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IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY  
SECOND JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

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DONUTNV FRANCHISING, INC., :  
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 Plaintiff, :  
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 v. :  
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 : Docket No. CI-25-00737  
 :  
 SEAN KELLY and RELENTLESS INC., :  
 t/d/b/a UNHAPPY FRANCHISEE, :  
 :  
 Defendants. :  
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**PLAINTIFF’S BRIEF IN OPPOSITION TO  
DEFENDANTS’ MOTION FOR JUDGMENT ON THE PLEADINGS**

Plaintiff DonutNV Franchising, Inc. (“DonutNV” or “Plaintiff”) submits this brief in opposition to the motion for judgment on the pleadings filed by defendants Sean Kelly (“Kelly”) and Relentless Inc. t/d/b/a Unhappy Franchisee (“Relentless” and, together with Kelly, the “Defendants”). For the reasons set forth below, Plaintiff respectfully requests that Defendants’ motion be denied and this matter proceed to discovery.

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## I. INTRODUCTION

Plaintiff DonutNV brought claims against Defendants Kelly and Relentless for tortious interference with contract and defamation *per se*. In response, Defendants did not file preliminary objections; rather, they answered Plaintiff's Complaint and filed Counterclaims. To date, no meaningful discovery has been exchanged — Plaintiff served discovery on Defendants, but Defendants provided non-material responses, largely interposed objections, and produced no documents. Viewed through the traditional standards of disposing of claims before trial, and the need for an adequate record to be developed to ensure fair adjudication of claims on their merits, Plaintiff's claims are well-pleaded and meritorious. Therefore, judgment on the pleadings is inappropriate.

Yet, Defendants claim that merely invoking a newly adopted statute<sup>1</sup> which has yet to be interpreted by any Pennsylvania court—and for which no detailed, substantive, or procedural rules have been established—requires that Plaintiff's otherwise meritorious claims immediately be dismissed without any discovery whatsoever. In other words: Defendants assert that Plaintiff's otherwise meritorious defamation and tortious interference claims must be dismissed before discovery — on the bare allegation that Defendants' purported First Amendment rights are being “chilled.” Defendants' interpretation of the statute would, essentially, cause a dramatic and sweeping change to—indeed, virtually do away with—the traditional and well-established claims of tortious interference and defamation.

As further discussed below, and among other things:

- The UPEPA guards only against *meritless* or *frivolous* claims, not every claim where First Amendment rights are baselessly asserted.

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<sup>1</sup> Pennsylvania's Uniform Public Expression Protection Act (the “UPEPA”).

- Likewise, the UPEPA guards only against *meritless* or *frivolous* claims, not every claim where matters of public or social importance are baselessly asserted.
- Because the Pennsylvania Supreme Court have yet to adopt procedural rules to specifically determine whether a claim is baseless, meritless, frivolous, or brought for improper purpose in connection with the UPEPA, the Court should decide these issues by applying the traditional and well-established procedural mechanisms and standards used to “weed out” such claims prior to trial.
- Here, Defendants have not filed their UPEPA motion in a timely manner (within 60 days of service of the Complaint, as required) but, instead, rely on an ill-timed motion for judgment on the pleadings to dismiss Plaintiff’s claims.
- Because Defendants fail to carry their burden to demonstrate entitlement to judgment on the pleadings, Defendants’ motion should be denied and this matter should proceed to discovery.
- This result does not do violence to the either the letter or spirit of the UPEPA. Plaintiff respectfully asserts that while the statute apparently seeks to provide a mechanism for the earliest possible dismissal of a claim within its ambit, it does not set forth a particular stage in a lawsuit at which this must happen and—as set forth above—it certainly does not say that otherwise meritorious claims that should proceed to trial must be dismissed, leaving the injured Plaintiff without a remedy despite bringing well-pleaded, well-recognized, factually and legally supportable causes of action against Defendants.

In summary, Defendants’ motion for judgment on the pleadings should be denied and Plaintiff’s claims should proceed to discovery.

## II. RELEVANT FACTS<sup>2</sup>

### A. General Background

Defendant Kelly is the owner of defendant Relentless, which operates a website known as Unhappy Franchisee (the “Website”). (Compl. ¶¶ 1, 2). Through the Website, Defendants extort money out of participants in the franchise industry by: (i) posting untrue, false, and defamatory statements and information about these participants on the Website; (ii) publishing these untrue, false, and defamatory statements through the Website or otherwise transmitting them to third

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<sup>2</sup> These well-pleaded facts are set forth in Plaintiff’s Complaint (“Compl.”), attached hereto as **Exhibit “A”** for the Court’s convenience.

parties for the purpose of interfering with and harming these participants' existing and prospective business relationships; and (iii) then offering to remove the untrue, false, and defamatory statements from the Website in exchange for the payment of money — sometimes disguised as a purported “consulting fee.” (Compl. ¶ 3).

Plaintiff DonutNV is a victim of Defendants' scheme but refuses to give in to this blackmail, despite Kelly's personal attempt to intimidate DonutNV by promising certain unspecified dire consequences if DonutNV tried to sue him instead of giving in to his demands without a fight. (Compl. ¶ 4). On account of Defendants' wrongful scheme, Plaintiff brings claims for tortious interference and defamation *per se*. (Compl. ¶ 5). The chief wrongdoer, Kelly, is personally liable for all tortious acts of his company, Relentless, pursuant to Pennsylvania's participation theory. (Compl. ¶ 6).

**B. The DonutNV Franchise System**

DonutNV is a franchisor with franchisees operating at over 100 locations in the United States. (Compl. ¶ 13). A DonutNV franchise essentially consists of a customized food truck which can be driven to various locations and events within the franchisee's sales territory, from which fresh donuts are made and sold along with beverages. (Compl. ¶ 14). DonutNV has valuable business relationships with its current and prospective franchisees and various franchise promoters who match prospective franchisees with suitable franchises. (Compl. ¶ 15).

**C. Defendants' Defamatory And Extortionate Website**

Through their Website, Defendants publish articles and/or “blogs” relating to the franchise industry. (Compl. ¶ 17). More specifically, Kelly and Relentless purport to post materials supposedly to alert individuals and businesses who may be interested in owning a franchise about franchises that Defendants allege have engaged in misconduct or unethical business practices. (Compl. ¶ 18).

However, at least with respect to the DonutNV franchise system, the purpose of Defendants' business is not to inform and/or protect prospective franchisees but, rather, to target DonutNV by posting scandalous, defamatory, and untrue statements about them, and when contacted by the targeted franchisor, to demand payment (disguised as a "consulting fees") as a *quid pro quo* to remove the posts. (Compl. ¶ 19). This is bribery, extortion, and blackmail. (Compl. ¶ 20). DonutNV was recently victimized by Defendants' scheme and—as a consequence—filed this lawsuit. (Compl. ¶ 22).

While Defendants claim that this lawsuit is somehow chilling or preventing their speech, the reality is that even after this lawsuit was filed they continue to post negative, tortiously, and defamatory statements about DonutNV, undeterred by any consequences.

**D. Samples Of Defendants' Tortious And Defamatory Statements**

Defendants' statements about DonutNV included, but are not limited, to the following:

- An untrue statement that a franchisee was struggling to purchase Christmas gifts for his or her children while the owners of DonutNV were flying to the Bahamas in a private jet. The owners did not fly by "private jet."
- Untrue statements accusing DonutNV and its owners of "destroying people's lives" and of "hurting people."
- An untrue statement that one-half of the DonutNV franchisees were failing.
- An additional untrue statement that DonutNV's owners flew by private jet to the Bahamas. Again, this never occurred.
- A false claim that DonutNV's owners are the "victims of bad advisors."
- A false accusation that DonutNV partners with unscrupulous franchise promoters.
- Yet a third untrue statement accusing DonutNV's owners of "flying private to the Bahamas all the time."

(Compl. ¶ 22(A)-(G). Numerous additional defamatory and tortious statements can be found on Defendants' Website, which continues to disseminate this false material to the public.

As if these were not enough, defendant Kelly attempted to bolster his untrue statements, and provide them with some false patina of fake credibility, by representing that he had “spent the better part of 3 decades growing start-up franchises into true franchise success stories” and-from that seat of supposed industry knowledge-proceeded to criticize DonutNV and its owners, including an accusation that DonutNV was a “money grab” and a “Ponzi scheme.” (Compl. ¶ 22(H)). This is clearly defamation *per se*. Other posts are in the same false vein, including false accusations that DonutNV is somehow filing deceptive documents with the Federal Trade Commission. (Compl. ¶ 23). This, too, is defamation *per se*. As a final matter, when requested to remove the false and misleading statements and information from the Website, Defendants began demanding payment to do so and otherwise refused. (Compl. ¶ 24). Consequently, DonutNV has been forced to defend itself against the false and misleading statements and information that continue to be published on the Website by Defendants through this lawsuit. (Compl. ¶ 25).

DonutNV has been contacted by current and potential franchisees, and franchise brokers, regarding the false and misleading statements and information that continue to be published on the Website by Defendants. (Compl. ¶ 26). Due to these false and misleading statements and information that continue to be published on the Website, DonutNV has lost franchisees and potential franchisees (and therefore a substantial amount of revenue), and also lost valuable relationships with franchise brokers and advertisers/marketers. (Compl. ¶ 27). The false and misleading statements and information on the Website continue to cause severe harm to DonutNV’s reputation in the industry and also causing a concomitant loss of goodwill that the business and its owners had carefully built up over the years. (Compl. ¶ 28). Defendants’ actions and inactions are the direct and proximate cause of DonutNV’s humiliation, reputational damage and economic loss. (Compl. ¶ 29). Defendants’ failure to remove and otherwise retract the false

and misleading statements and information on the Website has only exacerbated DonutNV's injuries, which are continuing so long as the false and misleading statements and information continue to be published by Defendants. (Compl. ¶ 30).

### III. PROCEDURAL HISTORY

On account of Defendants' wrongful activities, DonutNV commenced this lawsuit and brought claims against Defendants for tortious interference and defamation. DonutNV also served written discovery upon Defendants, which Defendants largely refused to answer. DonutNV therefore filed a motion to compel. On the eve of oral argument on the motion to compel, Defendants filed the instant motion for judgment on the pleadings, arguing, among other things, that Pennsylvania's recently adopted UPEPA required immediate dismissal of DonutNV's lawsuit without any discovery taken. While DonutNV did not believe that the UPEPA provided summary and completely immunity to Defendants—as Defendants argue—DonutNV and Defendants, at the motion to compel argument, agreed that the Court would decide the motion for judgment on the pleadings and, if the motion were denied (as it should be) Defendants would the respond fully and completely to DonutNV's outstanding discovery requests. This was entered as an Order of the Court.

