

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT
 DOCKET NO.: 2484CV02931-H

DANY ABOUELKHIER,	)
Plaintiff / Defendant-in-Counterclaim,	)
	)
v.	)
	)
VIRTUAL FULFILLMENT CENTER, LLC,	)
MOHAMED KASSEM,	)
OMAR NEAMATALLA,	)
MOHAMMED ALI, and	)
AHMED KASEM,	)
Defendants / Plaintiffs-in-Counterclaim.	)
	)

**DEFENDANTS' / PLAINTIFFS'-IN-COUNTERCLAIM OPPOSITION TO
 PLAINTIFF'S / DEFENDANT'S-IN-COUNTERCLAIM
 MOTION TO DISMISS COUNTERCLAIMS**

NOW COME the Defendants / Plaintiffs-in-Counterclaim Virtual Fulfillment Center, LLC ("VFC"), Mohamed Kassem ("Mr. Kassem"), Omar Neamatalla ("Mr. Neamatalla"), Mohamed Ali ("Mr. Ali"), and Ahmed Kasem ("Mr. Kasem") (collectively referred to as the "VFC Parties"), and hereby oppose the Plaintiff / Defendant-in-Counterclaim Dany Abouelkhier's ("Mr. Abouelkhier") Motion to Dismiss Counterclaims.

ARGUMENT

This matter concerns multiple disputes regarding a domestic limited liability company, VFC (a food business exclusively for take-out / delivery service). The Plaintiff, Mr. Abouelkhier, argues that the VFC Parties' Counterclaims should be dismissed for failure to state a claim upon which relief can be granted, in addition to other technical arguments. The VFC Parties' counterclaims assert: Count I – Declaratory Judgment; Count II – Injunctive Relief; Count III – Breach of Contract; Count IV – Breach of Implied Good Faith and Fair Dealings;

Count V – Fraud, Misrepresentation, and Deceit; Count VI – Tortious Interference; Count VII – Defamation; Count VII – Violation of MGL c. 93A, ss. 2, 11; and Count IX – Conversion. The VFC Parties’ Counterclaims should not be dismissed because they properly meet the required pleading standards, are meritorious, and otherwise are not procedurally defective.

Mr. Abouelkhier argues that the Counterclaims fail for lack of a manager vote within VFC. It is not a required pleading standard for an LLC to allege the details of the internal company’s attorney-client communications in connection with the filing of pleadings. Moreover, the Counterclaims were authorized and approved by the VFC Parties and are properly pled.

Mr. Abouelkhier argues the Counterclaims fail because they impermissibly merge VFC’s and the individually listed managers’ and members’ claims. The Counterclaims clearly distinguish which entity or person is bringing each claim, and the Prayer for Relief of the Counterclaims further specifies what each Defendant / Plaintiff-in-Counterclaim is seeking. VFC is asserting claims against the Plaintiff, as are the individually listed Defendants. Additionally, Mass. R. Prof. C. 1.13(g) explicitly permits an attorney representing the LLC to also represent its individual officers and managers. Mass. R. Prof. C. 1.13(g) states in relevant part as follows: “(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.” There is no inherent conflict of interest in a joint representation, nor are there grounds for dismissal of the Counterclaims.

To the extent Mr. Abouelkhier is arguing judicial estoppel, such an argument is an affirmative defense, and otherwise attacks the underlying merits of some of the Counterclaims.

Such an argument is not grounds for a dismissal on the pleadings. To the extent Mr. Abouelkhier is arguing the Counterclaims fail to state a claim upon which relief can be granted, the various Counts are plausible, plead entitlement to relief, and state the necessary specifics for the allegations of Fraud.

Mr. Abouelkhier is arguing that certain Counterclaims should be dismissed under MGL c. 231, s. 59H. There are no Counterclaims asserted based upon Mr. Abouelkhier's personal right of petition. A portion of the allegations concern false statements made to the City of Boston licensing board regarding Mr. Abouelkhier's authority within VFC and internal business matters, and then making unauthorized requests to delay the issuance of a license to VFC to the detriment of VFC. The "petition" before the licensing board was brought by VFC as a company, not Mr. Abouelkhier as an individual, and Mr. Abouelkhier otherwise had no standing as an individual in VFC's licensing application. None of the Counterclaims concern Mr. Abouelkhier's individual constitutional rights to petition as a citizen. As a matter of law, MGL c. 231, s. 59H does not apply in this situation. See Cardno ChemRisk, LLC v. Foytlin, 476 Mass. 479, 485, 68 N.E.3d 1180, 1187 (2017).¹ Moreover, Counts VI-VIII of the Counterclaims encompass more than just Mr. Abouelkhier's conduct with the City of Boston, and include interference with relationships beyond that of the City of Boston.

¹ The Court commenting on the language on MGL c. 231, s. 59H's definition of "exercise of [the] right to petition":

"While this definition is "very broad," Duracraft, 427 Mass. at 162, 691 N.E.2d 935, it has been limited by our construction of the statutory phrase "said party's exercise of its right of petition." G. L. c. 231, § 59H (emphasis added). We have taken this phrase to mean that one seeking the protection of the statute must show that he or she has "petition[ed] the government on [his or her] own behalf ... in [his or her] status as [a] citizen." Kobrin, 443 Mass. at 332, 821 N.E.2d 60. Put another way, the petitioning at issue must be of the kind contemplated by the United States and Massachusetts Constitutions. See id. at 334, 821 N.E.2d 60; Fisher v. Lint, 69 Mass.App.Ct. 360, 364, 868 N.E.2d 161 (2007)."

Cardno ChemRisk, LLC v. Foytlin, 476 Mass. 479, 485, 68 N.E.3d 1180, 1187 (2017)

WHEREFORE, the VFC Parties request this Court deny Mr. Abouelkhier's Motion to Dismiss Counterclaims.

Defendants / Plaintiffs-in-Counterclaim,
VIRTUAL FULFILLMENT CENTER, LLC,
MOHAMED KASSEM,
OMAR NEAMATALLA,
MOHAMMED ALI, and
AHMED KASEM
By counsel,

/s/ Alexander W. Levine

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Dated: November 11, 2025

CERTIFICATE OF SERVICE

I, Alexander W. Levine, hereby certify that on November 11, 2025, I caused the foregoing to be served upon Mr. Abouelkhier via e-mail.

/s/ Alexander W. Levine

Alexander W. Levine