COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT

SUPERIOR COURT DEPARTMENT

SUFFOLK, ss. Civil Action No. 2484CV02931-H

DANY ABOUELHKIER, Pro Se
Plaintiff,

v.

VIRTUAL FULFILLMENT CENTER, LLC,
MOHAMED KASSEM,
OMAR NEAMATALLA,
MOHAMED ALI, and
AHMED KASEM,
Defendants.

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO MOTION TO DISMISS

I. INTRODUCTION

Defendants' Opposition does not cure the fatal defects in their Counterclaims.

To the contrary, the Opposition confirms that:

1. VFC is a multi-manager LLC with no Operating Agreement, requiring formal governance under G.L. c. 156C;

2. No notice, vote, minutes, written consent, or corporate authorization occurred before Defendants filed Counterclaims in VFC's name;

3. Defendants engaged in a secret plan to restructure the LLC and "remove Dany from the manager role" (See Exhibit – Ahmed email to business counsel, 10/31/24);

4. Defendants took directly contradictory positions about Plaintiff's role (manager in

internal communications, "independent contractor" in communications to Plaintiff);

5. Their own pleadings concede petitioning activity, triggering Anti-SLAPP protection;

6. Their claimed "injuries" are injuries to VFC, not to any individual member, making the Counterclaims derivative and procedurally defective;

7. Judicial estoppel bars Defendants from denying Plaintiff's ownership/managerial role, having represented him as such to the City of Boston (See Exhibit – licensing filings).

For these reasons, the Counterclaims must be dismissed.

II. THIS IS A MULTI-MANAGER LLC, BUT DEFENDANTS CONCEDE THEY TOOK NO FORMAL CORPORATE ACTION

Defendants argue that because they "also" acted as managers, they could simply approve litigation informally.

Massachusetts law does not allow this.

A. Multi-manager LLCs require formal procedure

In a multi-manager LLC with **NO** Operating Agreement, corporate action requires notice to all managers, an opportunity to deliberate, an actual vote, minutes, and written consent or resolution. *See G.L. c. 156C §§ 21–24*.

B. Defendants admit they did none of these things

The Opposition offers no meeting notice, minutes meeting, vote, written consent, or Secretary of State filing showing corporate action.

Instead, Defendants repeatedly refer to the "VFC Parties" having "approved" the Counterclaims. That phrase admits the problem: informal agreement among a faction of managers does not constitute corporate authorization.

C. Even if Defendants' characterization were true, unilateral action is unlawful

In a multi-manager LLC, managers cannot secretly hire litigation counsel, secretly authorize litigation, secretly remove a co-manager, secretly change ownership structure, or secretly submit amendments to the Secretary of State.

Such actions require documented formal procedure.

Defendants concede none existed.

Thus the Counterclaims were unauthorized.

III. EXHIBIT CONFIRMS A SECRET TAKEOVER PLAN AND UNAUTHORIZED RETENTION OF COUNSEL

The most serious admission comes from Defendants themselves.

See Exhibit (Ahmed email to Attorneys Scanlon & Barnosky, 10/31/24) states:

"*Alexander will be overseeing changes to our company structure and the removal of Dany from the manager role… We already submitted updates to the Secretary of State.*"

This email is legally dispositive because it shows decisions were made in secret, Plaintiff a co-manager, received no notice, they intended to alter governance without following statutory procedure, there was an attempted false filing with the Secretary of State and Attorney Levine was retained **specifically** to remove a co-manager.

This is unauthorized corporate action as a matter of law.

The Opposition does not address or explain this email. Because it cannot.

IV. DEFENDANTS' "INDEPENDENT CONTRACTOR" CLAIM IS REFUTED BY THEIR OWN EMAIL

Immediately after telling business counsel that Plaintiff was the **manager to be removed**, Defendants told Plaintiff he was "just an independent contractor."

(See Exhibit – defendants email to Plaintiff)

This contradiction is fatal:

A person cannot be "removed" from a manager role if they never were one. A contractor cannot perform managerial licensing duties. A contractor cannot be listed as a 20% owner/ manager in licensing filings with the City. A contractor cannot open the primary LLC bank account. A contractor cannot form an LLC as a founding member or add members to it unless he is an equity owner of that company.

Their Opposition does not reconcile this contradiction or explain why Defendants said two incompatible things within hours.