### IV. QUESTION INVOLVED

*Should Defendants' motion for judgment on the pleadings be denied?*

Suggested Answer: **Yes.**

*Should Plaintiff be awarded reasonable attorney fees, costs and expenses as allowed to a prevailing party under UPEPA?*

Suggested Answer: **Yes.**

V. ARGUMENT

A. **Under The Standard Of Review For Judgment On The Pleadings, The Motion Must Be Denied**

The standard of review for granting judgment on the pleadings is well-established. A motion for judgment on the pleadings is in the nature of a demurrer; all of the opposing party's well-pleaded allegations are viewed as true but only those facts specifically admitted by him may be considered against him. Sejpal v. Corson, Mitchell, Tomhave & McKinley, M.D.'s, Inc., 665 A.2d 1198, 1199 (1995). See also Beardell v. Western Wayne S.D., 496 A.2d 1373, 1375 (Pa. Commw. Ct. 1985) (a motion for judgment on the pleadings may be granted only in cases where no facts are at issue and the law is so clear that a trial would be a fruitless exercise); Gallo v. J.C. Penney Cas. Ins. Co., 476 A.2d 1322, 1324 (Pa. Super. Ct. 1984) (a judgment on the pleadings shall not be entered when there are unknown or disputed issues of fact).

This standard is insurmountable for Defendants. First, DonutNV's well-pleaded allegations, which must be taken as true, demonstrate that DonutNV has stated claims against Defendants that have sufficient merit to survive a motion for judgment on the pleadings and proceed to discovery. Second, DonutNV has admitted no material facts that can be used against it and that would, in and of themselves, require judgment on the pleadings in Defendants' favor. Third, the UPEPA was not intended to immunize a defendant from otherwise meritorious tortious interference and defamation claims.<sup>3</sup> Thus, under any traditional view of a motion for judgment on the pleadings, the motion presented here necessarily must be denied.

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<sup>3</sup> As to this point, in Beardell, supra, the appellate court reversed the trial court and held that the trial court erred by disposing of plaintiff's claim based on Pennsylvania's sovereign immunity statute before the complete factual record necessary to determine whether the statute should apply had been developed. 496 A.2d at 1377. By analogy, the same situation is present here, and the same result should be reached: there is absolute no record under which this Court can determine whether the UPEPA even applies, let alone at such an early stage so as to oust DonutNV from

Also, it must be noted that the Pennsylvania Superior Court has been reluctant to countenance dismissal of well-pleaded defamation claims via judgment on the pleadings. In Rubin v. CBS Broadcasting, Inc., a former school police officer brought a defamation lawsuit against a broadcast company and its news anchor, alleging that they had published defamatory statements about him that caused him to lose his job and that otherwise harmed his reputation. 170 A.3d 560, 563 (Pa. Super. Ct. 2017). Defendants filed a motion for judgment on the pleadings, which the trial court granted. Id. The appellate court reversed the trial court, holding that the trial court did not have enough information to determine whether the alleged defamatory statements were true or false; nor did the trial court have any information pertaining to the source of the information defendants relied upon in reporting on the matter, or what investigation they did to determine the information was true and correct before reporting on it. Id. at 568. Thus, granting a motion for judgment on the pleadings, without allowing the defamation plaintiff to develop a sufficient record in discovery, was reversible error on the part of the trial court.

**B. DonutNV’s Claims Are Meritorious And Not Frivolous**

Considering the well-pleaded allegations of the Complaint, which included screen shots of many of the tortiously interfering and defamatory statements in question, it is clear that DonutNV’s claims are anything but frivolous.

As an initial matter, the posts in question on their face—and without further analysis—constitute defamation *per se*. Defamation *per se* are words that impute to plaintiff: (i) criminal offense; (ii) loathsome disease; (iii) business misconduct; or (iv) serious sexual misconduct. Goldfarb v. Kalodimos, 539 F. Supp.3d 435, 461 (E.D. Pa. 2021). An accusation of business misconduct is one that ascribes to another conduct, characteristics, or a condition that would

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Court even though DonutNV has stated a claim that—all other things being equal—would survive attach a demurrer or motion for judgment on the pleadings.

adversely affect his fitness for the proper conduct of his lawful business. *Id.* Between Defendants accusing DonutNV of running a “Ponzi scheme” and the other posts set forth above, the defamatory statements here comfortably fit into prongs (i) and (iii) of what Goldfarb held constitutes defamation *per se*.

Aside from being actionable as defamation *per se* (and tortious interference), DonutNV’s claims are not “frivolous.” In Pennsylvania, “frivolous” claims are generally described in connection with the so-called “Dragonetti Act,” codified at 42 Pa.C.S. §§ 8351 *et seq.* Generally, under the statute, a claim is “frivolous” if it is brought in a “grossly negligent manner,” “without probable cause” or “primarily for a purpose other than that of securing property discovery, joinder of parties or adjudication of the claim in which the proceedings are based.” *Id.*

“Gross negligence” is defined as the want of even scant care and the failure to exercise even that care which a careless person would use. Moreover, a party has “probable” cause to bring a civil action if he believes in the existence of the facts upon which the claim is based and either: (i) reasonably believes that under those facts his claim may be valid under existing or developing law or (ii) believes as an attorney of record, in good faith, that his procurement, initiation or continuation of a civil cause is not intended to merely harass or maliciously injure the opposite party. See Guerrier v. State Farm, 605 F. Supp.3d 664, 671-72 (E.D. Pa. 2022) (discussing the indicia that means a claim is not “frivolous” or “brought for an improper purpose”). In light of the foregoing, by definition, DonutNV’s claims cannot be considered “frivolous” or “brought for an improper purpose.”

**C. Rules Of Statutory Construction Indicate That Defendants’ Motion For Judgment On The Pleadings Should Be Denied**

As set forth above, plaintiff DonutNV has unequivocally established that its claims against Defendants: (i) have survived demurrer, in that Defendants did not file preliminary objections; (ii) cannot be disposed of under the standards applicable to a motion for judgment on the pleadings; (iii) are anything but “frivolous,” as that term has been defined and recognized in statutory and common law; and (iv) have not been brought for an “improper purpose,” as that term has been defined and recognized in statutory and common law.

The central question is, thus, can and should the UPEPA be interpreted to immunize Defendants from otherwise valid and actionable claims for tortious interference and defamation *per se*? DonutNV respectfully—but firmly—believes that the answer to this question is an emphatic “no.”

Before delving into the specific provisions of this newly enacted law, DonutNV reviews the well-established canons of statutory construction. Interpretation of a statute is generally a matter of law. Academy Charter School v. Harrisburg S.D., 934 A.2d 189, 192 (Pa. Commw. Ct. 2007). Importantly, in construing a statute, it is presumed that the legislature “does not intend a result that is absurd, impossible of execution or unreasonable.” Summit School v. Penna. Dept. of Educ., 108 A.3d 192, 197 (Pa. Commw. Ct. 2015). Thus, “statutes should receive a sensible construction and should be construed, if possible, so that absurdity and mischief may be avoided.” Id. Finally, statutes should not be interpreted to nullify common law principles unless they expressly so state but, rather, should be interpreted to comport with the common law. In re Rodriguez, 791 A.2d 441, 442-43 (Pa. Commw. Ct. 2002).

Here, interpreting the UEPA to immunize Defendants’ from DonutNV’s well-pleaded claims merely because Defendants file a judgment on the pleadings that argues—with little

analysis—that Defendants enjoy blanket immunity to defame and harm (and even blackmail) DonutNV would violate each and every one of these canons. Indeed, finding in favor of *Defendants on this motion upon this (non-existent) record would be tantamount to erasing the torts of defamation and defamation-based tortious interference out of the common law entirely.*

If this does not constitute an absurd, unreasonable, and impracticable result, nothing does.

**D. The UPEPA Cannot Be Interpreted To Require Such Early Dismissal Of DonutNV’s Otherwise Well-Pleaded And Proper Claims And Thereby Immunize Defendants’ Tortious Conduct**

The Uniform Law Comment to Pennsylvania’s UPEPA in Section 8340.11 states that the statute is designed to prevent and protect against “Strategic Lawsuits Against Public Participation” and, thus, is an anti-SLAPP act. This Uniform Law Comment describes SLAPP lawsuits as follows:

[w]hile SLAPP suits masquerade as ordinary lawsuits the conceptual features which reveal them as SLAPP’s are that they are generally meritless suits brought by large private interests to deter common citizens from exercising their political or legal rights or to punish them for doing so.

Right out of the gate, this description of the UPEPA demonstrates that it is not applicable to DonutNV’s claims against Defendants. DonutNV’s lawsuit is not “meritless,” nor has it been “brought by large private interest to deter common citizens” from exercising their rights. In fact, this lawsuit is nothing more than a garden-variety tortious interference and defamation lawsuit brought by one private commercial enterprise against another private commercial enterprise.<sup>4</sup>

In Sections 8340.13 and 8340.14, Uniform Law Comment 2 states:

the Act's procedural features are designed to prevent substantive consequences: the impairment of First Amendment rights and the time and expense of defending against litigation that has no

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<sup>4</sup> Defendants are certainly not registered as a non-profit business advocating for some public concern and—regardless—their “blackmail by defamation” scheme would be out of character for any *bona fide* guardian of the “common weal.”

demonstrable merit...As stated by one California court, ‘[t]he point of the anti-SLAPP statute is that you have a right not to be dragged through the courts because you exercised your constitutional rights.’

However, as discussed above, DonutNV’s claims are not meritless. There is nothing in the UPEPA that indicates that it provides immunity against meritorious claims, even if such claims arise out of Defendants’ alleged free speech rights.

Indeed, this concept—that the UPEPA does not immunize a defendant against a plaintiff’s meritorious claims—is enshrined in Section 8340.15, which provides that Defendants enjoy immunity under the statute only if the following apply:

A person is immune from civil liability for a cause of action based on protected public expression if any of the following paragraphs apply:

(1) The party asserting the cause of action based on protected public expression fails to:

- (i) establish a *prima facie* case as to each essential element of the cause of action; or
- (ii) state a cause of action upon which relief can be granted.

