



Home Office • 100 Erie Insurance Place • Erie, Pennsylvania 16530
717.795.8200 • Toll Free 800.382.1304 • Fax 800.545.0408 • erieinsurance.com

March 21, 2025

CERTIFIED MAIL

Sean Kelly
2221 New Holland Pike
Lancaster, PA 17601 - 5419

Re: ERIE Claim No: A00006570655
ERIE Insured: Sean Kelly
ERIE Policy No: Q500603665
Claimant: Donutnv Franchising Inc.
Date of Loss: February 03, 2025

DISCLAIMER

Dear Mr. Kelly:

We are in receipt of the Civil Action Complaint filed against Relentless Inc. t/d/b/a Unhappy Franchisee and you, individually, by DonutNV Franchising, Inc. in the Court of Common Pleas of Lancaster County, Docket No. 25-00737.

The Complaint states that through the website known as Unhappy Franchisee, 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."

The complaint alleges that "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." It alleges that on account of Defendants' wrongful scheme, Plaintiff brings claims for tortious interference and defamation *per se*. The complaint alleges that Kelly is personally liable for all tortious acts of his company, Relentless, pursuant to Pennsylvania's participation theory.

The complaint alleges that through the Website, Kelly and Relentless publish articles and/or blogs relating to the franchise industry. It alleges 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 payments as a *quid pro quo* to remove the posts. It alleges that this "smacks of bribery, extortion and blackmail." In paragraph 22 of the complaint, Plaintiff lists eight "examples" from a recent post on the Website

and reference their Exhibit 1:

- 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 Donut NV 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 of 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*.

The complaint alleges that other posts of Defendants “are in the same false vein, including false accusations that DonutNV is somehow filing deceptive documents with the Federal Trade Commission” and reference their Exhibit 2.

The complaint alleges that when requested to remove the false and misleading statements and information from the Website, Defendants began demanding payment to do so and otherwise refused. It alleges that 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. It alleges that 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. It alleges that 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. It alleges that the false and misleading statements and information on the Website are causing severe harm to DonutNV’s reputation in the industry and causing a concomitant loss of goodwill that the business and its owners had carefully built up over the years. It alleges that Defendants’ actions and inactions are the direct and proximate cause of DonutNV’s humiliation, reputational damage and economic loss. It alleges that 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.

In Count I – Tortious Interference, DonutNV alleges that 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. DonutNV also alleges that “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.” ¶34. It alleges that DonutNV suffered harm and damage as a direct and proximate result of Defendants’ wrongful actions. It alleges that 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.

In Count II – Defamation *Per Se*, DonutNV alleges that “Defendants published knowingly false statements and information about DonutNV to third parties.” ¶40. It alleges that the subject false statements and information were specifically directed at, and thus applied, to DonutNV. It alleges that DonutNV suffered special harm from Defendants’ publication of the false statements and information. It alleges that “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.” ¶47. It alleges that Defendants failed to properly confirm the truthfulness of the statements and information they published about DonutNV. It alleges that 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.

DonutNV seeks judgment against Defendants, jointly and severally, along with an award of compensatory, consequential and punitive damages in an amount in excess of \$50,000 and injunctive and such other relief as the Court deems appropriate, including pre-judgment interest, costs and attorney’s fees.

Based on our review of the ErieSecure Home Policy (ESHP or Policy), the Policy does not cover the claims set forth in the DonutNV complaint. Therefore, ERIE is unable to provide coverage or a defense to you in this matter.

We wish to call your attention to certain portions of the ESHP that may be applicable to this loss. We refer you to page 17 of ErieSecure Home Policy (ESHPA) (Ed. 10/17) Policy #Q500603665, where it reads:

OUR PROMISE – Personal Injury Liability Coverage

“**We**” will pay all sums up to the amount shown on the “**Declarations**” which “**anyone we protect**” becomes legally obligated to pay as damages because of “**personal injury**” caused by an offense committed during the policy period. “**We**” will pay for only “**personal injury**” covered by this policy.

“**We**” may investigate or settle any claim or suit for damages against “**anyone we protect,**” at “**our**” expense. If “**anyone we protect**” is sued for damages because of “**personal injury**” covered by this policy, “**we**” will provide a defense with a lawyer “**we**” choose, even if the allegations are not true. “**We**” are not obligated to pay any claim or judgment or defend any suit if “**we**” have already used up the amount of insurance by paying a judgment or settlement.

...

