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DONUTNV FRANCHISING, INC.,

Plaintiff,

VS.

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

Defendants,

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

**MEMORANDUM OF LAW IN SUPPORT OF MOTION STRIKE OBJECTIONS AND
COMPEL ANSWERS TO PLAINTIFF’S FIRST SET OF REQUESTS FOR THE
PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS AND PLAINTIFF’S
FIRST REQUEST FOR INTERROGATORIES DIRECTED TO DEFENDANTS**

I. Matter Before the Court

Motion of Plaintiff, DonutNV Franchising, Inc. (“Plaintiff” or “DonutNV”) for an Order striking Defendants Sean Kelly and Relentless, Inc.’s (“Defendants”) objections to Plaintiff’s First Set of Requests for the Production of Documents Directed to Defendants (“Document Requests”) and Plaintiff’s First Request for Interrogatories Directed to Defendants (“Interrogatories” and, together with the Document Requests, the “Discovery Requests”); compelling full and complete responses to the Discovery Requests; and scheduling a conference for the purposes of establishing a case management order to guide the completion of pre-trial discovery and to discuss any

anticipated issues among counsel in this matter, and for such other or further relief as the Court deems necessary.

II. Statement of Questions Involved

Whether this Court should grant Plaintiff's motion and strike Defendants' objections to the Discovery Requests; compel full and complete responses from Defendants to Plaintiff's Discovery Requests, along with corresponding document production; and schedule a conference for the purposes of establishing a case management order to guide the completion of pre-trial discovery and to discuss any anticipated issues among counsel in this matter.

SUGGESTED RESPONSE: Yes. The Court should grant Plaintiff's motion and enter the proposed Order striking Defendants' objections to Plaintiff's Discovery Requests; compel full and complete responses from Defendants to Plaintiff's Discovery Requests, along with full and complete document production; and schedule a conference for the purposes of establishing a case management order to guide the completion of pre-trial discovery and to discuss any anticipated issues among counsel in this matter, and for such other or further relief as the Court deems necessary.

III. Procedural History and Factual Statement

This case is about extortion disguised as online journalism. Plaintiff's claims against Defendants center on Defendants' wrongful scheme to extort money from Plaintiff by using Defendants' website known as Unhappy Franchisee (the "Website") to post untrue, false, and defamatory statements and information; publicly disseminating these statements on Defendants' Website and further transmitting these statements to third parties for the purpose of interfering with and harming the existing and prospective business relationships between Plaintiff and participants in the franchise industry; and then offering to remove the untrue, false, and defamatory

statements from the Website in exchange for the payment of money — disguised as a purported “consulting fee.” *See* Cmplt. at ¶¶ 1-6.

In Defendants’ Answer with New Matter and Counterclaim (the “Answer”), in response to Plaintiff’s allegations that Defendants “purport to post materials supposedly to alert individuals and businesses who may be interested in owning a franchise about franchises that Kelly and Relentless allege to have engaged in misconduct or unethical business practices,” Defendants admit in part that “Relentless publishes the opinions and experiences submitted to it by current or former franchisees,” and that “[t]hese opinions and experiences are published as submissions from third parties, not as facts.” *Compare* Cmplt. at ¶ 18 to Answer at ¶ 18. But this is only partially accurate at best: Defendants cherry-pick which third-party submissions to publish; modify third-party submissions in certain cases; and directly post on their Website their own false and negative information concerning Plaintiff’s business operations.

In Defendants’ Answer, in response to Plaintiff’s allegations that “the purpose of Kelly’s and Relentless’ business is not to inform and/or protect prospective franchisees but, rather, to target franchisors by posting scandalous, defamatory, and otherwise untrue statements and information about them, and when contacted by the targeted franchisors, to demand payment (sometimes in the form of “consulting fees”) as a *quid pro quo* to remove the posts,” Defendants denied the allegations and indicated that “[t]he Website is to provide transparency in the franchise process.” *Compare* Cmplt. at ¶ 19 to Answer at ¶ 19. This response from Defendants is also patently false, and Plaintiff seeks targeted discovery to prove it.

On or about April 28, 2025, Plaintiff served Defendants with the Discovery Requests, true and correct copies of which are attached hereto and incorporated herewith as **Exhibit “A”** and **“B”**.

Pursuant to Pa.R.C.P. 4006 and 4009, Defendants' responses to the Discovery Requests were due within 30 days of service, *i.e.*, no later than May 28, 2025.

On May 29, 2025, Defendants served Plaintiff with Defendants' Objections and Responses to Plaintiff's Interrogatories and Request for Production of Documents (collectively, the "Discovery Responses"), a true and correct copy of which is attached hereto as **Exhibit "C"**.

Defendants' Discovery Responses consist primarily of objections aimed at preventing Plaintiff from proving its affirmative claims and disproving Defendant's Counterclaim. Defendants produced no substantive information or documentation in their Discovery Responses. Instead of demonstrating the "transparency in the franchise process" and sharing the requested relevant and discoverable information about "the opinions and experiences submitted to it by current or former franchisees" (which Defendants claim is the purpose of Defendants' Website), Defendants instead chose to interpose objections, asserting inapplicable theories of confidentiality and privilege.