(2) There is no genuine issue as to any material fact, and the person against whom the cause of action based on protected public expression has been asserted is entitled to judgment as a matter of law in whole or in part.

42 Pa.C.S.A. § 8340.15.

None of these requirements are met here. At this point, DonutNV has pleaded the elements of its claims (thus establishing a *prima facie* case for each claim) and has stated causes of action for which relief can be granted. This is further demonstrated by the fact that Defendants did not file preliminary objections to DonutNV’s claims. Also, as discussed above, Defendants are not now entitled to judgment as a matter of law on DonutNV’s claims, and especially not via Defendants’ defective motion for judgment on the pleadings. Put another way, Defendants claim

immunity under the statute but ignore that the prerequisites for such immunity—as set forth in Section 8340.15—have not been met. At best, Defendants’ claim of immunity is highly premature.

Defendants’ motion arguing that it should enjoy complete immunity also is untimely. The Complaint was filed on February 3, 2025 and Defendants were served on March 3, 2025. According to Section 8340.16 (a) and (b)(1), a motion asserting immunity under the UPEPA was required to be filed within sixty (60) days after service (which would have made the motion due on May 2, 2025). Yet, Defendants filed this motion invoking the UPEPA in mid-July 2025, well outside of the sixty (60) day deadline.

That being said, Section 8340.16(c) of the UPEPA does allow Defendants to raise the statutory immunity issue via motions filed under other Rules of Civil Procedure—such as Rule 1034 allowing motions for judgment on the pleadings—but having chosen this route, Defendants’ are bound by the standards of review and procedures relating to Rule 1034. The special procedures pertaining to raising the statutory immunity defense in the balance of Section 8340.16 appear to apply only to those motions timely filed under Section 8340.16 (a) and (b)(1), but not when another Rule of Civil Procedure—such as those pertaining to demurrer, judgment on the pleadings, summary judgment or non-suit at trial are used.

In short, Section 8340.16 of the UPEPA demonstrates that the Court can dispose of this motion for judgment on the pleadings as an ordinary, garden-variety motion for judgment on the pleadings, with no special considerations or shifting of burdens in Defendants’ favor merely because Defendants have invoked the UPEPA. Since Defendants have failed to carry their burden to demonstrate entitlement to judgment on the pleadings, their motion should be denied and discovery should be allowed to commence forthwith. Such a result would comport not only with the plain language of the UPEPA, but also with the rules of statutory construction, discussed above.

Also, when examined under the above statutory rubric, it is clear that Defendants' assertion of protected public expression immunity via this motion for judgment on the pleadings is frivolous or filed solely with intent to delay the proceeding, and under such circumstances the UPEPA states that the Court "shall award the opposing party [namely, DonutNV] attorney fees, court costs and expenses of litigation, incurred in opposing the assertion of protected public expression immunity." See Section 8340.18(b) of the UPEPA.

**E. The Commercial Speech Exception Bars Application Of The UPEPA Here**

Under Section 8314(b)(3), the UPEPA does not apply against a person or entity primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to the person's sale or lease of the goods or services. DonutNV is in the business of selling franchise systems which allow its franchisees to sell food products to customers. In connection with this, DonutNV—while not directly selling the food products—certainly provides services to its franchisees, including assisting in the fit-out and design of the specialty food trucks used, development of food products, advertising and training. There is also no doubt that Defendants' tortious and defamatory statements directly relate to DonutNV's business and commercial activities. Consequently, it is respectfully asserted that the UPEPA, by its own plan terms, cannot be asserted against DonutNV.

**F. Cases Decided Under The UPEPA**

The UPEPA has been adopted by only a minority of states. Reviewing the state cases, it is difficult—if not impossible—to come up with a uniform interpretation and application of this supposedly uniform law. Federal cases have provided a somewhat more cogent and unified analysis. These federal cases come in two major strains: those that decline to apply the UPEPA in federal court as portions of the statute conflict with established Federal Rules of Civil Procedure used to evaluate whether claims should be dismissed or adjudicated prior to trial and those that use

the well-established standards of the Federal Rules of Civil Procedure to determine whether the claims are so “meritless,” “baseless” or “frivolous” as to allow dismissal under the UPEPA.

In Jakes v. Youngblood, the Western District of Pennsylvania declined to apply the UPEPA, holding that the Pennsylvania Supreme Court had not yet adopted procedural rules and standards that the federal court could look to for guidance to dispose of such a motion, and also holding that the standards of review that were set forth in the UPEPA conflicted with federal standards to decide motions to dismiss and motions for summary judgment. 2025 WL 1208276, at \*1 (W.D. Pa. Apr. 25, 2025) (applying Pennsylvania law). The federal court indicated that it could not apply such a statute in a diversity action. Id. at \*4. If anything, Jakes casts doubt on the ultimate viability of the statute as currently drafted (at least in federal court) and disapproved of the way the statute seemed to upend well-established standards by which courts have historically disposed of cases upon pre-trial motions. Other federal courts have reached this same result. See e.g., Peach v. Hagerman, 2024 WL 1748443 (W.D. Ky. Apr. 23, 2024); Salaam v. Trump, 2025 WL 1789648 (E.D. Pa. June 27, 2025). While these cases, based on principles of federalism, are not completely germane here, they do instruct caution in abandoning well-established standards of review in favor of new statute that has yet to be fully interpreted and for which no specific and practical rules of application have been adopted.

As for the second strain of cases, in Torchstar Corp. v. Hyatech, Inc., 2023 WL 137762 (E.D. Wash. Jan. 9, 2023), the federal court denied an early UPEPA motion brought by defendant seeking dismissal of plaintiff’s claims, holding that the claims were well-pleaded and meritorious, and that there were genuine issues of material fact in dispute that needed to be explored in discovery before plaintiff’s claims could be dismissed. The federal court also noted that the UPEPA allowed for early adjudication of only baseless claims (in other words, the statute does not

provide—let alone mandate—early adjudication of every claim that may touch on First Amendment rights). Other federal courts have followed this procedure. See UHS of Provo Canyon, Inc. v. Bliss, 2024 WL 4279243 (D. Utah Sept. 24, 2024) (denying UPEPA motion for early adjudication because movant failed to meet its burden to dismiss plaintiffs’ claims under Rule 12(b)(6) standards). These decisions comport with Defendants’ argument here, specifically, that absent further procedural guidance as to how the UPEPA should be applied, this Court should heavily lean on well-established standards of review pertinent to the motion in front of it (namely, a motion for judgment on the pleadings).

**G. DonutNV’s Claims Against Defendants Are Sufficiently Pleaded**

Although not included in their motion for judgment on the pleadings, in their brief in Defendants assert that DonutNV’s claims for tortious interference and defamation *per se* are insufficiently pleaded. It is noteworthy that Defendants failed to demurrer on this basis but rather filed an answer with new matter and counterclaims. Regardless, Defendants’ argument should be rejected.

All elements of both claims are adequately pleaded, via statement of facts, allegations in the counts themselves and from all reasonable inferences flowing from the allegations of the Complaint, all of which must be construed in favor of the non-moving party — DonutNV. Also— as is especially true for the defamation *per se* claim—Defendants’ contentions are classic “speaking demurrers,” which would have been improper even had Defendants filed preliminary objections (which they did not). While Defendants contend that third parties other than Defendants posted the defamatory content on the Website, this is demonstrably untrue, as reflected ***by Defendants’ personalized editorial shown in Exhibit 1 of the Complaint.*** (Compl. at Ex. 1). Further, Defendants have refused to respond to any discovery seeking (i) the source of these posts, (ii) the extent to which Defendants manipulated any information that was given to them by third

parties, and (iii) what investigation Defendants may have performed to ensure that there was any factual basis to the posts. This raises genuine material issues of fact, making disposition of Plaintiff's claims by a motion for judgment on the pleadings completely inappropriate.

While Defendants cherry-pick one of the posts identified as being a matter of opinion, this post *made by defendant Kelly*—that “*DonutNV franchise founders Alex Gingold & Amanda Gingold are, I suspect, victims of bad advisers*”—is not true opinion when considered in the context of the other posts on the Website and Kelly's self-professed decades of experience in the franchise industry. “The bar of using an opinion to support a defamation claim is not absolute; even if a statement is construed as an opinion, it can still be defamatory if it contained a demonstrably false factual connotation.” Salaam v. Trump, 777 F. Supp. 3d 414, 425 (E.D. Pa. 2025). Here, the false factual connotations is in the plain language of the statement, that Alex and Amanda Gingold—the owners of DonutNV—cannot properly select advisors. It remains to be seen in discovery who these alleged advisors that Defendants refer to are, and what makes them “bad.” In short, as with many motions for judgment on the pleading, the movant attempts to prove too much before any discovery has been taken.

Plaintiff's tortious interference claim is likewise adequately pleaded. There is no requirement that a plaintiff, even considering Pennsylvania's fact-pleading regime, plead the particular evidence it will rely on in proving its claims and the basic material facts set forth in its complaint. El-Garbaoui v. Ajayi, 260 A.3d 944, 963 (Pa. Super. Ct. 2021). There are no heightened pleading requirements for tortious interference claims. Thus, the test of whether Plaintiff's claim is adequately pleaded does not hinge on technicalities such as those raised by Defendants, but is distilled into two conditions, both of which are easily met here: (i) the Complaint must adequately explain the nature of the claim to the opposing party so as to permit

him to prepare a defense; and (ii) the Complaint must be sufficient to convince the Court that its averments are not merely subterfuge. Commw. of Penna. v. Golden Gate Nat'l Senior Care LLC, 194 A.3d 1010, 1030 (Pa. 2018). Moreover, to assess whether a claim has been pleaded with the requisite specificity, the allegations must be viewed in the context of the pleading as a whole. Id. Especially considering that Defendants are self-professed experts in the franchise industry, and that their entire business is—supposedly—criticizing various franchises, taking the Complaint as a whole, DonutNV's tortious interference claim is adequately pleaded. Defendants completely understand what they are being accused of, and there is no indication of any subterfuge in any of the allegations in the Complaint.

