

Klehr Harrison Harvey Branzburg LLP

D. Joseph Ferris (ID No. 314146)
William J. Clements (ID No. 86348)
1835 Market Street, Suite 1400
Philadelphia, PA 19103
Phone: (215) 569-2700
Fax: (215) 568-6603
jfferris@klehr.com
wclements@klehr.com

NOTICE TO PLEAD

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

/s/ D. Joseph Ferris

DONUTNV FRANCHISING, INC.,

Plaintiff,

v.

SEAN KELLY and RELENTLESS, INC.
t/d/b/a UNHAPPY FRANCHISEE,

Defendants.

:
: COURT OF COMMON PLEAS
: LANCASTER COUNTY
:
: CIVIL ACTION
:
: Docket No. 25-00737
:
:
:
:
:

**PLAINTIFF'S ANSWER TO DEFENDANTS'
NEW MATTER AND COUNTERCLAIM**

Plaintiff DonutNV Franchising, Inc. ("Plaintiff"), through counsel, hereby files this Answer to defendants Sean Kelly ("Kelly") and Relentless, Inc. t/d/b/a Unhappy Franchisee's (collectively, the "Defendants") New Matter and Counterclaim, and in support thereof alleges the following:

PLAINTIFF'S ANSWER TO DEFENDANTS' NEW MATTER

54. The corresponding paragraph contains an incorporation clause to which no response is required.

55. The corresponding paragraph does not contain a factual allegation. Accordingly, no response is required.

56. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

57. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

58. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

59. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

60. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

61. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

62. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

63. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

64. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

65. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

66. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

67. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

68. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

69. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

70. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

71. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

72. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

73. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

74. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

75. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

76. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

77. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

78. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

79. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

80. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

WHEREFORE, Plaintiff respectfully requests judgment in its favor and against Defendants, jointly and severally, along with an award of compensatory, consequential, and punitive damages in an amount in excess of \$50,000 and to be proven at trial, and injunctive relief and such other relief as the Court deems appropriate, including pre-judgment interest, costs, and attorneys' fees as may be allowed by law.

PLAINTIFF'S ANSWER TO DEFENDANTS' COUNTERCLAIM

81. The corresponding paragraph contains an incorporation clause to which no response is required.

82. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

83. Denied as a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

WHEREFORE, Plaintiff respectfully requests judgment in its favor and against Defendants, jointly and severally, along with an award of compensatory, consequential, and punitive damages in an amount in excess of \$50,000 and to be proven at trial, and injunctive relief and such other relief as the Court deems appropriate, including pre-judgment interest, costs, and attorneys' fees as may be allowed by law.

PLAINTIFF'S NEW MATTER TO DEFENDANTS' COUNTERCLAIM

1. Plaintiff incorporates each paragraph of the foregoing Answer as if fully set forth herein.
2. Defendants' Counterclaim fails to state a claim upon which relief can be granted.
3. Defendants' Counterclaim is barred, in whole or in part, by the failure of a condition precedent.
4. Defendants' Counterclaim is barred, in whole or in part, by the doctrine of set off.
5. Defendants' Counterclaim is barred, in whole or in part, because any loss or damage that Defendants allege to have sustained is the result of Defendants' own actions or inactions, and not the result of actions or inactions of Plaintiff.
6. Defendants' Counterclaim is barred, in whole or in part, because Plaintiff's alleged actions and/or inactions were justified and/or privileged under the circumstances.
7. Defendants' Counterclaim is barred, in whole or in part, by the doctrines of laches, estoppel, waiver, and/or acquiescence.
8. Defendants' Counterclaim is barred, precluded, and/or limited by reason of Defendants' bad faith or unclean hands.
9. Defendants' Counterclaim is barred, in whole or in part, by Defendants' own actions and/or omissions.

10. Defendants' Counterclaim is barred because Plaintiff's claims have a substantial basis in fact and law.

11. Defendants' Counterclaim is barred because the statements made by Defendants were defamatory and thus do not constitute constitutionally protected speech under the First Amendment of the United States Constitution and/or the Constitution of Pennsylvania.

12. Plaintiff's claim is not an action involving the exercise, on a matter of public concern, of the rights of freedom of speech or of the press, the right to assemble or petition or the right of association guaranteed by the First Amendment to the United States Constitution or Section 7 or 20 of Article I of the Constitution of Pennsylvania.

13. Defendants have not alleged any cognizable injury under 42 Pa. C.S. § 8320.1, *et seq.*, or 42 Pa. C.S. § 8340, *et eq.*

Plaintiff reserves the right to amend and assert other New Matter if and when it becomes appropriate in this action.

WHEREFORE, Plaintiff respectfully requests judgment in its favor and against Defendants, jointly and severally, along with an award of compensatory, consequential, and punitive damages in an amount in excess of \$50,000 and to be proven at trial, and injunctive relief and such other relief as the Court deems appropriate, including pre-judgment interest, costs, and attorneys' fees as may be allowed by law.

**KLEHR HARRISON HARVEY
BRANZBURG LLP**

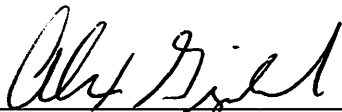
Dated: April 24, 2025

By: /s/ D. Joseph Ferris
D. Joseph Ferris
William J. Clements
1835 Market Street, 14th Floor
Philadelphia, Pennsylvania 19103
(215) 569-2700
jferris@klehr.com
wclements@klehr.com
Attorneys for Plaintiff

VERIFICATION

I, Alex Gingold, state that I am authorized to make this Verification on behalf of Plaintiff, and that the statements made in the foregoing *Answer to Defendants' New Matter and Counterclaim* are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4909, relating to unsworn falsification to authorities.

Dated: 04/24/2025



Alex Gingold

CERTIFICATE OF SERVICE

I, D. Joseph Ferris, hereby certify that on April 24, 2025, I caused a true and correct copy of the foregoing *Answer to Defendants' New Matter and Counterclaim* to be served via the Court's electronic filing system, and via electronic mail as follows:

Brandon S. Harter, Esq.
c/o Sean Kelly and
Relentless, Inc. t/d/b/a Unhappy Franchisee (Email and U.S. Mail)
brandon@lancastertechlaw.com
Attorney for Defendants

**KLEHR HARRISON HARVEY
BRANZBURG LLP**

Dated: April 24, 2025

By: /s/ D. Joseph Ferris
D. Joseph Ferris (No. 314146)
1835 Market Street, 14th Floor
Philadelphia, Pennsylvania 19103
(215) 569-2700
Attorneys for Plaintiff