We next turn your attention to pages 17-19 of the Policy, which contains the following relevant exclusions:

EXCLUSIONS – What We Do Not Cover

...

Personal Injury Liability Coverage

...

“We” do not cover under Bodily Injury Liability Coverage, Property Damage Liability Coverage, Personal Injury Liability Coverage and Medical Payments To Others Coverage:

1. **“bodily injury,” “property damage” or “personal injury”** expected or intended by **“anyone we protect”** even if:
 - a. the degree, kind or quality of the injury or damage is different than what was expected or intended; or
 - b. a different person, entity, real or personal property sustained the injury or damage than was expected or intended.

“We” do cover reasonable acts committed to protect persons and property.

2. **“bodily injury,” “property damage” or “personal injury”** arising out of **“business”** pursuits of **“anyone we protect.”**

“We” do cover:

- a. activities not related to any **“business;”**
- b. **“business”** pursuits of salespersons, collectors, messengers and clerical office workers employed by others. **“We”** do not cover installation, demonstration and servicing operations;
- c. **“business”** pursuits of educators while employed by others as educators, and while acting in the capacity of an educator, including corporal punishment of pupils;
- d. occasional **“business”** activities of **“anyone we protect.”** These include, but are not limited to, babysitting, caddying, lawn care, newspaper delivery and other similar activities. **“We”** do not cover regular **“business”** activities or **“business”** activities for which a person is required to be licensed by the state; and

...

12. punitive or exemplary damages and related defense costs.

...

We next turn your attention to page 20 of the Policy, which contains the following relevant limitation:

“We” do not cover under Bodily Injury Liability Coverage, Property Damage Liability Coverage or Personal Injury Liability Coverage:

...

11. Suits for libel, slander or defamation of character made against **“anyone we protect”** if the publication or statement:
 - a. took place before the effective date of this insurance or
 - b. was knowingly untrue.

...

We next turn your attention to pages 2-3 of the Policy, which contains the following relevant definitions:

...

“Bodily injury” means physical harm, sickness or disease, including mental anguish or resulting death, but does not include:

1. any communicable disease or condition transmitted by **“anyone we protect”** to any other person through a parasite, virus, bacteria or any other organism.
2. the exposure to or transmission of any disease, parasite, virus, bacteria or other organism by **“anyone we protect”** to any other person.

“Business” means any full-time, part-time or occasional activity engaged in as a trade, profession or occupation, including farming.

...

“Personal injury” means injury arising out of:

1. libel, slander or defamation of character;
2. false arrest, wrongful detention or imprisonment, malicious prosecution;
3. discrimination based on race, religion, or any other protected class;
4. wrongful entry or eviction, invasion of privacy;
5. electronic aggression, including cyberbullying, that occurs through technology or social media by **“anyone we protect”** under the age of 18; or
6. humiliation caused by any of these.

“Property damage” means:

1. physical injury to or destruction of tangible property, including loss of its use. All such loss of use will be deemed to occur at the time of the physical injury that caused it; and
2. loss of use of tangible property which is not physically injured or destroyed. All such loss of use will be deemed to occur at the time of the “**occurrence**.”

...

“You”, “your” or “Named Insured” means the person(s) named on the “Declarations” under “Named Insured.” ...

The Policy does not provide coverage for the claims asserted and relief requested in the DonutNV action. In determining whether the allegations trigger the Erie’s duty to defend, the complaint’s allegations must be taken as true. We do not comment on whether the allegations are actually true. Based on comparing the complaint’s allegations against the Policy, there is no coverage.

The Policy provides coverage only for Bodily Injury Liability, Property Damage Liability, and Personal Injury Liability, subject to the Policy’s conditions, exclusions and limitations. DonutNV’s allegations of defamation describe “personal injury” as defined by the Policy in the form of libel, slander or defamation of character.

DonutNV’s claim of tortious interference is not “bodily injury,” “property damage,” or “personal injury,” within the meaning of the Policy and therefore, the claim of tortious interference is not covered by the Policy. Further, DonutNV’s complaint alleges that Defendants specifically intended to harm DonutNV’s existing contractual relationships, or to prevent prospective contractual relationships from occurring. Coverage is excluded for bodily injury, property damage or personal injury expected or intended by anyone we protect under the expected or intended injury exclusion.