The cases cited by Defendants do nothing to advance their argument, or to undermine Plaintiff's claims. Chester Upland S.D. v. Rossi, 275 A.3d 1117 (Pa. Commw. Ct. 2022) was a case by a school district against various county prothonotary offices for alleged overcharging of court fees. The claims at issue were unjust enrichment and for declaratory relief, neither of which is present in this lawsuit. Foster v. UPMC South Side Hosp., 2 A.3d 655 (Pa. Super. Ct. 2010) was decided on summary judgment. Also, it should be noted that even if the Court finds a defect in the pleadings at this point—and it should not—the proper course would be to allow DonutNV to amend its Complaint. DonutNV respectfully asserts that this is unnecessary, and would only serve to delay the case and consume more of the parties'—and the Court's—resources.

Quite simply, looked at from any angle, Defendants' motion for judgment on the pleadings should be denied and this case should proceed forward into discovery.

## **VI. CONCLUSION**

For the reasons set forth above, Plaintiff DonutNV respectfully requests that this Court: (i) deny Defendants' motion for judgment on the pleadings; (ii) order that Defendants file responses and objections to Plaintiff's outstanding discovery requests, along with corresponding document

production, within ten (10) days of the issuance of the order; (iii) award costs, expenses, and attorney's fees to plaintiff DonutNV in connection with opposing this motion; and (iv) in connection with (iii), allow a period of ten (10) days after the issuance of the order denying this motion for DonutNV to submit an affidavit and other documentation pertaining to the recoverable costs, expense, and attorney's fees incurred in connection with Plaintiff opposing this Motion.

KLEHR HARRISON  
HARVEY BRANZBURG LLP

Dated: August 4, 2025

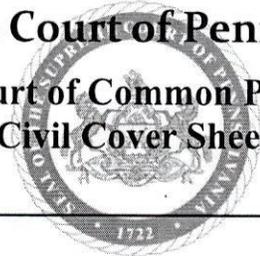
By: /s/ D. Joseph Ferris  
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wclements@klehr.com

*Attorneys for Plaintiff,  
DonutNV Franchising, Inc.*

# EXHIBIT A

# Supreme Court of Pennsylvania

## Court of Common Pleas Civil Cover Sheet



County \_\_\_\_\_

Lebanon County Prothonotary Filed: Aug 20 2025 2:28:39 PM  
Case Number: 25-00737

For Prothonotary Use Only:

Docket No:

25 - 00737

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

**Commencement of Action:**

- Complaint     
  Writ of Summons     
  Petition  
 Transfer from Another Jurisdiction     
  Declaration of Taking

Lead Plaintiff's Name:

DonutNV Franchising, Inc.

Lead Defendant's Name:

Sean Kelly and Relentless Inc.

Are money damages requested?  Yes     No

Dollar Amount Requested:     within arbitration limits  
(check one)                             outside arbitration limits

Is this a *Class Action Suit*?     Yes     No

Is this an *MDJ Appeal*?     Yes     No

Name of Plaintiff/Appellant's Attorney: D. Joseph Ferris and William J. Clements, Esquires

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

**Nature of the Case:** Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

**TORT** (do not include Mass Tort)

- Intentional  
 Malicious Prosecution  
 Motor Vehicle  
 Nuisance  
 Premises Liability  
 Product Liability (does not include mass tort)  
 Slander/Libel/ Defamation  
 Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**CONTRACT** (do not include judgments)

- Buyer Plaintiff  
 Debt Collection: Credit Card  
 Debt Collection: Other  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Employment Dispute: Discrimination  
 Employment Dispute: Other  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**CIVIL APPEALS**

- Administrative Agencies
- Board of Assessment  
 Board of Elections  
 Dept. of Transportation  
 Statutory Appeal: Other  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Zoning Board  
 Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**MASS TORT**

- Asbestos  
 Tobacco  
 Toxic Tort - DES  
 Toxic Tort - Implant  
 Toxic Waste  
 Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**REAL PROPERTY**

- Ejectment  
 Eminent Domain/Condemnation  
 Ground Rent  
 Landlord/Tenant Dispute  
 Mortgage Foreclosure: Residential  
 Mortgage Foreclosure: Commercial  
 Partition  
 Quiet Title  
 Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**MISCELLANEOUS**

- Common Law/Statutory Arbitration  
 Declaratory Judgment  
 Mandamus  
 Non-Domestic Relations  
 Restraining Order  
 Quo Warranto  
 Replevin  
 Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**PROFESSIONAL LIABILITY**

- Dental  
 Legal  
 Medical  
 Other Professional: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA

DONUTV FRANCHISING, INC.,

**25 - 00737**

No. CI- \_\_\_\_\_

vs.

SEAN KELLY and RELENTLESS INC.,

t/d/b/a UNHAPPY FRANCHISEE

### NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lancaster Bar Association  
Lawyer Referral Service  
28 East Orange Street  
Lancaster, PA 17602

Telephone: 717-393-0737

*2/4/2025 \$180.50 RemD 025602355 receipt 190456*

KLEHR HARRISON HARVEY BRANZBURG LLP  
D. Joseph Ferris (Pa. I.D. No. 314146)  
William J. Clements (Pa. I.D. No. 86348)  
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*Attorneys for Plaintiff,  
DonutNV Franchising, Inc.*

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY  
SECOND JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

\_\_\_\_\_  
DONUTNV FRANCHISING, INC.,  
3745 South Highway 27  
Suite A  
Clermont, FL 34711,

Plaintiffs,

v.

SEAN KELLY and RELENTLESS INC.,  
t/d/b/a UNHAPPY FRANCHISEE,  
2221 New Holland Pike  
Lancaster, PA 17601,

Defendants.

Docket No. 25 - 00737

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff DonutNV Franchising, Inc. (“DonutNV” or “Plaintiff”) files this Complaint against defendants Sean Kelly (“Kelly”) and Relentless Inc. (“Relentless”), t/d/b/a Unhappy Franchisee and collectively referred to herein as “Defendants,” and in support thereof DonutNV avers as follows.

**Introduction**

1. Defendant Kelly is the owner of defendant Relentless.

2. Kelly and Relentless own and operate a website known as Unhappy Franchisee (the “Website”).

3. Through the Website, Kelly and Relentless extort money out of participants in the franchise industry by: (i) posting untrue, false and defamatory statements and information about these participants on the Website; (ii) publishing these untrue, false and defamatory statements through the Website or otherwise transmitting them to third parties for the purpose of interfering with and harming these participants’ existing and prospective business relationships; and (iii) then offering to remove the untrue, false and defamatory statements from the Website in exchange for the payment of money, sometimes disguised as a purported “consulting fee.”

4. Plaintiff DonutNV recently became a victim of Defendants’ extortionate scheme but refused to give in to this blackmail, despite defendant Kelly’s attempted intimidation of the company in promising certain unspecified dire consequences if DonutNV tried to sue him instead of giving in to his demands without a fight.

5. On account of Defendants’ wrongful scheme, Plaintiff brings claims for tortious interference and defamation *per se*.

6. The chief wrongful actor, Kelly, is personally liable for all tortious acts of his company, Relentless, pursuant to Pennsylvania’s participation theory.

#### **The Parties**

7. Plaintiff DonutNV is a Florida company registered to do business in Pennsylvania, with its principal place of business located at 3745 South Highway 27, Suite A, Clermont, FL 34711.

8. Defendant Kelly is an adult individual whose last known address was 2221 New Holland Pike, Lancaster, PA 17601.

9. Defendant Relentless is a Pennsylvania corporation whose last known address was 2221 New Holland Pike, Lancaster, PA 17601.

10. The Website is owned and operated by Kelly and Relentless from 2221 New Holland Pike, Lancaster, PA 17601.

### **Jurisdiction And Venue**

11. Jurisdiction and venue are proper in this Court because: (i) defendant Kelly resides within Lancaster County, Pennsylvania; (ii) Relentless has its principal place of business located within Lancaster County, Pennsylvania; and (iii) the Website is operated by Kelly and Relentless from Lancaster County, Pennsylvania.

12. Further, DonutNV's causes of action arose in Lancaster County, and/or transactions or occurrences out of which DonutNV's causes of action arose took place in Lancaster County.

### **Background**

13. DonutNV is a franchisor with franchisees operating at over 100 locations in the United States.

14. A DonutNV franchise essentially consists of a customized food truck which can be driven to various locations and events within the franchisee's sales territory, from which fresh donuts are made and sold along with beverages.

15. DonutNV has valuable business relationships with its current and prospective franchisees and various franchise promoters who match prospective franchisees with suitable franchises.

16. Kelly and Relentless own and operate the Website, which is known as Unhappy Franchisee.

17. Through the Website, Kelly and Relentless publish articles and/or blogs relating to the franchise industry.

18. More specifically, Kelly and Relentless 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 have engaged in misconduct or unethical business practices.

19. However, 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.

20. This smacks of bribery, extortion and blackmail.

21. DonutNV has recently been victimized by Defendants' scheme.

22. For example, a recent post on the Website:

- A. Contained an untrue statement that a franchisee was struggling to purchase Christmas gifts for his or her children while the owners of DonutNV were flying to the Bahamas in a private jet. The owners did not fly by "private jet."
- B. Contained untrue statements accusing DonutNV and its owners of "destroying people's lives" and of "hurting people."
- C. Contained an untrue statement that one-half of the DonutNV franchisees were failing.
- D. Contained another untrue statement that DonutNV's owners flew by private jet to the Bahamas. Again, this never occurred.

- E. Falsely claimed that DonutNV's owners are the "victims of bad advisors."
- F. Falsely accused DonutNV of partnering with unscrupulous franchise promoters.
- G. Contained yet another untrue statement accusing DonutNV's owners of "flying private to the Bahamas all the time."
- H. Defendant Kelly also represented that he had "spent the better part of 3 decades growing start-up franchises into true franchise success stories" and—from that seat of supposed industry knowledge—proceeded to criticize DonutNV and its owners, including an accusation that DonutNV was a "money grab" and a "Ponzi scheme." This is clearly defamation *per se*.

See Exhibit 1.

23. Other of Defendants' posts are in the same false vein, including false accusations that DonutNV is somehow filing deceptive documents with the Federal Trade Commission. See Exhibit 2.

24. When requested to remove the false and misleading statements and information from the Website, Defendants began demanding payment to do so and otherwise refused.

25. DonutNV has been forced to defend itself against the false and misleading statements and information that continue to be published on the Website by Defendants.

26. DonutNV has been contacted by current and potential franchisees, and franchise brokers, regarding the false and misleading statements and information that continue to be published on the Website by Defendants.

27. On account of the false and misleading statements and information that continue to be published on the Website, DonutNV is at severe risk of losing current franchisees and potential franchisees, as well as losing its valuable relationships with franchise brokers and advertisers/marketers.

