinent, and made solely to embarrass Defendants.

21. Denied. Defendants incorporate by reference their response to paragraph 4 above.

22. Admitted in part and denied in part. Defendants admit that Exhibit 1 to DonutNV's Complaint is a screenshot from the Website. Defendants deny DonutNV's mischaracterizations and misquotes of the Website's language, including that it contains untrue statements. The remaining allegations are denied as conclusions of law.

23. Admitted in part and denied in part. Defendants admit that Exhibit 2 to DonutNV's Complaint is a screenshot from the Website. Defendants incorporate by reference their response to paragraph 22 above.

24. Admitted in part and denied in part. Defendants admit that DonutNV's counsel, Attorney Ferris, contacted Mr. Kelly and demanded the removal of all content about DonutNV from the Website. Defendants deny demanding payment for removal of content from the Website. Relentless does not remove content from the Website, it provides franchisors with an opportunity to provide rebuttals. The remaining allegations are denied as conclusions of law.

25. Denied. Defendants incorporate by reference their response to paragraph 4 above.

26. Denied. After a reasonable investigation, Defendants are without knowledge or information sufficient to form a belief about DonutNV's contacts with current franchisees, "potential" franchisees, or franchise brokers, and therefore, these allegations are denied.

27. Denied. After a reasonable investigation, Defendants are without knowledge or information sufficient to form a belief about DonutNV's relationships with current franchisees, "potential" franchisees, or franchise brokers, and therefore, these allegations are denied.

28. Denied as a conclusion of law.

29. Denied as a conclusion of law.

30. Denied as a conclusion of law.

COUNT I - TORTIOUS INTERFERENCE

31. Defendants incorporate by reference the paragraphs above.

32. Defendants incorporate by reference their response to paragraph 15 above.

The remaining allegations are denied as conclusions of law.

33. Defendants incorporate by reference their response to paragraph 15 above.

The remaining allegations are denied as conclusions of law.

34. Denied. Defendants deny having any intent to harm DonutNV. The remaining allegations are denied as conclusions of law.

35. Denied as a conclusion of law.

36. Denied. Defendants are without reasonable basis to know what "prospective contractual relationships were likely to occur." Defendants lack any

information regarding these vaguely referenced potential relationships, which parties were involved. The remaining allegations are denied as conclusions of law.

37. Denied. Defendants deny that DonutNV has suffered any harm because of Defendants' actions. The remaining allegations are denied as conclusions of law.

38. Denied as a conclusion of law.

COUNT II - DEFAMATION PER SE

39. Defendants incorporate by reference the paragraphs above.

40. Denied as a conclusion of law.

41. Denied as a conclusion of law.

42. Denied as a conclusion of law.

43. Denied as a conclusion of law.

44. Denied as a conclusion of law.

45. Denied as a conclusion of law.

46. Denied as a conclusion of law.

47. Denied as a conclusion of law.

48. Denied as a conclusion of law.

49. Denied as a conclusion of law.

50. Denied as a conclusion of law.

51. Denied as a conclusion of law.

52. Denied as a conclusion of law.

53. Denied as a conclusion of law.

NEW MATTER

54. Defendants incorporate by reference the paragraphs above.

55. By pleading the defenses set forth below, the Defendants do not admit that they bear the burden of proof on all or any of these defenses and reserve all rights regarding allocation of the burden of proof under law.

56. Defendants' publications at suit are protected by the Pennsylvania Uniform Public Expression Protection Act ("UPEPA"). 42 Pa. C.S. § 8340.11 et seq.

57. Defendants' publications at suit are protected public expression as defined by UPEPA. 42 Pa. C.S. § 8340.13(1)-(3)

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

59. Plaintiff's claims are barred in whole or in part because Defendants' actions are protected by the First and Fourteenth Amendments to the Constitution of the United States and Article I, Section 7 of the Pennsylvania Constitution.

60. The statements complained of are not defamatory statements of fact or are not reasonably capable of defamatory meaning or susceptible to a defamatory interpretation or implication and thus cannot give rise to any claim against the Defendants.

61. The statements complained about are not actionable because they are true, substantially true, and/or not substantially false, and thus they cannot give rise to any claim against the Defendants.

62. The statements complained of are not actionable as libel per se because Plaintiff fails to properly allege the requisite special damages.

63. If the Plaintiff challenges any statement as purported implications, Plaintiff's claims fail because he cannot assert facts sufficient to show that the implication was intended or endorsed.

64. Plaintiff's claims fail because Plaintiff did not incur any damage or loss as a result of any act or conduct by the Defendants.

