

COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT

SUPERIOR COURT DEPARTMENT

SUFFOLK, ss.

Civil Action No. 2484CV02931-H

DANY ABOUELHKIER,

Plaintiff / Defendant-in-Counterclaim,
v.

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

REPLY TO DEFENDANTS' OPPOSITION TO MOTION TO STRIKE

I. INTRODUCTION

Plaintiff Dany Abouelkhier submits this Reply to Defendants' Opposition to his Motion to Strike filed on February 11, 2025. This is a Fast Track Rule 65 injunction matter. On November 14, 2024, the Honorable Judge Ullmann ruled that business-related disputes, damages, and Chapter 93A claims do not belong in this docket. The case was dismissed without prejudice to allow parties to file civil claims elsewhere. Plaintiff complied. Defendants are now improperly using this injunction forum to retaliate and preclude the very relief the Court authorized.

II. DEFENDANTS WERE HEARD AND FULLY PARTICIPATED

Defendants claim they “were not heard,” but the record proves otherwise. They filed an Opposition, Cross-Motion, Memorandum of Law, and four affidavits—all of which were considered during the November 14 hearing. Both parties were allowed to speak. Judge Ullmann invited further action within two weeks. Defendants chose not to act.

III. DEFENDANTS’ COUNTERCLAIMS ARE UNTIMELY AND PROCEDURALLY IMPROPER

Under **Mass. R. Civ. P. 13(a)**, compulsory counterclaims must be filed with the first responsive pleading. Defendants filed their counterclaims on February 11, 2025, nearly three months after appearing and without leave under **Rule 15(a)**. They filed no motion, no affidavit, and provided no justification. This failure renders their counterclaims procedurally defective.

IV. THIS IS NOT THE PROPER FORUM FOR MONETARY OR TORT CLAIMS

This case was filed under the **Equitable Remedies** track (**DCM Track F**) and governed by Rule 65. It was never converted into a general civil case. Judge Ullmann ruled explicitly that this docket was not the forum for monetary damages, torts, or Chapter 93A claims. Plaintiff followed that directive. Defendants ignored it. Their counterclaims were filed without leave in violation of Rule 15 and reflect a deliberate misuse of the pro se litigant’s procedural position.

V. DEFENDANTS FILED COUNTERCLAIMS TO PREEMPT PLAINTIFF’S CIVIL CASE

Plaintiff served a proper Chapter 93A demand letter, notifying Defendants of his intent to file a separate civil action. The counterclaims were filed only after that notice

and are not based on new facts. Defendants' goal is to invoke **res judicata** by forcing Plaintiff to respond in this improper forum, thereby blocking his from obtaining relief where permitted. This is intentional, retaliatory conduct.

VI. DEFENDANTS MISREPRESENT PLAINTIFF'S MOTION AND SETTLEMENT CLAIMS

Plaintiff's **March 17, 2025 motion** was titled "Motion for Extension of Time." It did not state an intent to answer the counterclaims. It stated Plaintiff was seeking legal counsel. Attorney Levine's representation that Plaintiff sought "time to answer counterclaims" is knowingly false and violates **Mass. R. Prof. C. 3.3(a)(1)**. Similarly, Defendants falsely claim that settlement discussions occurred. Plaintiff affirms that there were no negotiations whatsoever with any of the defendants or Attorney Levine. If Levine claims otherwise, he must produce evidence. He cannot.

VII. DEFENDANTS FAILED TO FILE A VALID RULE 15 MOTION

Defendants' vague line—"if leave is required, we move now"—is not a motion under **Rule 15(a)**. There is no affidavit, memorandum, or supporting facts. Courts do not grant retroactive permission to violate procedural rules. This is not how Rule 15 operates, and Attorney Levine knows it.

VIII. BASELESS ARGUMENT REGARDING DEFAULT

Defendants claim Plaintiff should have moved for default. This is baseless. They filed motions, appeared, and were heard. Plaintiff had no legal basis to move for default. The only party who failed to act was Attorney Levine. He had ample opportunity to:

1. Move for reconsideration
2. Seek leave to file counterclaims

3. File a new civil action
4. Request clarification or status

He did none of these. His inaction does not justify improper filings now.

IX. DEFENDANTS WAIVED THEIR RIGHT TO JURY TRIAL

Defendants did not demand a jury trial in any responsive pleading before February 11, 2025. Under **Rule 38(b)**, a party has ten days from their last pleading to request a jury. That deadline passed months earlier. This matter remains a non-jury Rule 65 proceeding on Track F which does not allow jury trials. The late jury demand is invalid and must be struck.

X. DEFENDANTS ATTEMPTED TO SHORTEN PLAINTIFF'S REPLY TIME IN VIOLATION OF RULE 12

Attorney Levine's attempt to reduce Plaintiff's reply time to **10 days** contradicts **Rule 12(a)(1)**, which provides 20 days to respond to counterclaims. His demand is procedurally baseless and part of a broader pattern of harassment and confusion designed to pressure a pro se litigant into waiver or default.

XI. DEFENDANTS WERE HEARD—CLAIMS TO THE CONTRARY ARE FALSE

Levine's assertion that Defendants were "not heard" or that their claims were "not addressed" is knowingly false. Their motions were denied without prejudice at the November 14 hearing, and both sides were given full opportunity to participate. If Defendants had concerns, they could have filed a Motion for Clarification. They did not. Their current claims are misrepresentations that waste judicial resources.

XII. CONCLUSION

Defendants' counterclaims are untimely, procedurally improper, and strategically retaliatory. They violate **Rule 13, Rule 15, Rule 12, and Rule 38**. Their jury demand is waived. Their deadline is fabricated. Their filings reflect procedural manipulation and abuse of process aimed at trapping a pro se Plaintiff and preempting his right to file in a proper forum.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- **Strike** the counterclaims filed on February 11, 2025, **with prejudice**;
- **Deny** Defendants' Cross-Motion;
- **Strike** the untimely jury demand;
- **Affirm** Plaintiff's right to pursue a separate civil action, as previously directed.

Respectfully submitted,

Dany Abouelkhier (Pro Se)

550 Liberty St. Unit 905

Braintree, MA 02184

Tel: (617) 909-7799

Email: danytaw@yahoo.com

Date: April 17, 2025

/s/ Dany Abouelkhier

Dany Abouelkhier (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 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)