28. The false and misleading statements and information on the Website are causing severe harm to DonutNV's reputation in the industry and also causing a concomitant loss of goodwill that the business and its owners had carefully built up over the years.

29. Defendants' actions and inactions are the direct and proximate cause of DonutNV's humiliation, reputational damage and economic loss.

30. Defendants' failure to remove and otherwise retract the false and misleading statements and information on the Website has only exacerbated DonutNV's injuries, which are continuing so long as the false and misleading statements and information continue to be published by Defendants.

### **Count I—Tortious Interference**

31. DonutNV incorporates the averments of Paragraph 1-30, above, as if set forth at length herein.

32. DonutNV has contractual or prospective contractual relationships with third parties, including current and potential franchisees; current and potential franchise brokers; and persons or entities that DonutNV uses (or will use) to market the franchise opportunities it provides.

33. At all times relevant hereto, Defendants were aware of these contractual or prospective contractual relationships, by virtue of Kelly's self-professed and touted experience in the franchise industry.

34. Defendants engaged in purposeful action, including publishing false and untrue statements and information on the Website, specifically intended to harm DonutNV's existing contractual relationships, or to prevent prospective contractual relationships from occurring.

35. Defendants' actions are not subject to or protected by any privilege or justification.

36. All prospective contractual relationships were reasonably likely to occur and be entered into by DonutNV but for Defendants' interference.

37. DonutNV has suffered harm and damage as a direct and proximate result of Defendants' wrongful actions.

38. Defendants' wrongful actions were malicious, undertaken with reckless disregard for DonutNV's rights, outrageous and otherwise well beyond the bounds of commercial conduct under the totality of the circumstances present and, consequently, the imposition of punitive damages is warranted.

WHEREFORE, Plaintiff seeks judgment against Defendants, jointly and severally, on Count I of the Complaint, 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 and such other relief as the Court deems appropriate, including pre-judgment interest, costs and attorney's fees as may be allowed by law.

### **Count II—Defamation *Per Se***

39. DonutNV incorporates the averments of Paragraph 1-38, above, as if set forth at length herein.

40. As set forth above, Defendants published knowingly false statements and information about DonutNV to third parties.

41. Thus, the element of publication is met here.

42. The subject false statements and information were defamatory in nature.

43. The subject false statements and information were specifically directed at, and thus applied, to DonutNV.

44. The defamatory meaning of the subject false statements and information is clear and would be so understood by the recipient, reader or listener as both being defamatory and as applying to DonutNV.

45. DonutNV suffered special harm from Defendants' publication of the false statements and information.

46. Defendants' publication of the false statements and information was not privileged, or any privilege (conditional or otherwise) was abused by Defendants.

47. Regardless and/or in addition to the foregoing, Defendants have knowingly published false statements and information about DonutNV that has (and will continue to) adversely affect DonutNV in its lawful business and trade.

48. This constitutes defamation *per se*, because Defendants' publications impute to DonutNV conduct, characteristics or conditions that would adversely affect DonutNV in its lawful business or trade.

49. This includes, but is not limited to, Defendants' accusing DonutNV of being a "Ponzi scheme."

50. Defendants failed to properly confirm the truthfulness of the statements and information they published about DonutNV.

51. Defendants' actions have (and will) result in irreparable harm to DonutNV and its reputation.

52. DonutNV has suffered harm and damage as a direct and proximate result of Defendants' wrongful actions.

53. Defendants' wrongful actions were malicious, undertaken with reckless disregard for DonutNV's rights, outrageous and otherwise well beyond the bounds of commercial conduct under the totality of the circumstances present and, consequently, the imposition of punitive damages is warranted.

WHEREFORE, Plaintiff seeks judgment against Defendants, jointly and severally, on Count II of the Complaint, 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 and such other relief as the Court deems appropriate, including pre-judgement interest, costs and attorney's fees as may be allowed by law.

KLEHR HARRISON  
HARVEY BRANZBURG LLP

Dated: January 31, 2025

By: /s/ William J. Clements  
D. Joseph Ferris  
William J. Clements  
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Fax (215) 568-6603  
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wclements@klehr.com

*Attorneys for Plaintiff,  
DonutNV Franchising, Inc.*

**VERIFICATION**

I, Alex Gingold, state that I am authorized to make this Verification on behalf of the Plaintiff, and that the statements made in the foregoing Complaint are true and correct to the best of my knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

01/30/2025  
Date

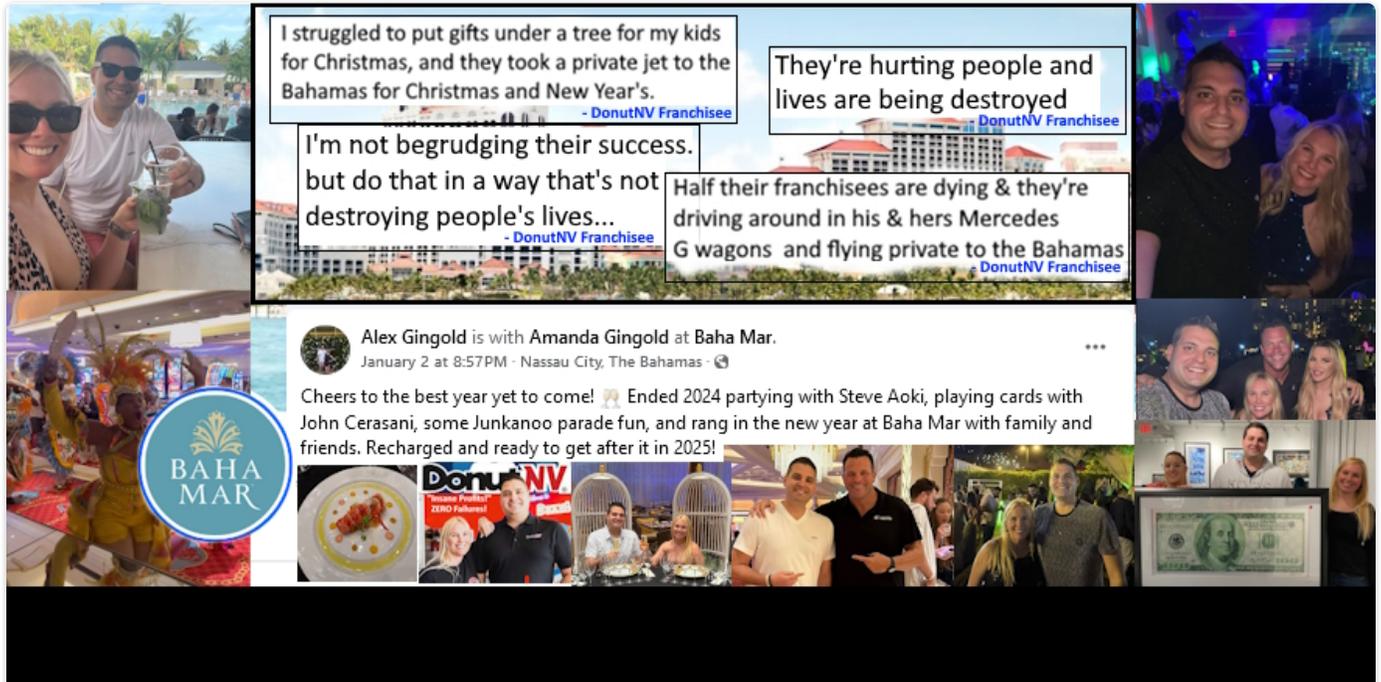
Alex Gingold  
Alex Gingold

# Exhibit 1



# Unhappy Franchisee

No-Nonsense Hype-Free Franchise Issues & Discussion Site



ALEX GINGOLD    ALL POSTS    AMANDA GINGOLD    DONUTNV FRANCHISE    FRANCHISE FASTLANE    IFPG

SPOTLIGHT 1

## DonutNV is NOT a Franchise Success Story... And May Never Be

📅 January 14, 2025 👤 unhappyzee

*DonutNV franchise founders Alex Gingold & Amanda Gingold are, I suspect, victims of bad advisors. The would-be mini-donut moguls flaunt monthly trips to luxury resorts as if they've earned the jet-setting lifestyle of the rich & famous. Alex Gingold posts entrepreneurial & motivational messages with the authority of one who's already built a successful franchise organization. Except... he hasn't. A well-intentioned intervention by Sean Kelly.*

([UnhappyFranchisee.Com](https://www.unhappyfranchisee.com)) If any of the many DonutNV franchise advisors, attorneys, fee-hungry sales and finance brokers, butt-kissers and clingers-on like, care about or have any real faith in Alex & Amanda Gingold, they will join me in impressing upon them this simple truth:

**DonutNV is not a franchise success story.**

Not yet.

Not by a longshot.

And, unless they take a serious reality check very soon, it never will be.

*Please share your candid & confidential opinions and information with an anonymous comment below, or by emailing the author at [UnhappyFranchisee\[at\]Gmail\[dot\]com](mailto:UnhappyFranchisee[at]Gmail[dot]com).*

DonutNV is Not a Franchise Success Story. At Best, It's a Franchise SALES Success Story.



After nearly a decade since starting their business, Alex & Amanda Gingold were only able to grow DonutNV to 13 franchises... and most of those had been open for less than a year.

In very late 2022 or early 2023, the Gingolds turned over their

franchisee recruitment and sales functions to the controversial franchise sales organization (FSO) Franchise Fastlane.

Franchise Fastlane deployed its customary, aggressive *blitzkrieg* consisting of commission-hungry franchise brokers and lenders outfitted with questionable sales claims (*semi-absentee model, alleged overstatements of revenue & profit*) and their playbook of hard-sell closing techniques.



The 2024 DonutNV FDD discloses that Fastlane had boosted the company's franchise count from 13 to 98 operational franchises by the end of 2023.

IFPG reports, through its FranchiseWire promotional site, that as of November 2024 DonutNV had 130 franchisees managing mobile mini-doughnut franchises in about 150 territories in 31 states.

*The Franchise Fastlane website boasts that they've sold 280+ franchise territories in the last year and a half or so vs. the 13+ the Gingolds managed to get open in 8 years.*

“ So, it appears to me that the only documented DonutNV success story, thus far, is Franchise Fastlane's success at using questionable earnings claims and an established syndicate of hypesters to convince otherwise rational people to bet their life savings on mobile mini-donuts.

