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NightShift Digital, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

HUMO CORP.,

Plaintiff,

v.

NIGHTSHIFT DIGITAL LLC; SUSANA
PLASCENCIA; ROBERT LADY and DOES
1-100, inclusive,

Defendants.

Case No. 23STCV17937

*[Assigned to Hon. Stephen I. Goorvitch
Department 39]*

ANSWER TO COMPLAINT

Action filing date: July 28, 2023

Defendants Susana Plascencia, Robert Lady and NightShift Digital, LLC (“NightShift”) (collectively, “Defendants”), for themselves and for no other defendant, answer the Complaint of Plaintiff Humo Corp. (“Humo”), as follows:

INTRODUCTION

1. The cannabis company Humo terminated the face of its brand, Ms. Plascencia, and then, in apparent response to public and industry support for her, threatened her with legal action, bad mouthed her in the industry, and ultimately filed this lawsuit.

2. This lawsuit does not just lack merit—it impinges on Ms. Plascencia’s free speech rights. For that reason, Ms. Plascencia and the other named defendants have filed an anti-SLAPP motion. Humo’s core allegations—that Ms. Plascencia boycotted Humo because of its “patriarchal” conduct and stated publicly and to third parties that Humo had mistreated and discriminated against her due to her gender and ethnicity—squarely concern conduct in furtherance of Ms. Plascencia’s free speech rights in connection with important public issues, such as the lack of Latina representation in the cannabis industry. They are also false—while Humo waged a campaign to cast Ms. Plascencia in a negative light, Ms. Plascencia took the higher ground and handled a difficult situation with class by not saying anything negative about Humo—and should be dismissed under California Code of Civil Procedure Section 425.16.

3. Defendants believe that Humo’s allegations not subject to their anti-SLAPP motion are ticky tack, low value claims that lack merit. They intend to challenge these claims in a dispositive motion later in this case. For now, with the anti-SLAPP motion pending, Defendants deny each and every aspect of Humo’s claims.

GENERAL DENIAL

4. Pursuant to Section 431.30 of the California Code of Civil Procedure, Defendants deny, generally and specifically, each and every allegation of the Complaint, and further deny that (a) Humo is entitled to any relief. (b) Humo has been damaged in any sum by reason of any acts or omissions of Defendants, or (c) Humo is entitled to any relief whatsoever against Defendants, including without limitation, monetary relief in any amount, declaratory relief, and/or injunctive relief.

AFFIRMATIVE DEFENSES

5. In further answer to the Complaint, and as separate and distinct affirmative defenses to the purported causes of action set forth in the Complaint, Defendants allege as follows:

FIRST AFFIRMATIVE DEFENSE

(Lack of Independently Unlawful Act)

6. Although Humo has the burden of proof as to the alleged wrongful conduct, Defendants allege that Humo will be unable to show that they interfered with Humo's prospective economic relations by way of any independently unlawful act. Defendants allege that they did not make any statements that caused Humo's economic relationships to suffer. Defendants further allege that Humo is a public figure, generally and/or with regards to this controversy. As such, for Defendants' alleged speech to be unlawful, Humo must prove that Defendants made the alleged statements with actual malice, that is, with knowledge of falsity of the alleged statements or with reckless disregard for the truth. Humo cannot establish that Defendants acted with actual malice because it cannot show that Defendants had knowledge of the purported falsity of their statements about Humo and/or had actual doubt concerning their truth. Nor can Humo establish that the alleged statements are false.

SECOND AFFIRMATIVE DEFENSE

(Lack of Interference)

7. Although Humo has the burden of proof as to interference, Defendants allege that Humo will be unable to show that they interfered with Humo's prospective economic relations. Defendants are informed and believe, and based thereon allege, that Humo's own conduct, including the abrupt termination of its relationship with Ms. Plascencia, caused its economic relationships to suffer.

THIRD AFFIRMATIVE DEFENSE

(Lack of Causation)

8. Although Humo has the burden of proof as to causation, Defendants allege that Humo will be unable to show that Defendants' alleged conduct caused it any damages.

1 Defendants are informed and believe, and based thereon allege, that Humo's own conduct,
2 including the abrupt termination of its relationship with Ms. Plascencia, caused any damage that
3 Humo claims to have suffered.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **(Substantial Truth)**

6 9. Defendants allege that the representations allegedly made by them were
7 substantially true and cannot give rise to causes of action for intentional interference with
8 prospective economic relations.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 **(Fair Comment)**

11 10. Defendants allege that their alleged statements about Humo are a non-actionable
12 fair comment on Humo since Humo itself is a public figure and Humo's conduct is a matter of
13 public concern.