65. Plaintiff's claims fail because any injury or damage suffered by Plaintiff, which injury or damage the Defendants expressly deny, were proximately or directly caused, in whole or in part, by the actions of others over whom Defendants had no control, including Plaintiff himself.

66. Plaintiff's claim for punitive damages is barred by the Constitution of the United States and the governing state Constitution and the common law.

67. Some or all of the allegedly defamatory statements complained of by Plaintiff are privileged fair reports.

68. Some or all of the allegedly defamatory statements do not assert verifiably false facts, and/or constitute subjective statements of opinion, and thus cannot give rise to any claim against the Defendants.

69. Plaintiff's claims are barred in whole or in part by the incremental harm and/or "libel proof plaintiff" doctrines.

70. Plaintiff's claims are barred, in whole or in part, because Plaintiff's damages, if any, are vague, uncertain, imaginary, and speculative.

71. The publications at issue were privileged exercises of the right of free speech and of a free press under the First and Fourteenth Amendments to the U.S. Constitution and/or Article I, Section 7 of the Pennsylvania Constitution.

72. The publications were produced upon a proper occasion, in good faith, without fault, for a justifiable journalistic purpose, and with a belief founded upon reasonable grounds that the publication was fair and accurate.

73. Defendants acted in good faith toward Plaintiff, with neither common law malice nor actual malice.

74. The publications are otherwise privileged.

75. DonutNV's claims fail to state a claim upon which relief can be granted.

76. DonutNV's claims are barred by consent.

77. DonutNV's claims are barred by fair comment.

78. DonutNV's claims are barred by illegality.

79. DonutNV's claims are barred by immunity from suit.

80. DonutNV's claims are barred by the affirmative defense of truth.

COUNTERCLAIM COUNT I - UPEPA LIABILITY
42 PA. C.S. § 8320.1(A)¹

81. Defendants incorporate by reference the paragraphs above.

¹ Section 8340.16 of the UPEPA provides a motions-based method of asserting immunity for public expression, including an award of attorney's fees. 42 Pa. C.S. § 8340.16. This section does not take effect until rules are promulgated by the Pennsylvania Supreme Court. PA LEGIS 2024-72, 2024 Pa. Legis. Serv. Act 2024-72 (H.B. 1466) (PURDON'S). Absent such procedural guidance, Defendants raise their UPEPA immunity as an affirmative defense and a counterclaim.

82. Defendants' publications at issue in this case are and were protected public expression as defined by the UPEPA. 42 Pa. C.S. § 8340.13(1)-(3).

83. Defendants are entitled to an award of "party attorney fees, court costs and expenses of litigation jointly and severally against each adverse party" that sued attacking their public expression. 42 Pa. C.S. § 8320.1(c).

WHEREFORE, Defendant Relentless, Inc. and Sean Kelly request the Court enter judgment in their favor and against Plaintiff DonutNV Franchising, Inc., award Defendants their attorney's fees, court costs and expenses of litigation, plus such other relief as the Court deems appropriate.

Date: 4/4/25

LANCASTER TECH LAW PLLC

By: Brandon Harter
Brandon S. Harter, Esquire
Attorney No. 307676

*Representing Defendants Relentless, Inc.
and Sean Kelly*

VERIFICATION

I verify that the statements made in the Answer with New Matter and Counterclaim are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Relentless, Inc.

Date: Apr 4, 2025

By: Sean Kelly
Sean Kelly (Apr 4, 2025 11:33 EDT)
Sean Kelly

I verify that the statements made in the Answer with New Matter and Counterclaim are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: Apr 4, 2025

Sean Kelly
Sean Kelly (Apr 4, 2025 11:33 EDT)
Sean Kelly

CERTIFICATE OF COMPLIANCE

I certify this filing complies with the provisions of the *Public Access Policy of the United Judicial Systems of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 4/4/25

LANCASTER TECH LAW PLLC

By: Brandon Harter

Brandon S. Harter, Esquire
Attorney No. 307676

*Representing Defendants Relentless, Inc.
and Sean Kelly*

CERTIFICATE OF SERVICE

I certify that I am this day serving the Answer with New Matter and

Counterclaim by email sent to:

D. Joseph Ferris, Esq.
William J. Clements, Esq.
Klehr Harrison Harvey Branzberg LLP
1835 Market Street
14th Floor
Philadelphia, PA 19103
jferris@klehr.com
wclements@klehr.com
Attorneys for DonutNV Franchising, Inc.

LANCASTER TECH LAW PLLC

Date: 4/4/25

By: _____
Brandon S. Harter, Esquire
Attorney No. 307676

*Representing Defendants Relentless, Inc.
and Sean Kelly*

Answer with New Matter and Counterclaim - draft

Final Audit Report

2025-04-04

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