## Alex & Amanda Gingold's Reputation Will be Determined by the Success – Or Failure – of DonutNV Franchisees



**Franchisors like Alex Gingold should be careful not to believe their own hype. Quickly selling hundreds of franchises does not make you a success. Only successful franchisees make a franchise a success story.**  
**UnhappyFranchisee.com**

Some DonutNV franchisees fear that Alex & Amanda Gingold have forgotten that having sold a franchise is just the beginning of a ten-year commitment.

One struggling DonutNV franchisee laments:

“ I struggled to put gifts under a tree for my kids for Christmas, and they took a private jet to the Bahamas for Christmas and New Year’s.

Another DonutNV franchisee, on the verge of losing \$300,000, summarized his/her feelings like this:

“ When Alex & Amanda [Gingold] started DonutNV, I don’t think they were out to like, pardon my French, f- over everybody.

“ But I think they started seeing how much money they were making, and now I don’t think they care.

“ They’re driving around in his and hers G wagons and flying private to the Bahamas all the time and posting about it on LinkedIn and Facebook

Yet another DonutNV franchise owner predicted:

“ If they keep handling things as they have been, I have no doubt they’re going to

be gone within a couple of years.

Another franchisee stated:

“ They must realize, at this point in time, they're hurting people, and lives are being destroyed.

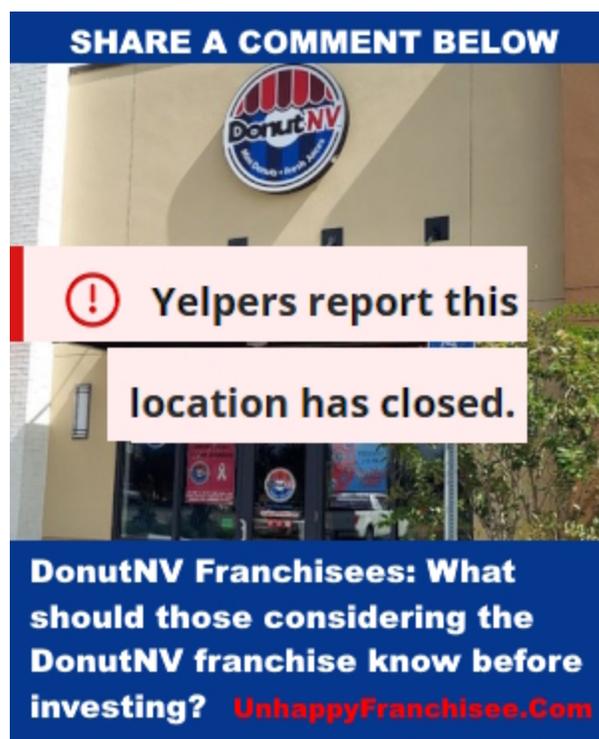
## I Predict: 2025 Will be a Defining Year for the DonutNV Franchise

Whether the Gingolds can transform the DonutNV sales success story into the start of an genuine franchise success story will likely become clear, in my opinion, by the end of 2025... or even sooner.

I hope they do... for their sake and the well-being of their hard-working franchisees.

As one who's spent the better part of 3 decades growing start-up franchises into true franchise success stories, I'll off this advice – free of charge – to Alex & Amanda Gingold:

- “ Dear Alex & Amanda:
- “ Don't make the deadly mistake to believe the hype your franchise sales brokers have created for you.
- “ You may have a successful concept, but you do not yet have a successful franchise.
- “ Franchise Fastlane convinced more than 100 franchisee investors that you two are willing, able and dedicated to help them create successful businesses.



- “ These franchisees have trusted that you understand and will honor your responsibility to be the franchisor you claim to be.
- “ Some are now privately characterizing the DonutNV franchise opportunity as a “Money Grab” and a Ponzi scheme.
- “ Your social media posts boasting of expensive dinners and drinks, and frequent, extravagant resort vacations seem to be validation of their worse fears.
- “ Those pictures, posts and messages communicate that either you’re not aware of their struggles... or that you don’t care.
- “ You haven’t responded to any of my questions or been willing to acknowledge the important issues raised.
- “ It’s not too late to make DonutNV a franchise success, but it won’t happen by hiding from challenges.
- “ Whether DonutNV becomes a franchise success story or just another cautionary tale won’t be determined by how many franchises Franchise Fastlane sold. It’ll be determined by what happened during the ten-year franchise agreements AFTER they signed.
- “ Feel free to give me a call for suggestions on correcting your course... or to explain how I’m mistaken.
- “ I’ll be happy to share any rebuttals, clarifications or corrections you provide.
- “ All the best,
- “ Sean Kelly
- “ Publisher, [UnhappyFranchisee.Com](https://www.unhappyfranchisee.com)
- “ President, Relentless, Inc.

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NEW:

[Has IFPG Stopped Promoting the DonutNV Franchise?](#)

*DonutNV References/Documentation:*

[DonutNV 2024 Franchise Disclosure Document \(FDD\)](#)

Are you familiar with the DonutNV franchise opportunity? With Alex & Amanda Gingold?

Are you familiar with Franchise Fastlane?

Please leave a comment below or email us, in confidence, at  
UnhappyFranchisee[at]Gmail[dot]com.

*Franchisors: The franchisor, its employees and agents are invited to submit correction, clarifications, rebuttals or other opinions for immediate consideration.*

[UnhappyFranchisee.com](#) is not associated with this or other franchise company or seller.

Tags: DonutNV, DonutNV franchise, DonutNV franchise earnings, DonutNV franchise opportunity, Donut franchise, Franchise Fastlane, Alex Gingold, Amanda Gingold, Jake Hamburger, Franchise Sidekick, Franchoice, IFPG, Franserve, Franchise Brokers Association,

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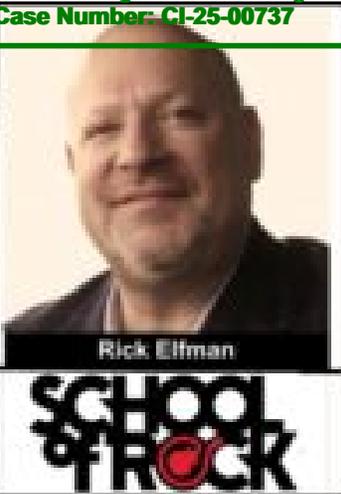
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## Open Letter to Rick Elfman and Sterling Partners

📅 June 9, 2017

## OVERVIEW

📅 April 12, 2008

## DICKEY'S BARBECUE PIT Franchise Warning

📅 August 6, 2014

# 8 thoughts on "DonutNV is NOT a Franchise Success Story... And May Never Be"



## With great power comes great responsibility

January 14, 2025 at 1:38 pm [Permalink](#)

It's hard to lead a company and guide over 100 new (because at donut nv almost all the franchisees are less than 2 years into it) franchisees from the seat of a private jet or a beach resort in the Bahamas. It doesn't appear that Mr. and Mrs. Gingold have the slightest motivation to help their floundering franchise family members who bought into the fools gold projections and false promises offered by their franchise sellers. What a shame as the concept seems cool, if a bit gimmicky. It seems the only lives being made sweeter one donut at a time are the lives of the founders...



## unhappyzee

January 14, 2025 at 5:45 pm [Permalink](#)

You make good points. This likely could be a good/fun business for the right person in the right market with the right expectations.

Why the big rush to sell hundreds of franchises all at once? Well, at \$30K per referral fee I can see why the brokers and Franchise Fastlane wanted to make this a Gold Rush (or Fools Gold Rush, as you said).

But the Gingolds made a 10-year commitment that they still have to fulfill even after the commission-seekers are down the road.



## Curious kitten

January 15, 2025 at 9:05 pm [Permalink](#)

Just a curiosity question as I'm not familiar with this type of business. They are on entrepreneurs magazine top 500 franchises. Does that not mean anything success wise? They are on that list with a lot of big names, yes very much lower. But still on none the least. Just general curiosity as it seems still very mixed comments of franchisees being happy and not happy.



## unhappyzee

January 16, 2025 at 2:04 pm [Permalink](#)

Curious Kitten:

Thanks for an excellent question.

Let me get the snarky answer out of the way first.

If DonutNV is ranked #278 in the Franchise 500, doesn't that mean there are 277 better franchises to look at first?

Actually, the rankings mean little to nothing. The Entrepreneur Franchise 500 provides good though superficial information about franchise brands, but they will tell you that that's all they do.

Entrepreneur states: "The Franchise 500 is not intended to endorse, advertise, or recommend any particular franchise. It is solely a tool to compare franchise operations. You should always conduct your own careful research before investing in a franchise. Read the FDD and related materials, get help from a franchise attorney and an accountant to review legal and financial documents, talk to as many existing and former franchisees as possible, and visit their outlets. Protect yourself by doing your homework to find the opportunity that's best for you."

They advise doing what we're doing here: asking franchisees and verifying what we hear.

Entrepreneur takes their information from the company FDD. Their data for DonutNV starts in 2023 and 2024. The Franchise 500 does not take into account franchisee satisfaction or litigation & accepts the franchisor's numbers without independent verification.

When reading articles, interviews and accounts of awards, always check to see if the writer, interviewer or publisher has a vested (undisclosed) interest.

They usually do.

Entrepreneur relies on franchisor advertising and gets paid to generate leads for those who sell franchises.

1851 Magazine is one of several pay-for-praise paid publications masquerading as a legitimate, unbiased publication.

FranchiseWire & Franchise Dictionary are owned by commissioned and paid franchise broker groups.

There are no legitimate franchise “awards” with any substance. That’s why the hyped award winners are usually some hot new concept with little to no track record.

Otherwise brands like McDonald’s and Chik-fil-A would be sweeping them every year.

Look for brands that are open and transparent – and don’t shy away from discussing the challenges facing franchisees.

We continue to invite DonutNV Corp. to join the discussion.



## DonutFairyTale

📅 January 16, 2025 at 4:32 pm 🔗 Permalink

Once upon a time, there was a farmer and his wife who wanted to be break out of their class and join the rich and the elite.

Naturally, they knew the quickest way to achieve this, would be to sell their souls to the devil and go after older people who were looking for a nice nest egg to retire with and would be willing to pour their life savings into it or others that were very motivated to get into the owning their business, but didn’t quite know how and could easily be lured by unrealistic margins and earning potential; they would even openly LIE to people and tell them that this business is easy to do as a semi-absentee, even though there were little to no examples for semi-absentees who were doing anywhere near the numbers the farmer and his wife said were possible.