V. JUDICIAL ESTOPPEL BARS DEFENDANTS FROM DENYING PLAINTIFF'S OWNERSHIP/MANAGEMENT ROLE

Defendants represented to the City of Boston that Plaintiff was **20% owner**, that Plaintiff was **manager**, that Plaintiff was the **primary signatory**, that Plaintiff had authority for licensing. (See Exhibit – City of Boston licensing forms)

Now Defendants claim the opposite.

Massachusetts law prohibits parties from contradicting a prior position when the inconsistent position benefits them in litigation. *See New Hampshire v. Maine*, 532 U.S. 742 (2001).

Defendants are estopped from claiming:

Plaintiff lacked authority, Plaintiff was not a manager, Plaintiff had no licensing role, Plaintiff caused harm by performing duties they publicly assigned to him, they were not assigned to, they were agreed in writing between partners at all times. Plaintiff can provide many different exhibits as proof. Thus the Counterclaims fail.

VI. THE COUNTERCLAIMS ARE DERIVATIVE AND PROCEDURALLY INVALID

Every alleged harm concerns VFC's business, VFC's licensing, VFC's profits and/or VFC's operations. These are LLC-level injuries., Under Massachusetts law, such claims must be brought as derivative claims, require formal demand, require a vote and require compliance with procedural protections. *See Bessette v. Bessette, 385 Mass. 806 (1982)* (derivative claims may not be disguised as personal claims).

Defendants did not follow any derivative procedure.

This is an independent ground for dismissal.

VII. ANTI-SLAPP APPLIES BECAUSE THE COUNTERCLAIMS ARISE SOLELY FROM PETITIONING

Defendants repeatedly allege that Plaintiff communicated with the City, filed complaints with licensing, raised compliance issues and delayed approval of the license.

These allegations are **petitioning activities** under G.L. c. 231 §59H.

If a claim is based solely on petitioning, it is barred as a matter of law.

See Fabre v. Walton, 436 Mass. 517 (2002).

Defendants' Opposition cannot change what their own pleadings state.

VIII. THE TIMING OF THE COUNTERCLAIMS SHOWS RETALIATORY PURPOSE

The Counterclaims were filed mere days after Plaintiff's G.L. c. 93A demand, without any corporate procedure, after a secret takeover plan and by counsel retained without authority.

This sequence demonstrates retaliation and bad faith. Courts regularly dismiss such filings.

CONCLUSION

Defendants' Opposition confirms, rather than cures, the fatal defects in their Counterclaims. They admit there was no Operating Agreement, no vote, no meeting, no notice, and no written consent for any corporate action. Their claims are derivative, unauthorized, reliant on protected petitioning activity, contradicted by public filings, and legally unsustainable.

Most importantly, Defendants' own licensing conduct makes their narrative impossible.

While telling this Court, that he was "just an independent contractor," they simultaneously relied on his 20 years of restaurant experience, which none of them had, his 20% ownership interest, and his managerial authority to obtain the dine-in and take-out licenses. In November 2024, Defendants and their counsel represented Plaintiff to the City of Boston as a 20% owner and manager to secure the take-out license, even after secretly removing him from the Secretary of State. They opened the business using Plaintiff's ownership and qualifications, then reversed positions months later.

A party cannot swear one fact to a licensing authority to obtain government approval and tell the opposite to this Court. This contradiction constitutes a knowing misrepresentation to a municipal body, triggers judicial estoppel, and renders Defendants' tort theories logically impossible. If any conduct threatens the business or its licensure, it is Defendants' conflicting representations, not Plaintiff's actions.

Because the Counterclaims rest on irreconcilable contradictions and repudiated representations, they must be dismissed with prejudice.

Respectfully submitted,

Dany Abouelkhier (Pro Se)

550 Liberty St. Unit 905
Braintree, MA 02184

Tel: (617) 909-7799

Email: danytaw@yahoo.com

Date: November 25, 2025

/s/ Dany Abouelkhier
Dany Abouelkhier (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2025 a copy of the foregoing was served via electronic mail on all counsel of record.

Alexander W. Levine
RIVER STREET LAW
11 River Street, Suite 301
Wellesley, MA 02481
Tel: (781) 369-7090

Fax: (781) 369-7090
alevine@riverstreetlaw.com
www.riverstreetlaw.com

Respectfully submitted,

Dany Abouelkhier, appearing pro se

/s/ Dany Abouelkhier
Dany Abouelkhier (Pro Se)