DonutNV’s claim of defamation is excluded from coverage by the expected or intended injury exclusion and the “knowingly untrue” limitation. The complaint alleges that Defendants published knowingly false statements and information about DonutNV to third parties, and that Defendants have knowingly published false statements and information about DonutNV that adversely affects DonutNV’s in its business. These allegations and the allegation that Defendants specifically intended to harm DonutNV’s contractual relationships, establish that Defendants intended to harm DonutNV. Further, coverage does not apply to suits for defamation if the publication or statement was knowingly untrue. Here, because DonutNV alleges that the publication or statement was made while knowingly false, there is no coverage because of the policy exclusions. Therefore, ERIE declines to provide a coverage or a defense in the DonutNV matter.

DonutNV’s requested relief in the form of injunctive relief is not covered by the Policy. Coverage for punitive damages is specifically excluded by the Policy. Although ERIE concludes that the expected or intended injury exclusions and the knowingly untrue exclusion for suits for libel, slander or defamation of character are the primary reasons that coverage does not apply to the DonutNV action, other policy exclusions may also eliminate coverage, including the exclusion for personal injury arising out of business pursuits of anyone we protect.

This letter is not intended to be exhaustive. ERIE’s failure to expressly mention a term, condition, exclusion or defense under the insurance policy does not constitute a waiver of any rights, which ERIE may have or later

assert under the Policy.

We caution you that any coverage decisions can only be based upon the documents which have been provided for our review. If you have any additional relevant documents in your possession or if you receive any additional relevant documents, we ask that you submit them to us at your earliest convenience in order for us to make a determination under the Policy.

You should contact us if you have any questions about this letter.

Sincerely,

Nicole R Gehret
Liability Specialist
Phone: 866-345-7730
Email: Nicole.Gehret@ERieInsurance.com
Hours: 8:00 a.m. to 4:30 p.m. EST Mon - Fri

cc: Community Insurance Services Inc



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2221 New Holland Pike
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Claimant: Donutnv Franchising Inc.
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The complaint alleges that "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." It alleges that on account of Defendants' wrongful scheme, Plaintiff brings claims for tortious interference and defamation *per se*. The complaint alleges that Kelly is personally liable for all tortious acts of his company, Relentless, pursuant to Pennsylvania's participation theory.

The complaint alleges that through the Website, Kelly and Relentless publish articles and/or blogs relating to the franchise industry. It alleges 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 payments as a *quid pro quo* to remove the posts. It alleges that this "smacks of bribery, extortion and blackmail." In paragraph 22 of the complaint, Plaintiff lists eight "examples" from a recent post on the Website

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provides. DonutNV also alleges that “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.” ¶34. It alleges that DonutNV suffered harm and damage as a direct and proximate result of Defendants’ wrongful actions. It alleges that 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.

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DonutNV seeks judgment against Defendants, jointly and severally, along with an award of compensatory, consequential and punitive damages in an amount in excess of \$50,000 and injunctive and such other relief as the Court deems appropriate, including pre-judgment interest, costs and attorney’s fees.

Based on our review of the ErieSecure Home Policy (ESHP or Policy), the Policy does not cover the claims set forth in the DonutNV complaint. Therefore, ERIE is unable to provide coverage or a defense to you in this matter.

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“**We**” may investigate or settle any claim or suit for damages against “**anyone we protect,**” at “**our**” expense. If “**anyone we protect**” is sued for damages because of “**personal injury**” covered by this policy, “**we**” will provide a defense with a lawyer “**we**” choose, even if the allegations are not true. “**We**” are not obligated to pay any claim or judgment or defend any suit if “**we**” have already used up the amount of insurance by paying a judgment or settlement.

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 - a. the degree, kind or quality of the injury or damage is different than what was expected or intended; or
 - b. a different person, entity, real or personal property sustained the injury or damage than was expected or intended.

“We” do cover reasonable acts committed to protect persons and property.

2. **“bodily injury,” “property damage” or “personal injury”** arising out of **“business”** pursuits of **“anyone we protect.”**

“We” do cover:

- a. activities not related to any **“business;”**
- b. **“business”** pursuits of salespersons, collectors, messengers and clerical office workers employed by others. **“We”** do not cover installation, demonstration and servicing operations;
- c. **“business”** pursuits of educators while employed by others as educators, and while acting in the capacity of an educator, including corporal punishment of pupils;
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2. the exposure to or transmission of any disease, parasite, virus, bacteria or other organism by **“anyone we protect”** to any other person.

“Business” means any full-time, part-time or occasional activity engaged in as a trade, profession or occupation, including farming.