With help of the Devil, they knew they could reach far more people than if they were to grow organically, first perfecting their craft and working hard to ensure a water tight business model with a proven track record and bullet proof product.

They would focus their time on selling as many crappy Horse and wagons as possible, selling them at a price 6x their worth on the market, as well as selling “bespoke products” like a candy apple making machine that would cost 800-1000 shillings on the open market, but they would go on to sell these machines at a 600%

mark up and claim these amazing machines were only made for them.

They would also FORCE the buyers to buy products ONLY from them, when all they would do is buy products that you can get literally anywhere, put their lovely farmers stamp on it and charge 5x the amount to the people they so adored.

They would go on to set up a community forum for their victims... I mean buyers. This forum would appear to be a place where people could ask for help/advice, however, the farmer and his wife would NEVER allow anyone to say anything bad about their precious company, as it was PERFECT and all of the MANY issues were simply false and not true.

After all, they knew it was better to try and put a band aid over a crack in the damn rather than fixing the damn and would instead go on to just gaslight the workers.

The farmer and his wife would continue to ignore the countless cries for help, the begging for change and a better product and the honest feedback when the same things went very wrong, over and over and over again.

They ignored the fact that so many were forced to close their door within the first 6-12 months of owning their Horse and Wagon, this would be 10s of people, with 10s more already looking to get out.

The farmer and his wife claimed to care, however whilst their "colleagues" scraped together the pennies they had left to stay alive and feed their families, they bought themselves gold chariots and went to paradise, toasting to the misery of the buyers that they suckered in...



### **All that glitters is not gold.**

📅 January 18, 2025 at 6:59 pm 🔗 Permalink

Thank you for highlighting these critical issues, Sean.

It's clear that DonutNV in its current state, while boasting a decade of existence, is only still a budding brand who did not become established until franchising began.

Their focus seems to be on maintaining an image of success and "skipping ahead" rather than on humble, slow and steady growth that truly benefits everyone

involved.

Tragically, it appears that the egos of the executive leadership have negatively impacted and devastated many lives.

Notably, favoritism seems to exist towards franchise owners who don't question the status quo and obediently "stay in line", while proactive ones who notice discrepancies, ask questions or request aid too often are treated as adversaries.

It's not surprising that many of the favored have commented positively about the company and the Gingolds themselves. However, they appear to be fortunate enough to overlook the main point of your articles. While it's true that DonutNV can certainly be successful, success only occurs under very specific circumstances, including but not limited to location, age/energy of the owners, whether the owner has other successful franchises, etc.

The crux of the matter is that DonutNV is being marketed and sold using false promises and exaggerated numbers which is negatively impacting good-hearted, hard working people.

I believe an investigation into Scott Gingold's business practices is also necessary (particularly after his sudden removal from the presidency, which was quietly swept under the rug) as his leadership and ethics appear to have played a significant role in many of DonutNV's failures.

Additionally, the abrupt departures of many dedicated corporate team members last year raise concerns.

Multiple dismissive comments from Amanda regarding the above served as a transparent attempt to undermine their contributions and besmirch their character while again, sweeping it all under the rug.

All of the above, coupled with the Gingold's boastful portrayal of a lavish lifestyle while their own franchisees and employees struggle, certainly seem to validate distrust and the investigations happening now.

It's my genuine, yet cautiously optimistic hope that these articles and comments will prompt them to reflect on their actions, take responsibility, seek genuine solutions,

and stop deflecting blame for the fallout from their lack of integrity and greed.



**unhappyzee**

January 19, 2025 at 1:39 pm [Permalink](#)

Thank you for sharing, All that Glitters...



**unhappyzee**

January 19, 2025 at 1:48 pm [Permalink](#)

Thank you for sharing, DonutFairyTale.

Your story contains a lot of lessons that can be gleaned from this unfortunate situation.

Franchisors who set up meaningful (internal) community forums where free speech and sharing is encouraged and challenges are acknowledged and addressed with a team approach do not, generally, prompt participation on this site.

If franchisors object to having internal issues discussed publicly, they should create a system whereby franchisees can express their needs and challenges internally without fear of repercussion.

I have contacted the DonutNV to offer ideas and support on how to do this but have not yet heard back.

I don't think it's too late to correct course and mitigate mistakes, but the window for doing so is not indefinite.

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## **Exhibit 2**



# Unhappy Franchisee

No-Nonsense Hype-Free Franchise Issues & Discussion Site

**FRANCHISE FASTLANE**  
IFPG International Franchise Professionals Group

**Too Good to be True???**

**Franchise Disclosure Document**  
DonutNV  
As a "DonutNV" Franchisee, you will operate an interactive mobile food trucking business, specializing in preparing, cooking, and serving your clients using only other food items and grocery ingredients, for a controlled mobile kitchen as listed on the Franchise Disclosure Document, and other items as it increasing the location, under the trade name "DonutNV".  
The total gross revenue to be reported for a DonutNV Franchise is \$100,000 to \$1,000,000.  
**? ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS ?**  
This section of the Franchise Disclosure Document contains information about the financial performance of DonutNV Franchises. It includes information about the financial performance of DonutNV Franchises, including the Adjusted Net Profit, and other financial information.  
DonutNV Franchise is a complete turnkey. The information in this disclosure document can help you make a more informed decision. More information on Franchising, such as "Franchise 500" and "Franchise 100" can help you understand how to use the Franchise Disclosure Document, is available from the National Trade Organization. You can contact the FTC at 1-877-FTIC-1088 or by visiting the FTC at 800 Pennsylvania Avenue, NW, Washington, D.C. 20548. You can also visit the FTC's home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on Franchising.  
There may also be fees for Franchising in your state. Ask your state agency about fees.  
Issued on April 28, 2024, as amended November 14, 2024.  
Item 19-10-100

**84% NET PROFIT MARGIN!**  
**ADJUSTED NET PROFIT \$169,799**  
**17 TO 276+ TERRITORIES AWARDED**

- ALEX GINGOLD
- AMANDA GINGOLD
- DONUTNV FRANCHISE
- FRANCHISE FASTLANE
- FRANCHISE SIDEKICK
- FRANCHISE CHOICE
- FRANNET
- FRANSERVE
- IFPG
- JAKE HAMBURGER
- PETE DOSIK
- SPOTLIGHT 1
- THE PERFECT FRANCHISE

## DonutNV Franchise Earnings Claims:

# Accurate? Or Intentionally Deceptive?

December 27, 2024 unhappyzee

*DonutNV Franchisees: Here are the earnings representations that DonutNV, Franchise Fastlane, Franchise Sidekick, and franchise consultants / brokers across the country are providing to prospective franchise investors. What do you think? Do these numbers seem accurate and reasonable based on your own experience? What do you think prospective franchisees (and their franchise advisors) should know before making this life-changing investment?* by Sean Kelly

Also Read:

[Is the DonutNV Franchise Too Good to be True?](#)

[Franchise Brokers: Have ZERO DonutNV Franchise Owners Failed?](#)

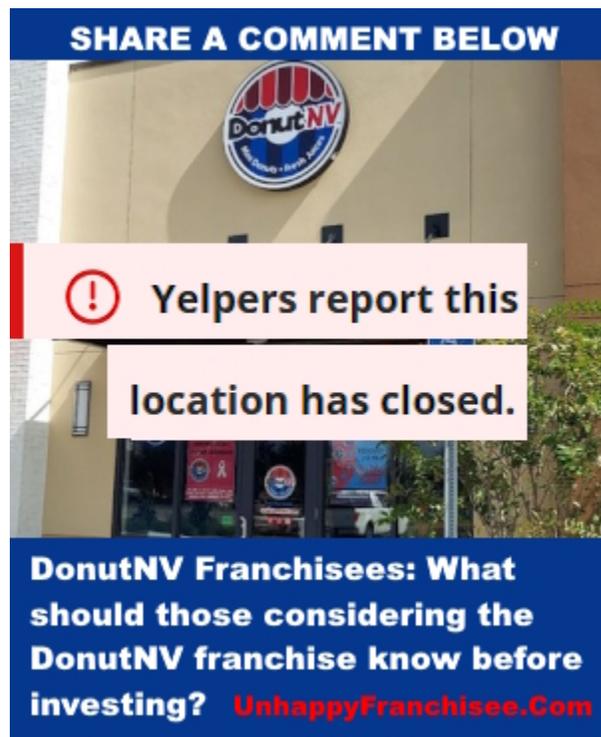
Prospective DonutNV franchise investors are making significant and life-changing decisions that could affect not only their futures, but the future of their family members, children and spouses for years to come.

Current & former DonutNV franchise owners and employees are invited to confirm whether the information they are being provided is consistent with their experience... or may be setting unrealistic expectations.

When it comes to hundreds of thousands of dollars and a ten-year contract, unrealistic expectations can result in devastating outcomes.

*Please share your candid & confidential opinions and information with an anonymous comment below, or by emailing the author at [UnhappyFranchisee\[at\]Gmail\[dot\]com](mailto:UnhappyFranchisee[at]Gmail[dot]com).*

## DonutNV Franchisees: Are You Averaging 78.5% Net Profit (or Higher) on your



## Events?

The first two tables in Item 19 FINANCIAL PERFORMANCE REPRESENTATIONS included in the [2024 DonutNV Franchise Disclosure Document \(FDD\)](#) include sales and profitability numbers reported for *a single trailer operated by an affiliate since 2018 and includes no labor costs.*



Table 1: Adjusted Net Profit Statement for 2023 – One Company Unit

The following table shows certain sales and expense information for the one DonutNV

trailer operated by our affiliate in 2023

	2023	% of Sales
<b>Sales</b>		
Event Revenue	\$159,639	
Travel Fees	\$8,275	
Gratuities	\$1,895	
<b>Gross Sales</b>	<b>\$169,809</b>	
<b>Select Expenses</b>		
Food Cost - Supplies	\$18,031	10.6%
Fuel	\$2,827	1.7%
Merchant Processing	\$2,392	1.4%
<b>Total Select Expenses</b>	<b>\$23,250</b>	<b>13.7%</b>
<b>Adjusted Net Profit</b>	<b>\$146,559</b>	<b>86.3%</b>
<b>Franchise Fees</b>		
Royalty	\$7,800	4.6%
Brand Fund	\$2,400	1.4%
Tech Fee	\$3,000	1.8%
<b>Total Franchise Fees</b>	<b>\$13,200</b>	<b>7.8%</b>
<b>Adjusted Net Profit after Franchise Fees</b>	<b>\$133,359</b>	<b>78.5%</b>

## DonutNV Franchisees: Do You Generate Average Per-Event Sales of \$1,930 – Or Higher?

“

**Table 2: Events Conducted in 2023 – One Company Unit**

The following table shows the number of events conducted by the affiliate-operated trailer in 2023, and sales per event.