By letter dated June 2, 2025, Plaintiff set forth detailed deficiencies in Defendants' Discovery Responses and document production (lack thereof), and along with Plaintiff's reasoning as to why Defendants' objections are without merit (the "Deficiency Letter"). A true copy of Plaintiff's Deficiency Letter is attached hereto and incorporated herewith as **Exhibit "D"**.

IV. Argument

This Court should grant Plaintiff's motion and strike Defendants' objections to Plaintiff's Discovery Requests; compel full and complete responses Plaintiff's Discovery Requests, along with corresponding document production; and schedule a conference for the purposes of establishing a case management order to guide the completion of pre-trial discovery and to discuss any anticipated issues among counsel in this matter.

As Plaintiff is incorporating by reference the entirety of its Deficiency Letter (*See Exhibit “D”*), Plaintiff will not repeat all of that letter’s context within the body of this motion. The crux of the Deficiency Letter is that all of Defendants’ objections lack merit, and that Defendants must cure their failure to produce any responsive documentation to Plaintiff’s Document Requests, or to provide any substantive responses to Plaintiff’s Interrogatories.

Defendants assert a general objection that the Discovery Requests “are an effort to chill the valid exercise of protected public expression in violation of the Uniform Public Expression Protection Act, 42 C.S.A. §§ 8340.11, *et seq.* (“UPEPA”). *See, e.g., Exhibit C* at p.1, ¶2. As stated in more detail in Plaintiff’s Deficiency Letter, Defendants’ objection should be stricken. Defendants’ broad UPEPA objection conflates the underlying claims with legitimate discovery proceedings — discovery requests themselves do not violate the UPEPA. Likewise, the argument that participating in discovery will have a “chilling effect” is without merit and also conflates the underlying legal question with the legal discovery necessary to establish that question.

In the Interrogatories, Plaintiff seeks “all Former Franchisees with whom You have communicated concerning Plaintiff or any of Your Blog Posts . . .” *See Exhibit “A”* at ¶5. Defendants responded with an objection, citing *DiPaolo v. Times Publishing Co.*, 142 A.3d 837 (Pa. Super. Ct. 2016) for the proposition that the Interrogatory “seeks to violate the confidential and privileged relationship between reporters and their sources,” and Defendants further object that the Interrogatory is overly broad and burdensome; that the interrogatory seeks information that is sought for the improper purpose of punishing protected public expression in violation of the UPEPA; and that the disclosure of such information will have a chilling effect on protected public expression in providing a necessary forum for members of the public considering the purchase of a franchise. *See Exhibit C* at ¶5. Defendants incorporated this objection into the bulk of their

Discovery Responses. *See Exhibit C, pages 3-8, ¶¶5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 24.* Defendants further repeat these objections as the asserted basis for Defendants' failure to produce any responsive documents to the majority of Plaintiff's Document Demands. *See Exhibit C, pages 9-15, ¶¶1, 2, 5, 6, 7, 8, 9, 11, 18, 19, 20, 21, 22, 23, 27, 29.*

As stated in more detail in the Deficiency Letter (**Exhibit D**), Defendants' objections should be stricken. First, a blanket assertion of privilege is insufficient. Defendants have failed to establish the factual basis necessary for this assertion and otherwise failed to show that their communications are privileged. Defendants have not sufficiently established any evidence of their status as a journalist and admit that they have no membership in or affiliation with any media organization. *See Exhibit "C" at ¶22.*

Nor have Defendants shown that their communications with DonutNV's business partners were confidential or made with any expectation of confidentiality necessary to invoke a reporter's privilege. In fact, Defendants' own Website demonstrates a pattern of identifying specific DonutNV franchisees and franchise brokers by name—for example, identifying Nicole Porretto-Brown and Scott Brown of Las Vegas, Nevada, Marshall Moore and Elizabeth Moore of Roswell, Georgia, and Andrew Nessler and Christine Nessler of North Mankato, Minnesota as franchisees; and identifying Jake Hamburger and Jennifer Cain of Franchise Fastlane, and Mark Schnurman and Brandon Siegfried of The Perfect Franchise, as franchise brokers, promoters and/or marketers. Defendants cannot choose to disclose DonutNV's business partners when it suits them and then claim that those same business partners' identities are confidential when asked about them in Interrogatories. This pattern of public disclosure contradicts any potential asserted claim of privileged communications.

Further, Defendants' claim that the Interrogatories and Document Requests are "overly broad and burdensome" is erroneous. The information requested pertains only to the small number of DonutNV's business partners who have communicated with Defendants, and bears directly on the subject matter of this litigation.