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“Personal injury” means injury arising out of:

1. libel, slander or defamation of character;
2. false arrest, wrongful detention or imprisonment, malicious prosecution;
3. discrimination based on race, religion, or any other protected class;
4. wrongful entry or eviction, invasion of privacy;
5. electronic aggression, including cyberbullying, that occurs through technology or social media by **“anyone we protect”** under the age of 18; or
6. humiliation caused by any of these.

“Property damage” means:

1. physical injury to or destruction of tangible property, including loss of its use. All such loss of use will be deemed to occur at the time of the physical injury that caused it; and
2. loss of use of tangible property which is not physically injured or destroyed. All such loss of use will be deemed to occur at the time of the “**occurrence**.”

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“You”, “your” or “Named Insured” means the person(s) named on the “Declarations” under “Named Insured.” ...

The Policy does not provide coverage for the claims asserted and relief requested in the DonutNV action. In determining whether the allegations trigger the Erie’s duty to defend, the complaint’s allegations must be taken as true. We do not comment on whether the allegations are actually true. Based on comparing the complaint’s allegations against the Policy, there is no coverage.

The Policy provides coverage only for Bodily Injury Liability, Property Damage Liability, and Personal Injury Liability, subject to the Policy’s conditions, exclusions and limitations. DonutNV’s allegations of defamation describe “personal injury” as defined by the Policy in the form of libel, slander or defamation of character.

DonutNV’s claim of tortious interference is not “bodily injury,” “property damage,” or “personal injury,” within the meaning of the Policy and therefore, the claim of tortious interference is not covered by the Policy. Further, DonutNV’s complaint alleges that Defendants specifically intended to harm DonutNV’s existing contractual relationships, or to prevent prospective contractual relationships from occurring. Coverage is excluded for bodily injury, property damage or personal injury expected or intended by anyone we protect under the expected or intended injury exclusion.

DonutNV’s claim of defamation is excluded from coverage by the expected or intended injury exclusion and the “knowingly untrue” limitation. The complaint alleges that Defendants published knowingly false statements and information about DonutNV to third parties, and that Defendants have knowingly published false statements and information about DonutNV that adversely affects DonutNV’s in its business. These allegations and the allegation that Defendants specifically intended to harm DonutNV’s contractual relationships, establish that Defendants intended to harm DonutNV. Further, coverage does not apply to suits for defamation if the publication or statement was knowingly untrue. Here, because DonutNV alleges that the publication or statement was made while knowingly false, there is no coverage because of the policy exclusions. Therefore, ERIE declines to provide a coverage or a defense in the DonutNV matter.

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This letter is not intended to be exhaustive. ERIE’s failure to expressly mention a term, condition, exclusion or defense under the insurance policy does not constitute a waiver of any rights, which ERIE may have or later

assert under the Policy.

We caution you that any coverage decisions can only be based upon the documents which have been provided for our review. If you have any additional relevant documents in your possession or if you receive any additional relevant documents, we ask that you submit them to us at your earliest convenience in order for us to make a determination under the Policy.

You should contact us if you have any questions about this letter.

Sincerely,

Nicole R Gehret
Liability Specialist
Phone: 866-345-7730
Email: Nicole.Gehret@ERieInsurance.com
Hours: 8:00 a.m. to 4:30 p.m. EST Mon - Fri

cc: Community Insurance Services Inc

COMMUNITY INSURANCE SERVICES INC
684 W MAIN ST
NEW HOLLAND, PA 17557



Home Office • 100 Erie Insurance Place • Erie, Pennsylvania 16530
717.795.8200 • Toll Free 800.382.1304 • Fax 800.545.0408 • erieinsurance.com

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- (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."

The complaint alleges that "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." It alleges that on account of Defendants' wrongful scheme, Plaintiff brings claims for tortious interference and defamation *per se*. The complaint alleges that Kelly is personally liable for all tortious acts of his company, Relentless, pursuant to Pennsylvania's participation theory.

The complaint alleges that through the Website, Kelly and Relentless publish articles and/or blogs relating to the franchise industry. It alleges 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 payments as a *quid pro quo* to remove the posts. It alleges that this "smacks of bribery, extortion and blackmail." In paragraph 22 of the complaint, Plaintiff lists eight "examples" from a recent post on the Website

and reference their Exhibit 1:

- 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 Donut NV 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 of 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*.

The complaint alleges that other posts of Defendants “are in the same false vein, including false accusations that DonutNV is somehow filing deceptive documents with the Federal Trade Commission” and reference their Exhibit 2.