14 **SIXTH AFFIRMATIVE DEFENSE**

15 **(Third-Party Conduct)**

16 11. Without admitting that Humo has stated a claim or suffered any damages, Humo's
17 claims are barred because Defendants are not liable for the acts of others operating outside of
18 Defendants' control.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 **(Justification)**

21 12. Without admitting that Defendants made any of the alleged statements,
22 Defendants' alleged statements were justified by the need to inform the public about Humo's
23 conduct.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Substantial Compliance)**

26 13. NightShift has substantially complied with its obligations under the Service
27 Agreement that Humo alleges it breached.
28

NINTH AFFIRMATIVE DEFENSE

(Prevention of Performance)

14. NightShift is informed and believes, and based thereon allege, that its performance under the Service Agreement was prevented by Humo's own actions or failures to act, including Humo's termination of NightShift.

TENTH AFFIRMATIVE DEFENSE

(Excuse)

15. NightShift is informed and believes, and based thereon allege, that Humo breached its Service Agreement with NightShift, and that NightShift's performance under the Service Agreement was therefore excused.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

16. Defendants are informed and believe, and based thereon allege, that Humo has failed to mitigate its damages, if any, in connection with the matters alleged in its Complaint, and such failure to mitigate bars and/or diminishes Humo's recovery, if any, against Defendants.

TWELFTH AFFIRMATIVE DEFENSE

(Impossibility/Impracticability)

17. NightShift alleges that, to the extent it could not comply with some or all of the promises in the Service Agreement, it was because Humo's conduct made it impossible or impractical for NightShift to do so.

THIRTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

18. Defendants allege that, by virtue of Humo's own careless, negligent and other wrongful conduct, Humo should be barred from recovering against Defendants under the equitable doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

(Estoppel)

19. The Complaint, and the purported causes of action alleged therein, are barred by

1 the doctrine of estoppel.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

3 **(Offset)**

4 20. Any damage alleged to have been caused by Defendants is offset by the damage
5 caused by Humo and/or other parties.

6 **RESERVATION OF AFFIRMATIVE DEFENSES**

7 21. The Complaint does not describe Humo's claims against Defendants with
8 sufficient particularity and certainty to enable Defendants to determine what additional defenses
9 may exist. Accordingly, Defendants reserve the right to amend its Answer to assert additional
10 affirmative defenses when it determines the particulars of Humo's claims or when additional
11 affirmative defenses become available based on future events or facts uncovered during
12 discovery.

13 **PRAYER**

14 WHEREFORE, Defendants pray for judgment against Humo as follows:

- 15 1. That Humo takes nothing by its Complaint;
- 16 2. That judgment be entered in favor of Defendants and against Humo on all causes
17 of action;
- 18 3. That Defendants be awarded their reasonable attorneys' fees according to proof;
- 19 4. That Defendants be awarded its costs of suit herein incurred; and
- 20 5. That Defendants be awarded such other and further relief as the Court may deem
21 appropriate.

22 DATED: September 15, 2023

GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP

24
25 By: 
26 STEVEN A. STEIN (SBN 287401)
27 Attorneys for Defendants Susana Plascencia, Robert
28 Lady and NightShift Digital, LLC

PROOF OF SERVICE

I am a resident of the state of California, over the age of eighteen years, and not a party to the within-action. My business address is 2049 Century Park East, Suite 2600, Los Angeles, California 90067.

On September 15, 2023, I served a copy of the within document: **ANSWER TO COMPLAINT** on the interested parties in this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

Kieran Ringgenberg
FEUERSTEIN KULICK LLP
1940 Embarcadero
Oakland, CA 94606
kringgenberg@dfmklaw.com
molly@dfmklaw.com

☐ **(BY MAIL)** By placing the document(s) listed above in sealed envelope(s) in a designated "OUT" box in the office of my employer. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid. (CCP Section 1013a, 2015.5, FRCP section 5(B), or FRAP 25(d).

☐ **(BY FEDERAL EXPRESS)** By placing a copy of the document(s) listed above in a sealed envelope to above addressee(s) and sending it via Federal Express, with delivery fees provided for. I know that in the ordinary course of business at this office said document(s) will be deposited in a box or other facility regularly maintained by Federal Express or delivered to an authorized courier or driver of Federal Express for next day delivery. (CCP Sections 1013(c), 2015.5)

☒ **(BY EMAIL)** I caused a true copy of the foregoing document to be served by e-mail at the e-mail address set forth above. Each email was complete and no reports of error were received.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 15, 2023, at Los Angeles, California.



Anne Marie De Felice