Yet further, and as stated above in response to Defendants' general objection based on the UPEPA, Defendants' broad UPEPA objection conflates the underlying claims with legitimate discovery proceedings—discovery requests themselves do not violate the UPEPA. Likewise, the argument that participating in discovery will have a "chilling effect" is without merit, and conflates the underlying legal question with the legal discovery necessary to establish that question.

When asked to "[s]tate the Basis for Your allegation in the Counterclaim that Unhappy Franchisee's Blog Posts are 'protected by the Pennsylvania Uniform Public Expression Protection Act ("UPEPEA")'", Defendants responded by interposing an objection on the grounds that "[i]nterrogatories that generally require the responding party to state the basis of particular contentions made in the pleadings or other documents should be used sparingly and, if used, should target claims, defenses, or contentions that the propounding attorney reasonably suspects may be the proper subjects of early dismissal or resolution or may be used to identify the scope of unclear claims. Pa.R.C.P. 4003.1 (notes)." *See Exhibit "C"*, pg. 4 at ¶11. Defendants further objected that "[t]his request is not reasonably targeted to claims subject to early dismissal, to advance early resolution, or to identify the scope of unclear claims." *Id.* Defendants also refer Plaintiff to Defendants' Answer for "the basis of this claim." *Id.* Defendants repeat this response to other responses to Plaintiff's Interrogatories. *See Exhibit "C", pages 5-8, ¶¶12, 13.* Defendants further repeat this response as the asserted basis for Defendants' failure to produce any responsive

documents to the majority of Plaintiff's Document Demands. *See Exhibit "C", pages 9-15, ¶¶13, 14, 15, 18, 19, 20, 21, 22, 23, 27, 29.*

Defendants' objections should be overruled. 231 Pa. Code. r. 4003.1(c) provides that "it is not ground for objection that the information sought involves an opinion or contention that relates to a fact or the application of law to fact." Furthermore, Defendants' reference to their pleadings is inadequate because their Answer contains only conclusory legal allegations without any underlying factual basis necessary to evaluate their UPEPA claim. This information is necessary for Plaintiff to conduct focused discovery and properly evaluate the merits of Defendants' claims.

When asked to "[s]tate whether You have conducted any investigation(s) Concerning in any way the subject matter of this Action . . .", Defendants responded by interposing an objection on the grounds that "[t]his request seeks information protected from disclosure by the attorney-client privilege. Pa.R.C.P. 4003.3." Defendants further stated, "[w]ithout waiving this objection, any investigation conducted by Mr. Kelly was for the purpose of defending this lawsuit and communicating with legal counsel." *Compare Exhibit "A" at ¶ 26 to Exhibit "C", p.8, ¶26.*

As stated in more detail in the Deficiency Letter (**Exhibit "D"**), these objections also should be overruled. Investigative activities themselves are not protected by any privilege where the underlying factual investigations preceded the commencement of litigation. Second, even if these interrogatories did occur after the commencement of litigation, the privilege protects communications seeking or providing legal advice, not pure fact-gathering activities, which are at issue here. Even if this were not the case, Defendants' blanket assertion of attorney-client privilege is overbroad and unsupported by facts. "The party invoking a privilege must initially set forth

facts showing that the privilege has been properly involved.” *Knopick v. Boyle*, 2018 PA Super 140, 189 A.3d 432, 439 (Pa. Super. 2018).

When asked to produce Defendants’ federal and state tax returns for the years 2020, 2021, 2022, 2023, and 2024”, Defendants responded by interposing an objection on the grounds that these requests seek irrelevant information and are not reasonably calculated to lead to the discovery of admissible evidence pursuant to Pa.R.C.P. 4003.1. Defendants also objected on the grounds that these requests attempt to “prematurely seek discovery of assets in aid of execution. *Compare Exhibit “A” at ¶¶25-26, to Exhibit “C”, pg.14, ¶¶25-26.*

As stated in more detail in the Deficiency Letter (**Exhibit “D”**), Defendants’ objections should be overruled. Defendants’ tax returns include information relevant to Defendants’ business operations and the scope of their activities related to the claims in this case.

At the conclusion of the Deficiency Letter (**Exhibit “D” at p.12**), Plaintiff states, “[t]o enable DonutNV to determine whether motion practice is necessary, please respond to this letter within **five business days** (*i.e.* by **Monday, June 9th, 2025**) with Defendants’ assurance that they will cure the deficiencies set forth above within **ten business days** of this letter (*i.e.* by **June 16, 2025**). We hope to avoid judicial intervention.”

As of this motion, neither Defendants nor their counsel has communicated with Plaintiff’s counsel in any respect.

V. Relief Requested

Plaintiff respectfully requests that this Court issue the proposed Order attached hereto (i) striking Defendants’ objections to Plaintiff’s Discovery Requests; (ii) compelling full and complete responses to Defendants’ Discovery Requests, along with corresponding document production; and (iii) scheduling a conference for the purposes of establishing a case management

order to guide the completion of pre-trial discovery and to discuss any anticipated issues among counsel in this matter, and for such other or further relief as the Court deems necessary.

Dated: June 18, 2025

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