The complaint alleges that when requested to remove the false and misleading statements and information from the Website, Defendants began demanding payment to do so and otherwise refused. It alleges that 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. It alleges that 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. It alleges that 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. It alleges that the false and misleading statements and information on the Website are causing severe harm to DonutNV’s reputation in the industry and causing a concomitant loss of goodwill that the business and its owners had carefully built up over the years. It alleges that Defendants’ actions and inactions are the direct and proximate cause of DonutNV’s humiliation, reputational damage and economic loss. It alleges that 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.

In Count I – Tortious Interference, DonutNV alleges that 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. DonutNV also alleges that “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.” ¶34. It alleges that DonutNV suffered harm and damage as a direct and proximate result of Defendants’ wrongful actions. It alleges that 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.

In Count II – Defamation *Per Se*, DonutNV alleges that “Defendants published knowingly false statements and information about DonutNV to third parties.” ¶40. It alleges that the subject false statements and information were specifically directed at, and thus applied, to DonutNV. It alleges that DonutNV suffered special harm from Defendants’ publication of the false statements and information. It alleges that “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.” ¶47. It alleges that Defendants failed to properly confirm the truthfulness of the statements and information they published about DonutNV. It alleges that 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.

DonutNV seeks judgment against Defendants, jointly and severally, along with an award of compensatory, consequential and punitive damages in an amount in excess of \$50,000 and injunctive and such other relief as the Court deems appropriate, including pre-judgment interest, costs and attorney’s fees.

Based on our review of the ErieSecure Home Policy (ESHP or Policy), the Policy does not cover the claims set forth in the DonutNV complaint. Therefore, ERIE is unable to provide coverage or a defense to you in this matter.

We wish to call your attention to certain portions of the ESHP that may be applicable to this loss. We refer you to page 17 of ErieSecure Home Policy (ESHPA) (Ed. 10/17) Policy #Q500603665, where it reads:

OUR PROMISE – Personal Injury Liability Coverage

“**We**” will pay all sums up to the amount shown on the “**Declarations**” which “**anyone we protect**” becomes legally obligated to pay as damages because of “**personal injury**” caused by an offense committed during the policy period. “**We**” will pay for only “**personal injury**” covered by this policy.

“**We**” may investigate or settle any claim or suit for damages against “**anyone we protect,**” at “**our**” expense. If “**anyone we protect**” is sued for damages because of “**personal injury**” covered by this policy, “**we**” will provide a defense with a lawyer “**we**” choose, even if the allegations are not true. “**We**” are not obligated to pay any claim or judgment or defend any suit if “**we**” have already used up the amount of insurance by paying a judgment or settlement.

...

We next turn your attention to pages 17-19 of the Policy, which contains the following relevant exclusions:

EXCLUSIONS – What We Do Not Cover

...

Personal Injury Liability Coverage

...

“We” do not cover under Bodily Injury Liability Coverage, Property Damage Liability Coverage, Personal Injury Liability Coverage and Medical Payments To Others Coverage:

1. **“bodily injury,” “property damage” or “personal injury”** expected or intended by **“anyone we protect”** even if:
 - a. the degree, kind or quality of the injury or damage is different than what was expected or intended; or
 - b. a different person, entity, real or personal property sustained the injury or damage than was expected or intended.

“We” do cover reasonable acts committed to protect persons and property.

2. **“bodily injury,” “property damage” or “personal injury”** arising out of **“business”** pursuits of **“anyone we protect.”**

“We” do cover:

- a. activities not related to any **“business;”**
- b. **“business”** pursuits of salespersons, collectors, messengers and clerical office workers employed by others. **“We”** do not cover installation, demonstration and servicing operations;
- c. **“business”** pursuits of educators while employed by others as educators, and while acting in the capacity of an educator, including corporal punishment of pupils;
- d. occasional **“business”** activities of **“anyone we protect.”** These include, but are not limited to, babysitting, caddying, lawn care, newspaper delivery and other similar activities. **“We”** do not cover regular **“business”** activities or **“business”** activities for which a person is required to be licensed by the state; and

...

12. punitive or exemplary damages and related defense costs.

...

We next turn your attention to page 20 of the Policy, which contains the following relevant limitation:

“We” do not cover under Bodily Injury Liability Coverage, Property Damage Liability Coverage or Personal Injury Liability Coverage:

...