Number of Events	88
Average Sales Per Event	\$1,930
# (%) Above Average	41 (47%)
Median Sales Per Event	\$1,581
Lowest Sales Event	\$268
Highest Sales Event	\$5,280

## DonutNV Franchisees: How Do Your Yearly Revenues Compare?

Despite claiming to have 300 franchises sold, [DonutNV Franchise Disclosure Document \(FDD\)](#) dated April 29, 2024 and amended November 16, 2024 includes sales data for only 15 trailers operated in 2023:

“

**Table 3: Sales By Franchisees in 2023**

This table shows certain sales information by DonutNV franchisees in 2023.

Franchisee/Unit	2023
#1	\$230,260
#2	\$36,776
#3	\$61,347
#4	\$77,300
#5	\$81,118
#6	\$83,836
#7	\$91,857
#8	\$113,700
#9*	\$142,251
#10**	\$85,996
#11**	\$85,996
#12	\$193,000
#13	\$80,250
#14	\$31,339
#15***	\$200,871
Average Sales	\$106,393
# (%) Above Avg	5 (33%)
Median	\$85,995
Lowest	\$31,339
Highest	\$230,260

“

\* This franchisee began operating a second trailer on November 1, 2023.

\*\* This franchise operated two trailers for all of 2023. They did not report separate sales data for

the trailers, so for Table 3 we divided sales equally between their two trailers.

\*\*\* This franchisee began operating a second trailer on October 20, 2023.

**Franchisor's Notes to Tables 1 and 2:**

1. There was one DonutNV trailer operated by our affiliate during 2023.
2. The following material financial and operational characteristics of the business described in Table 1 may reasonably be anticipated to differ materially from future franchise outlets: The trailer operates in Pennsylvania. It began operating under the "DonutNV" brand name in 2018. The trailer is primarily operated by a manager (rather than being owner-operated). It does not have a specific territorial boundary. It does not have any expense associated with a commissary (whereas your state or local laws may require you to have access to a commercial kitchen commissary).
3. In Table 1 and Table 2, "Sales" means total of all revenue in a period, not including discounts, taxes, voids, or refunds. It includes travel fees and gratuities (other than gratuities paid in cash).
4. "Select Expenses" means only the specific expenses listed. Table 1 does not include all costs you would incur to operate a DonutNV business, such as costs of marketing, maintenance, insurance, or professional fees (such as legal or bookkeeping). Labor cost is omitted from expenses because our affiliate's trailer was primarily operated by a person who was paid a percentage of operating profits.
5. "Food Cost - Supplies" is the cost of all food inventory and related supplies, including donut mix and bags. Our affiliate orders from the same vendors and pays the same prices as franchisees, except that for some events it used supplies from the DonutNV retail store in Pottstown, Pennsylvania. For those events, we estimated the cost of those supplies as if the trailer business had purchased them according to the normal procedure.
6. "Adjusted Net Profit" is Gross Sales less the Select Expenses. It also does not include interest, taxes, depreciation, or amortization.
7. "Franchise Fees" are the Royalty Fee, Brand Fund Contribution, and Technology

Fee that the business would have paid if it had signed the form of franchise agreement attached to this disclosure document and was in its first year of operation (reflecting a Royalty Fee of \$150 per week).

8. "Adjusted Net Profit after Franchise Fees" is Adjusted Net Profit minus Total Franchise Fees.

## “ Franchisor's Notes to Table 3:

DonutNV FDD 2024

1. In 2023, there were 16 DonutNV trailers operated by franchisees. One franchisee temporarily closed their trailer during 2023 and therefore was not included in Table 3.

“ 2. "Sales" means total of all sales in a period as reported to us by the franchisees.

“ Some outlets have sold and earned these amounts. Your individual results may differ. There is no assurance that you'll sell or earn as much.  
Written substantiation of the information contained in this Item 19 will be made available to prospective franchisees upon reasonable request

# Do You Believe the DonutNV Earnings Claims are Accurate & Honestly Presented?

Are you familiar with the DonutNV franchise opportunity? With Alex & Amanda Gingold?

Are you familiar with Franchise Fastlane? With Jake Hamburger? Jennifer Cain? With Mike Flowers?

Which franchise consultant / broker introduced you to this exciting opportunity?

Please leave a comment below or email us, in confidence, at  
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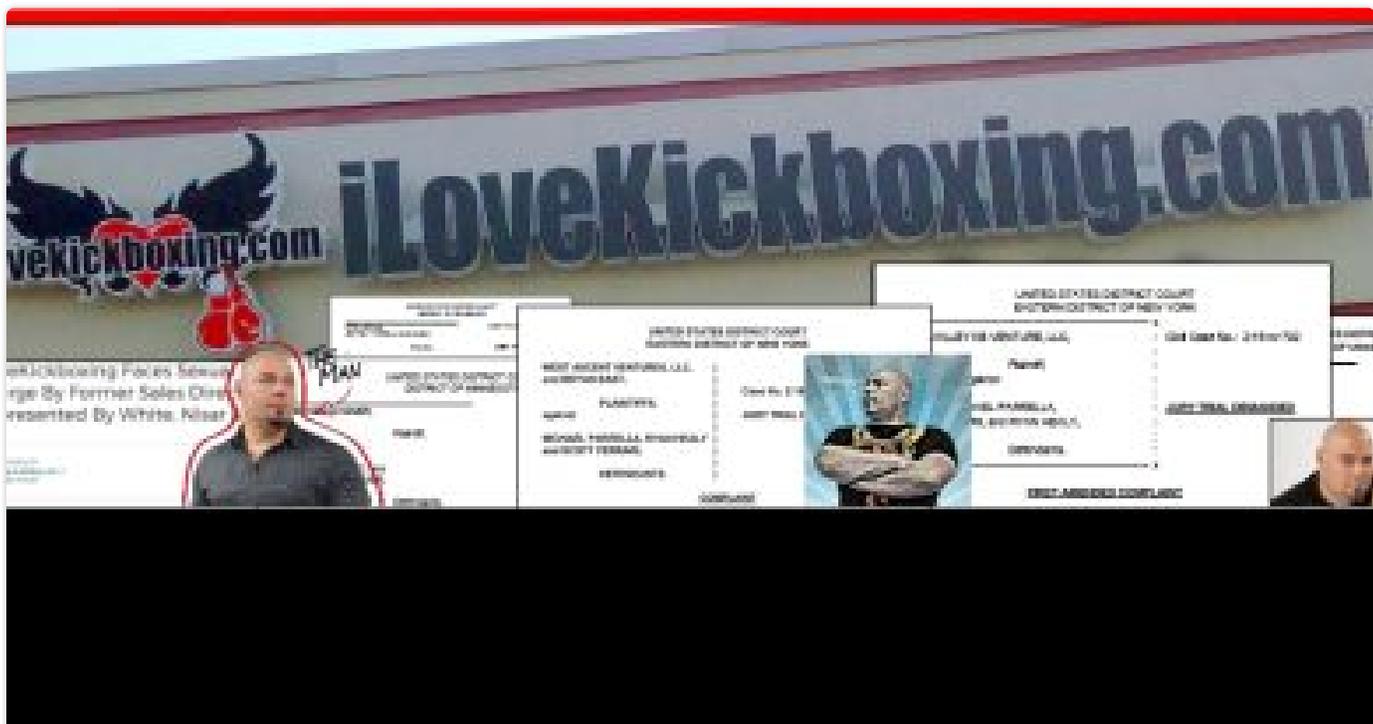
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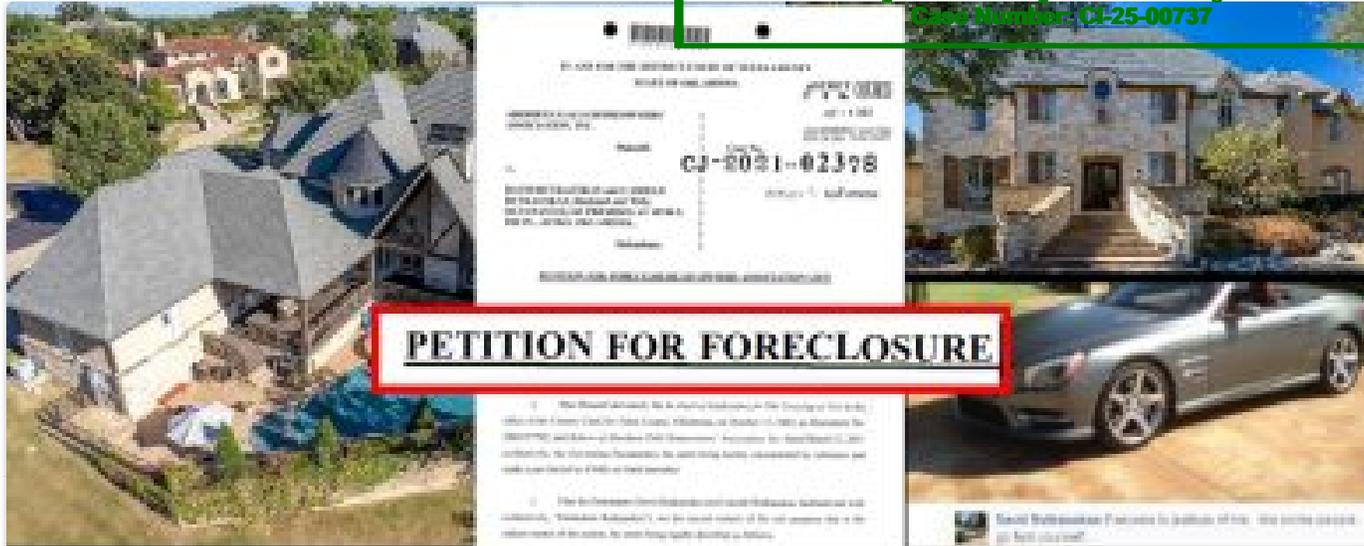
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