11. Suits for libel, slander or defamation of character made against **“anyone we protect”** if the publication or statement:
 - a. took place before the effective date of this insurance or
 - b. was knowingly untrue.

...

We next turn your attention to pages 2-3 of the Policy, which contains the following relevant definitions:

...

“Bodily injury” means physical harm, sickness or disease, including mental anguish or resulting death, but does not include:

1. any communicable disease or condition transmitted by **“anyone we protect”** to any other person through a parasite, virus, bacteria or any other organism.
2. the exposure to or transmission of any disease, parasite, virus, bacteria or other organism by **“anyone we protect”** to any other person.

“Business” means any full-time, part-time or occasional activity engaged in as a trade, profession or occupation, including farming.

...

“Personal injury” means injury arising out of:

1. libel, slander or defamation of character;
2. false arrest, wrongful detention or imprisonment, malicious prosecution;
3. discrimination based on race, religion, or any other protected class;
4. wrongful entry or eviction, invasion of privacy;
5. electronic aggression, including cyberbullying, that occurs through technology or social media by **“anyone we protect”** under the age of 18; or
6. humiliation caused by any of these.

“Property damage” means:

1. physical injury to or destruction of tangible property, including loss of its use. All such loss of use will be deemed to occur at the time of the physical injury that caused it; and
2. loss of use of tangible property which is not physically injured or destroyed. All such loss of use will be deemed to occur at the time of the “**occurrence**.”

...

“You”, “your” or “Named Insured” means the person(s) named on the “Declarations” under “Named Insured.” ...

The Policy does not provide coverage for the claims asserted and relief requested in the DonutNV action. In determining whether the allegations trigger the Erie’s duty to defend, the complaint’s allegations must be taken as true. We do not comment on whether the allegations are actually true. Based on comparing the complaint’s allegations against the Policy, there is no coverage.

The Policy provides coverage only for Bodily Injury Liability, Property Damage Liability, and Personal Injury Liability, subject to the Policy’s conditions, exclusions and limitations. DonutNV’s allegations of defamation describe “personal injury” as defined by the Policy in the form of libel, slander or defamation of character.

DonutNV’s claim of tortious interference is not “bodily injury,” “property damage,” or “personal injury,” within the meaning of the Policy and therefore, the claim of tortious interference is not covered by the Policy. Further, DonutNV’s complaint alleges that Defendants specifically intended to harm DonutNV’s existing contractual relationships, or to prevent prospective contractual relationships from occurring. Coverage is excluded for bodily injury, property damage or personal injury expected or intended by anyone we protect under the expected or intended injury exclusion.

DonutNV’s claim of defamation is excluded from coverage by the expected or intended injury exclusion and the “knowingly untrue” limitation. The complaint alleges that Defendants published knowingly false statements and information about DonutNV to third parties, and that Defendants have knowingly published false statements and information about DonutNV that adversely affects DonutNV’s in its business. These allegations and the allegation that Defendants specifically intended to harm DonutNV’s contractual relationships, establish that Defendants intended to harm DonutNV. Further, coverage does not apply to suits for defamation if the publication or statement was knowingly untrue. Here, because DonutNV alleges that the publication or statement was made while knowingly false, there is no coverage because of the policy exclusions. Therefore, ERIE declines to provide a coverage or a defense in the DonutNV matter.

DonutNV’s requested relief in the form of injunctive relief is not covered by the Policy. Coverage for punitive damages is specifically excluded by the Policy. Although ERIE concludes that the expected or intended injury exclusions and the knowingly untrue exclusion for suits for libel, slander or defamation of character are the primary reasons that coverage does not apply to the DonutNV action, other policy exclusions may also eliminate coverage, including the exclusion for personal injury arising out of business pursuits of anyone we protect.

This letter is not intended to be exhaustive. ERIE’s failure to expressly mention a term, condition, exclusion or defense under the insurance policy does not constitute a waiver of any rights, which ERIE may have or later

assert under the Policy.

We caution you that any coverage decisions can only be based upon the documents which have been provided for our review. If you have any additional relevant documents in your possession or if you receive any additional relevant documents, we ask that you submit them to us at your earliest convenience in order for us to make a determination under the Policy.

You should contact us if you have any questions about this letter.

Sincerely,

Nicole R Gehret
Liability Specialist
Phone: 866-345-7730
Email: Nicole.Gehret@ERieInsurance.com
Hours: 8:00 a.m. to 4:30 p.m. EST Mon - Fri

cc: Community Insurance Services Inc